ANNEX: A/HRC/36/43

**Annex 1: International legal framework relating to access to justice and remedy for victims of contemporary forms of slavery**

The Convention to Suppress the Slave Trade and Slavery of 1926 (Slavery Convention), defines slavery in article 1.1 as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”. Article 2, imposes on States Parties the obligation to undertake the necessary steps to: “a) prevent and suppress the slave trade; b) to bring about, progressively and as soon as possible, the complete abolition of slavery in all its forms”. The 1926 Slavery Convention differentiates between slavery and forced labour, article 5 requires States Parties “to take all necessary measures to prevent compulsory or forced labour from developing into conditions analogous to slavery”. Furthermore, article 6 refers to States’ obligation to adopt the necessary measures in order that severe penalties may be imposed in respect of infractions of laws and regulations giving effect to the purposes of the Convention.

The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956 (Supplementary Convention), requires in article 1 that States Parties completely abolish or abandon the four institutions and practices similar to slavery enumerated in the same article “where they still exist and whether or not they are covered by the definition of slavery contained in article 1 of the Slavery Convention […]”. The four institutions, also referred to as “servile status” are: debt bondage, serfdom, three categories of forced marriage and a category that has been subsequently known as ‘the sale of children’. Moreover, article 6 (2) imposes on States Parties the obligation to criminalize “the act of inducing another person to place himself or a person dependent upon him into the servile status resulting from any of the institutions or practices mentioned in article 1, to any attempt to perform such acts, to being accessory thereto, and to being a party to a conspiracy to accomplish any such acts”.

The Universal Declaration of Human Rights adopted by the United Nations General Assembly in 1948, provides in article 4 that “no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms”. Article 7 states that “all are equal before the law and are entitled without any discrimination to equal protection of the law […]”. Article 8 states that “everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law”. Furthermore, article 10 provides that “everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him”.

The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted by the General Assembly in 1985, recognizes that victims are “[…] entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm they have suffered” (para. 4).[[1]](#footnote-1)

The International Covenant on Civil and Political Rights of 1966, imposes on States Parties the obligation “to ensure that any person whose rights or freedoms as recognized in the Convention are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity”; and to ensure “that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy” (article 2 (3)).[[2]](#footnote-2) Article 8 provides that “1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited; 2. No one shall be held in servitude; 3. (a) No one shall be required to perform forced or compulsory labour”. Furthermore, article 26 provides that “all persons are equal before the law and are entitled without any discrimination to the equal protection of the law”.

The International Labour Organization (ILO) Forced Labour Convention, 1930 (Forced Labour Convention, No. 29), defines forced labour in article 2.1 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”. Moreover, article 25 provides that “the illegal exaction of forced or compulsory labour shall be punishable as a penal offence”, and imposes on States Parties the obligation to ensure that the penalties imposed by law are really adequate and strictly enforced.[[3]](#footnote-3)

The Protocol of 2014 to the Forced Labour Convention No. 29, provides in article 1 that State Parties shall take effective measures to prevent and eliminate the use of forced or compulsory labour and provide victims protection and access to appropriate and effective remedies, such as compensation, and to punish perpetrators. Article 2 of the Protocol of 2014 specifies six measures to be taken for the prevention of forced or compulsory labour.[[4]](#footnote-4) Moreover, article 4 (1) provides that States Parties shall ensure “that all victims of forced or compulsory labour, irrespective of their presence or legal status in the national territory, have access to appropriate and effective remedies, such as compensation; article 4 (2) refers to States Parties’ obligation to ensure that competent authorities do not prosecute or impose penalties on victims of forced labour for their involvement in unlawful activities which they have been compelled to commit as a direct consequence of being subjected to forced labour.[[5]](#footnote-5)

The ILO Domestic Workers Convention, 2011 (No.189), imposes to States Parties the obligation to respect, promote and realize the fundamental principles and rights at work, including the elimination of all forms of forced labour, the effective abolition of child labour and the elimination of discrimination in respect of employment and occupation (article 3(2)). Article 16 provides that States Parties shall take measures to ensure that all domestic workers “have effective access to courts tribunals or other dispute resolution mechanisms under conditions that are not less favourable than those available to workers generally”.[[6]](#footnote-6)

The ILO Convention on Worst Forms of Child Labour, 1999 (No. 182), provides in article 3 (a) that the term worst forms of child labour comprises among other practices “all forms of slavery or practices similar to slavery […]”. Moreover, article 7 imposes on States Parties the obligation to take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to the Convention “including the provision and application of penal sanctions or, as appropriate, other sanctions”. Article 7 obliges States Parties to take effective and time-bounded measures to “provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social reintegration; ensure access to free basic education, and, wherever possible and appropriate, vocation training, for all children removed from the worst forms of child labour; and identify and reach out to children at special risk”.

The Convention on the Rights of the Child (1989) establishes in article 3(1) that “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”. Article 12 provides that the child shall be provided the opportunity “to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law”. Article 32(1) refers to “the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to child’s health or physical, mental spiritual, moral or social development”; paragraph (2) provides that States Parties shall take legislative, administrative, social and educational measures to ensure this, noting that one of the measures that States Parties shall particularly adopt is to provide for appropriate penalties or other sanction to ensure the effective enforcement of article 32. Moreover, article 39 refers to States Parties obligation to take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of exploitation among other types of abuse.[[7]](#footnote-7)

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990, provides in article 83 (a) that State Parties are obliged to ensure that any person whose rights or freedoms recognized in the Convention are violated “have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity”.

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1965, elaborates on States Parties’ obligation pursuant to the principle of non-discrimination and prohibits “any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin” (article 1). Moreover, article 6 requires States Parties to provide effective remedies and upholds the right of all persons to seek from national tribunals just and adequate reparation or satisfaction for any damage suffered as a result of discrimination.

The European Convention on Human Rights prohibits slavery, servitude and forced labour in article 4 and refers to the right to an effective remedy in article 13. The American Convention on Human Rights provides in article 6 that “1. no one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as the slave trade and traffic in women. 2. No one shall be required to perform forced or compulsory labour”; article 25 refers to the right of judicial protection. The African Charter on Human and Peoples’ Rights contemplates in article 3 a general principle of equal protection, and in article 7 the right of every individual “to have his cause heard”. Article 7(1)(a) provides every individual with “the right to appeal to competent national organs against acts violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force”.

The UN Guiding principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework, 2011, refer in Principle 25 to States’ obligation to “take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses [business related human rights abuses] occur within their territory and/or jurisdiction those affected have access to effective remedy”. Principle 26 provides that “States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy”.

The draft UN Principles and Guidelines for the Effective Elimination of Discrimination Based on Work and Descent presented by the Special Rapporteurs on the topic of discrimination based on work and descent in 2009 (A/HRC/11/CRP.3), provide that “national and local governments should take all necessary steps to ensure equal access to judicial remedies for affected communities including the provision of legal aid […]” (para. 29). It also states that “[…] national and local governments should encourage the recruitment of members of affected communities into law enforcement agencies” (para.30).

The Recommended Principles and Guidelines on Human Rights and Human Trafficking issued in 2002 by the UN High Commissioner for Human Rights (E/2002/68/Add.1); and the draft Basic Principles on the Right to an Effective Remedy for Victims of Trafficking (A/HRC/26/18), presented by the Special Rapporteur on trafficking in persons, especially women and children in 2014; provide key guidance on access to justice and remedy for victims of forced labour, slavery, practices similar to slavery and servitude in the context of trafficking.

**Annex 2: Relevant regional and national jurisprudence**

**A.** The European Court of Human Rights

*Siliadin v France*

In 2005, the European Court of Human Rights issued a judgment concerning a Togolese woman who had been held in servitude as a domestic worker in France (*Siliadin v France*, Application No. 73316/01) [[8]](#footnote-8). The Court observed that France’s laws on servitude were too vague and the penalties imposed to those who had exploited the woman were inappropriately lenient. Referring to States’ positive obligations under the European Convention on Human Rights, the Court considered that “[…] in accordance with contemporary norms and trends in this field, the member States’ positive obligations under Article 4 of the Convention must be seen as requiring the penalisation and effective prosecution of any act aimed at maintaining a person in such situation […]” (para. 112).

The Court concluded that the applicant had been held in forced labour (as defined by the ILO Convention No. 29 of 1930) and servitude. In considering whether she had been held in servitude, the Court noted that servitude is “a particularly serious form of denial of freedom” and that, it includes “in addition to the obligation to perform certain services for others … the obligation for the ‘serf’ to live on another person’s property and the impossibility of altering his condition” (para. 123). The Court also noted that for the purposes of the European Convention “‘servitude’ means an obligation to provide one’s services that is imposed by the use of coercion, and is to be linked with the concept of ‘slavery’” (para. 124). After reaching its conclusions that the applicant had been in forced labour and servitude, the Court reviewed the positive obligations of the State (France) under article 4 of the European Convention. The Court observed that, although the applicant “was subjected to treatment contrary to Article 4 and held in servitude, was not able to see those responsible for the wrongdoing convicted under the criminal law” (para. 145). It also noted that according to a 2001 report by the French National Assembly’s joint taskforce on the various forms of modern slavery, the relevant articles of the Criminal Code criminalizing these practices “[…] as worded at the material time, were open to very differing interpretations from one court to the next, as demonstrated by this case […]” (para. 147). The Court considered that “the criminal-law legislation in force at the material time did not afford the applicant, a minor, practical and effective protection against the actions of which she was a victim” and thus found there had been “a violation of the respondent State’s positive obligations under Article 4 of the Convention” (paras. 148, 149).

*Rantsev v. Cyprus and Russia*

In 2010, the European Court of Human Rights issued a judgment concerning trafficking in persons for the purpose of the exploitation of the prostitution of others (*Rantsev v. Cyprus and Russia*, Application No. 25965/04). [[9]](#footnote-9) The case concerned a Russian woman who had been recruited in Russia and brought to Cyprus, where she had been employed as a prostitute and subsequently died in ambiguous circumstances. Referring to States’ positive obligations under the European Convention, the Court noted that “[…] Article 4 may, in certain circumstances, require a State to take operational measures to protect victims, or potential victims, of trafficking […]. In order for a positive obligation to take operational measures to arise in the circumstances of a particular case, it must be demonstrated that 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 […]” (para 286).

The Court observed that States have an obligation to investigate whether or not a victim (of trafficking in persons or by implication of exploitation who has not necessarily been trafficked) or his/her relatives or representatives lodges a complaint. In this regard, the Court considered that “[…] Article 4 also entails a procedural obligation to investigate situations of potential trafficking. The requirement to investigate does not depend on a complaint from the victim or next-of-kin: once the matter has come to the attention of the authorities they must act of their own motion […]. For an investigation to be effective, it must be independent from those implicated in the events. It must also be capable of leading to the identification and punishment of individuals responsible, an obligation not of result but of means. A requirement of promptness and reasonable expedition is implicit in all cases but where the possibility of removing the individual from the harmful situation is available, the investigation must be undertaken as a matter of urgency. […]” (para. 288). The Court held Russia and Cyprus responsible for failing to conduct an effective investigation of what had happened.

*C.N & V. v. France*

In 2012, the European Court of Human Rights issued a judgment concerning two orphaned Burundi sisters who alleged that they were held in servitude or forced labour at their aunt and uncle’s home by being forced to engage in unremunerated housework and domestic chores; the applicants were 16 and 10 years old when they arrived in France (*C.N & V. v. France*, Application No. 67724/09).[[10]](#footnote-10) As regards forced labour, the Court commented on the notion of “labour” within the meaning of Article 4(2) of the European Convention and specified that “[…] not all work exacted from an individual under the threat of a “penalty” is necessarily “forced or compulsory labour” prohibited by this provision” (para. 74). It suggested the type and amount of work involved are relevant factors which distinguish ‘forced labour’ from effort that can reasonably be expected of other family members or people sharing accommodation. In relation to the ‘penalty’ requirement, the Court observed that it can manifest through physical violence or restraint, but it can also take subtler forms of psychological nature such as threats to denounce victims to the police or immigration authorities when their employment status is illegal (para. 77). As regards servitude, the Court observed that it “[…] corresponds to a special type of forced or compulsory labour or, in other words, “aggravated” forced or compulsory labour” (para. 91). It noted that a fundamental distinguishing feature between servitude and forced labour within the meaning of Article 4 of the Convention “lies in the victim’s feeling that their condition is permanent and that the situation is unlikely to change”. The Court concluded that the first but not the second applicant was subjected to forced labour and servitude within the meaning of Article 4 of the Convention.

The Court referred to States’ positive obligation to penalize and effectively prosecute actions in breach of Article 4 of the Convention and the procedural obligation to investigate situations of potential exploitation when the matter comes to the attention of the authorities (para. 104). The Court considered that in this case the State had not violated Article 4 as regards to its procedural obligation to conduct an effective investigation into cases of servitude and forced labour (para. 111). However, the Court noted that the domestic law situation was the same as in the *Siliadin* case; it found France in violation of Article 4 of the Convention “in respect of the first applicant as regards the State’s positive obligation to set in place a legislative and administrative framework to effectively combat servitude and forced labour” (para. 108).

*Chowdury and Others v. Greece*

In 2017, the European Court of Human Rights delivered a judgment in relation to a group of undocumented migrant workers from Bangladesh who worked on a strawberry farm in Manolada, Greece, and who were subjected to labour exploitation (*Chowdury and Others v. Greece*, Application No. 21884/15).[[11]](#footnote-11) The Court found that the migrant workers’ situation amounted to forced labour and trafficking in persons and that Greece was in violation of its positive obligations under Article 4 of the European Convention. The Court observed that States’ positive obligations under article 4 should be interpreted in light of the Council of Europe Convention on Action against Trafficking in Human Beings and entail the adoption of preventive measures, the protection of victims, and the investigation, criminalization and effective suppression of any act intended to subject a person to exploitation (para. 104). The Court recalled that the Council of Europe Convention draws attention to a number of measures to prevent trafficking and protect victims. It noted that measures to protect victims include those aimed at facilitating the identification of victims by trained persons and assisting them in their physical, psychological and social recovery (para. 110).

The Court considered that the State (Greece) authorities had general knowledge of the abuses suffered by the migrant workers in the strawberry fields of Manolada (para. 111-112). It observed that the operational measures undertaken by the authorities were not sufficient to prevent the abuses suffered by the workers and protect them from the treatment to which they were subjected (para. 115). Commenting on the effectiveness of the investigation and judicial procedure, the Court noted that the prosecution and judicial authorities have an obligation to effectively investigate, and when they determine that an employer has perpetrated trafficking in human beings and forced draw the necessary conclusions arising from the implementation of the relevant legislation (para 116). Regarding the definitional scope of Article 4 of the European Convention, the Court noted that restriction on the freedom of movement is not a *sine qua non* condition to consider a situation as forced labour or trafficking (para. 123). The Court concluded that the State (Greece) had failed to comply with the positive obligations imposed by Article 4(2) of the European Convention, namely obligations to prevent the situation of trafficking in human beings, protect the victims, effectively investigate the offences committed and sanction those responsible (para. 128).

**B.** The Inter-American Court of Human Rights

*Trabajadores de la Hacienda Brasil Verde v Brasil*

In 2016, the Inter-American Court of Human Rights issued a judgment concerning a group of workers who had been allegedly subjected to trafficking in human beings, forced labour, debt bondage and slavery in a estate located in the northeast of Brasil (*Trabajadores de la Hacienda Brasil Verde vs. Brasil*. Sentencia de Octubre de 2016).[[12]](#footnote-12) The Court noted that Article 6 of the American Convention on Human Rights imposes on States the obligation to adopt all adequate measures to eradicate slavery, servitude, forced labour and trafficking in persons and prevent the violation of the right not to be subjected to such practices (para. 317). The Court observed that “[…] States should adopt comprehensive measures in order to comply with the due diligence in cases of servitude, slavery, trafficking in persons and forced labour. Particularly, States should have in place an adequate legal framework that is applied effectively and prevention policies and practices that allow an efficient response to complaints […].” (para. 320).

As regards to States’ duty to investigate, the Court observed that “when States are aware of an act that constitutes slavery, servitude or trafficking in persons, in the terms provided in article 6 of the American Convention they should initiate *ex officio* the investigation in order to establish the corresponding individual responsibilities”. (para. 362). Commenting on the effectiveness of the proceedings and the existence of an effective recourse in terms of Article 25 of the American Convention, the Court noted that “[…] the availability of judicial recourses does not fulfill the State’s obligation […] these instruments should be appropriate and effective, and also provide a timely and exhaustive response according to their purpose which is to establish responsabilities and provide a remedy to victims […]” (para. 395).

In relation to the imprescriptibility of the crime of slavery, the Court established that “i) slavery and its analogous forms constitute a crime of international law, ii) their prohibition by international law is a *jus cogens* norm” (para. 413). Consequently, the Court considered that the prescription of the crimes of subjecting someone to a condition of slave and its analogous forms is “incompatible with the obligation of the State [Brazil] to adapt its internal law to international standards […] [I]n this case the implementation of the prescription [to the crime of ‘reducing someone to a condition analogous to slavery’[[13]](#footnote-13)] constituted an obstacle for the investigation of the facts, the sanction of those responsible and reparation of the victims […]”. The Court ordered the State to adopt the necessary legislative measures to ensure that prescription is not applied to reducing someone to slavery and its analogous forms (para. 455); and concluded that there had been a violation of article 6.1 of the American Convention.

**C.** The International Criminal Tribunal for the Former Yugoslavia

*Prosecutor v Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic*

In 2001, the International Criminal Tribunal for the Former Yugoslavia issued a decision in the *Kunarac* case, the charges included ‘enslavement’.[[14]](#footnote-14) The case concerned the coercive detention and transportation of women and children to *de facto* military quarters in the Foca area of the former Yugoslavia –houses, apartments, and detention centers; they were subjected to various forms of forced labour, including cooking and cleaning, as well as demands for sexual services. The Trial Chamber held that the victims had been subjected to enslavement, a crime against humanity; it noted that enslavement consisted of the exercise of any or all of the powers attaching to the right of ownership over a person (para. 539). It found “that the *actus reus* of the violation is the exercise of any or all of the powers attaching to the right of ownership over a person and the *mens rea* consists in the intentional exercise of such powers” (para. 540).

The accused appealed, inter alia on the ground that the victims had freedom of movement within and outside the apartment and that they undertook the household chores willingly (para. 108). The Appeals Chamber noted that “the traditional concept of slavery, as defined in the 1926 Slavery Convention and often referred to as “chattel slavery”, has evolved to encompass various contemporary forms of slavery which are also based on the exercise of any or all of the powers attaching to the right of ownership. In the case of these various contemporary forms of slavery, the victim is not subject to the more extreme rights of ownership associated with “chattel slavery”, but in all cases, as a result of the exercise of any or all of the powers attaching to the right of ownership, there is some destruction of the juridical personality […]” (para. 117). Furthermore, the Appeals Chamber noted that the question whether a particular phenomenon is a form of enslavement will depend on the operation of the factors or indicia of enslavement; these factors include: the control of someone’s movement, control of physical environment, psychological control, measures taken to prevent or deter escape, force, threat of force or coercion, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality and forced labour (para. 119, quoting the Trial Chamber judgment).

**D.** Australia

*Regina v Wei Tang*

The definition of slavery and its implementation to contemporary circumstances was considered in the High Court of Australia decision in *Regina v Wei Tang (2008)*.[[15]](#footnote-15) The owner of a licensed brothel was convicted in the Victoria County Court of five counts of intentionally possessing a slave and intentionally exercising a power of ownership, specifically the power to use. The charges related to five Thai women who were brought to Australia to work as prostitutes under conditions which amounted to slavery. The Victoria Court of Appeal upheld an appeal on the basis that the jury had been incorrectly instructed. The prosecution appealed to the High Court and the defendant cross-appealed on other grounds.

Regarding the interpretation of the definition of ‘slavery’, the High Court observed that “if s [section] 270.3(1)(a)[[16]](#footnote-16) [of Australia’s Criminal Code], in its application to conduct within Australia, were confined to chattel slavery and legal ownership it would have no practical operation. Section 270.2[[17]](#footnote-17) would eliminate chattel slavery and ownership and s 270.3(1)(a) would be otiose. The Court of Appeal held that the facts alleged in the present case were capable of being regarded as within the scope of s 270.3(1)(a). For the reasons that follow, the decision of the Court of Appeal on these issues should be upheld” (para 20). Furthermore, referring to Article 1 of the 1926 Slavery Convention the High Court noted that “in its application to the de facto condition as distinct from the de jure status, of slavery, the definition was addressing the exercise over a person of powers of the kind that attached to the right of ownership when the legal status was possible; not necessarily all of those powers, but any or all of them […]” (para. 26). The High Court concluded that the evidence was sufficient to allow the jury to conclude that various powers were exerted over the complainants: they were made the object of purchase; the defendants had the capacity to use the complainants and their labour in a substantially unrestricted manner and they were entitled to the fruits of the complainants’ labour without commensurate compensation.

**E.** India

*Bandhua Mukti Morcha v Union of India*

In 1982, the Supreme Court of India received a petition lodged by Bandhua Mukti Morcha, an organization representing the interests of bonded workers which alleged that the Bonded Labour (Abolition) Act (1976) was not being enforced properly (*Bandhua Mukti Morcha v Union of India*)[[18]](#footnote-18). Commenting on the obligation of the State, the Supreme Court observed that “it is absolutely essential we would unhesitatingly declare that it is a constitutional imperative-that the bonded labourers must be identified and released from the shackles of bondage […]” (para. 2). It also noted that “it is not the existence of bonded labour that is a slur on the administration but its failure to take note of it and to take all necessary steps for the purpose of putting an end to the bonded labour system by quickly identifying, releasing and permanently rehabilitating bonded labourers [….]” (para. 4). Regarding the question of access to justice for bonded labourers, the judgment commented on the economic and power disparities between perpetrators and those in a situation of bonded labour, noting that “[…] where one of the parties to a litigation belongs to a poor and deprived section of the community and does not possess adequate social and material resources, he is bound to be at a disadvantage as against a strong and powerful opponent under the adversary system of justice, because of his difficulty in getting competent legal representation and more than anything else, his inability to produce relevant evidence before the court. Therefore, when the poor come before the court, particularly for enforcement of their fundamental rights, it is necessary to depart from the adversarial procedure and to evolve a new procedure which will make it possible for the poor and the weak to bring the necessary material before the court for the purpose of securing enforcement of their fundamental rights” (para. 23).

The Supreme Court also emphasized the State’s obligation to provide protection and assistance to persons who were released from bonded labour: “[…] if bonded labourers who are identified and freed, are not rehabilitated, their condition would be much worse that what it was before during the period of their serfdom and they would become more exposed to exploitation and slide back once again into serfdom even in the absence of any coercion. […] The State Governments must therefore concentrate on rehabilitation of bonded labour and evolve effective programmes for this purpose. Indeed they are under an obligation to do so under the provisions of the Bonded Labour System (Abolition) Act 1976” (para. 53).

**F.** United Kingdom

*Galdikas & Others v DJ Houghton Catching Services LTD*

In 2016, the England and Wales High Court of Justice (Queen’s Bench Division) issued a judgment in favour of six Lithuanian men who had been trafficked and subjected to severe labour exploitation by the chicken catching British company, DJ Houghton Catching Services LTD.[[19]](#footnote-19) The men brought a civil claim against the company alleging that they had been subjected to severe exploitation, including threats and assaults, working and living in degrading conditions, being forced to work long shifts for little or no pay, having their wages unlawfully held and denied adequate facilities to wash, rest, eat and drink. The claims encompassed claims in, inter alia, breach of contract, breach of the Agricultural Wages Act 1948, negligence, harassment and assault (para. 1). The High Court concluded that the claimants were entitled to judgment, with damages to be assessed, in respect of the defendants’ failure to pay them for their work in accordance with the terms of the relevant Agricultural Wages Orders (“AWO”); for breach of Condition 7 (prohibition on charging fees) and Condition 13 (deductions from wages) of the Gangmasters (Licensing Conditions) Rules 2009; and Standards 4.3 (suitable travel arrangements) and 6.3 (welfare facilities) of the GLA (Gangmasters Licensing Authority) Licensing Standards in respect of lack of facilities to wash, rest, eat and drink (para. 75).

*Hounga v Allen and another*

In 2014, the Supreme Court agreed to hear a case concerning a trafficked migrant worker, Ms. Hounga, who was brought to the UK when she was 14 years old to work in domestic service under arrangements made by the family of the respondent, Mrs. Allen. (*Hounga v Allen* [2014] UKSC 47)[[20]](#footnote-20). Ms. Hounga had been promised schooling and £50 a month in wages, but received neither. Instead she was forced to work, subjected to serious physical abuse, and finally evicted from the home and thus dismissed from her employment. Following these events, Ms. Hounga issued a variety of claims and complaints against Mrs. Allen in the Employment Tribunal. The tribunal upheld her claim brought under the Race Relations Act 1976, of unlawful discrimination on racial grounds in relation to her dismissal and Mrs. Allen was ordered to pay compensation to Ms. Hounga for the resultant injury to her feelings in the sum of £6,187. The Court of Appeal upheld a cross-appeal brought by Mrs. Allen against the order and set it aside finding that the illegality of the contract of employment formed a material part of Ms. Hounga’s complaint and that to uphold it would be to condone the illegality. Ms. Hounga appealed to the Supreme Court.

The legal issue before the Supreme Court was whether the Court of Appeal was correct to hold that the illegality defence defeated the complaint of discrimination (para. 23). The Court applied the “inextricable link test” developed in case law, which establishes that the defence of illegality applies when the claimant’s illegal conduct is inextricably linked with his/her claim; the Court considered that this link was absent. In this regard the Court noted: “[…] should Mrs. Allen’s cruel misuse of Ms. Hounga’s perceived vulnerability arising out of the illegality, by making threats about the consequences of her exposure to the authorities, be a further justification for the defeat of her complaint? […] such threats are an indicator that Ms. Hounga was the victim of forced labour but in the hands of the Court of Appeal they become the ground for denial of her complaint”. (para. 39). The Supreme Court considered that the entry into the illegal contract provided no more that the context in which the respondent perpetrated the acts of physical, verbal and emotional abuse by which she dismissed Ms. Hounga from her employment. The Supreme Court unanimously held that the appeal should succeed in relation to Ms. Hounga’s claim for the statutory tort of discrimination.

*L, HVN, THN, T v R*

In 2013, the Court of Appeal (Criminal Division) issued a judgment concerning four unconnected cases in which three children and one adult trafficked by criminals for their own purposes were prosecuted and convicted (*L, HVN, THN, T v R* [2013] EWCA Crim 991)[[21]](#footnote-21). Three of these cases concerned children trafficked from Vietnam who were forced to work in cannabis farms and were convicted for cannabis cultivation. The fourth case concerned an Ugandan woman who was victim of trafficking for sexual exploitation in forced prostitution and was convicted for possession of a false identity document. The Court examined the appeals in light of EU Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting its Victims (Recital 8, Recital 14 and Article 8), and the Council of Europe Convention on Action against Trafficking in Human Beings (Article 26). The Court observed that “[…] the criminality, or putting it another way, the culpability, of any victim of trafficking may be significantly diminished, and in some cases effectively extinguished, not merely because of age (always a relevant factor in the case of a child defendant) but because no realistic alternative was available to the exploited victim but to comply with the dominant force of another individual, or group of individuals” (para 13). Furthermore, the Court concluded that “[…] in some cases the facts will indeed show that he [the victim] was under levels of compulsion which mean that in reality culpability was extinguished. If so when such cases are prosecuted, an abuse of process submission is likely to succeed. That is the test we have applied in these appeals […]” (para. 33).

1. A. *Victims of Crime*

*[...] Access to Justice and fair treatment*

4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.

5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.

6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:

Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;

Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;

Providing proper assistance to victims throughout the legal process;

Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.

7. Informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, should be utilized where appropriate to facilitate conciliation and redress for victims.

UN General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power: resolution adopted by the General Assembly, 29 November 1985, A/RES/40/34. [↑](#footnote-ref-1)
2. In its General Comment No. 29 of 2001, the Human Rights Committee states that article 2 paragraph 3 “requires a State party to the Covenant to provide remedies for any violation of the provisions of the Covenant. This clause is not mentioned in the list of non-derogable provisions in article 4, paragraph 2, but it constitutes a treaty obligation inherent in the Covenant as a whole […]” (para. 14). CCPR General Comment No. 29: *Article 4: Derogations during a State of Emergency*, 31 August 2001, CCPR/C/21/Rev.1/Add.11. [↑](#footnote-ref-2)
3. The ILO Committee of Experts has noted in relation to art. 25 of the Forced Labour Convention No. 29 that “where a form of forced labour is found to exist, those responsible must be effectively punished in accordance with the penal sanctions established by the 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”.

See <http://www.ilo.org/public/english/standards/relm/ilc/ilc96/pdf/rep-iii-1b.pdf> [↑](#footnote-ref-3)
4. Article 2.

The measures to be taken for the prevention of forced or compulsory labour shall include:

educating and informing people, especially those considered to be particularly vulnerable, in order to prevent their becoming victims of forced labour;

educating and informing employers, in order to prevent their becoming involved in forced or compulsory labour practices;

undertaking efforts to ensure that:

(i) the coverage and enforcement of legislation relevant to the prevention of forced or compulsory labour , including labour law as appropriate, apply to all workers and all sectors of the economy; and

(ii) labour inspection services and other services responsible for the implementation of this legislation are strengthened;

protecting persons, particularly migrant workers, from possible abusive and fraudulent practices during the recruitment process;

supporting due diligence by both the public and private sectors to prevent and respond to risks of forced or compulsory labour; and

addressing the root causes and factors that heighten the risks of force or compulsory labour. [↑](#footnote-ref-4)
5. The Protocol of 2014 is complemented by ILO Recommendation on Supplementary Measures for the Effective Suppression of Forced Labour (Recommendation 203), which provides in guideline 5 (2) that protective measures should be provided to victims of forced labour or compulsory labour and that these “should not be made conditional on the victim’s willingness to cooperate in criminal or other proceedings”. Guideline 9(a) notes that State Parties should take reasonable efforts to protect the safety of victims of forced or compulsory labour “including protection from intimidation and retaliation for exercising their rights under relevant national laws or for cooperation with legal proceedings”. Guideline 11 refers to some of the measures that State Parties should take to protect migrant workers subjected to forced or compulsory labour, which include the “provision of a reflection and recovery period in order to allow the person concerned to take an informed decision relating to protective measures and participation in legal proceedings […]”. Furthermore, guideline 12 provides that State Parties should “take measures to ensure that all victims of forced or compulsory labour have access to justice and other appropriate effective remedies, such as compensation for personal and material damages, including by:

ensuring, in accordance with national laws, regulations and practice, that all victims, either by themselves or through representatives, have effective access to courts, tribunals and other resolution mechanisms, to pursue remedies, such as compensation and damages;

providing that victims can pursue compensation and damages from perpetrators, including unpaid wages and statutory contributions for social security benefits;

ensuring access to appropriate existing compensation schemes;

providing information and advice regarding victims’ legal rights and the services available, in a language that they can understand, as well as access to legal assistance, preferably free of charge; and

providing that all victims of forced or compulsory labour that occurred in the member State, both nationals and non-nationals, can pursue appropriate administrative, civil and criminal remedies in that State, irrespective of their presence or legal status in the State, under simplified procedural requirements, when appropriate”. [↑](#footnote-ref-5)
6. The Domestic Workers Recommendation, 2011 (No. 201) (Recommendation Concerning Decent Work for Domestic Workers), provides a number of measures that States Parties should consider to ensure effective protection of domestic workers and, in particular, migrant domestic workers including: “21. […](e) securing access to domestic workers to complaint mechanisms and their ability to pursue legal civil and criminal remedies, both during and after employment, irrespective of departure from the country concerned; and (f) providing for a public outreach service to inform domestic workers, in languages understood by them, of their rights, relevant laws and regulations, available complaint mechanisms and legal remedies, concerning both employment and immigration law, and legal protection against crimes such as violence, trafficking in persons and deprivation of liberty, and to provide any other pertinent information they may require.[…]”. [↑](#footnote-ref-6)
7. In its General Comment No. 5 of 2003, the Committee on the Rights of the Child noted that “For rights to have meaning, effective remedies must be available to redress violations. This requirement is implicit in the Convention […]. States need to give particular attention to ensuring that there are effective, child-sensitive procedures available to children and their representatives. These should include the provision of child-friendly information, advice, advocacy, including support for self-advocacy, and access to independent complaints procedures and to the courts with necessary legal and other assistance […]”. Committee on the Rights of the Child, General Comment No. 5 (2003), General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6). CRC/GC/2003/5. [↑](#footnote-ref-7)
8. European Court of Human Rights, *Siliadin v France* (Application no. 73316/01), 26 July 2005. See <http://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/siliadin_v_france_en_4.pdf> [↑](#footnote-ref-8)
9. European Court of Human Rights, *Rantsev v. Cyprus and Russia* (Application no. 25965/04), 7 January 2010. See <http://hudoc.echr.coe.int/fre#{"itemid":["001-96549>"]} [↑](#footnote-ref-9)
10. European Court of Human Rights, *C.N & V. v. France* (Application no. 67724/09), 11 October 2012. See <http://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-114032%22>]} [↑](#footnote-ref-10)
11. European Court of Human Rights, *Chowdury and Others v. Greece* (Application no. 21884/15), 30 March 2017. See <http://hudoc.echr.coe.int/fre#{"fulltext":["chowdury"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-172365>"]} ; Unofficial translation. [↑](#footnote-ref-11)
12. Corte Interamericana de Derechos Humanos, *Caso Trabajadores de la Hacienda Brasil Verde vs. Brasil*, Sentencia de 20 Octubre de 2016 (Excepciones Preliminares, Fondo, Reparaciones y Costas). See <http://www.corteidh.or.cr/docs/casos/articulos/seriec_318_esp.pdf> ; Unofficial translation. [↑](#footnote-ref-12)
13. At the time of the facts, Article 149 of the Criminal Code criminalized “reducing someone to conditions analogous to slavery”, without providing any specific elements to identify the various ways in which the victim could be reduced to a state analogous to slavery. In 2003, Article 149 was amended and a description of the different ways in which workers can be reduced to conditions analogous to slavery incorporated. [↑](#footnote-ref-13)
14. *Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic*, IT-96-23 and IT-96-23/1, judgment of 22 February 2001 (TC), See <http://www.icty.org/x/cases/kunarac/tjug/en/kun-tj010222e.pdf> ; judgment of 12 June 2002 (AC) (Kunarac), See <http://www.icty.org/x/cases/kunarac/acjug/en/kun-aj020612e.pdf> [↑](#footnote-ref-14)
15. *Regina [Queen] v Wei Tang* (2008) HCA 39, See <http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/HCA/2008/39.html?query=title(tang>) [↑](#footnote-ref-15)
16. **270.3 Slavery offences**

(1) A person who, whether within or outside Australia, intentionally:

(a) possesses a slave or exercises over a slave any of the other powers attaching to the right of ownership; or

(b) engages in slave trading; or

(c) enters into any commercial transaction involving a slave; or

(d) exercises control or direction over, or provides finance for:

(i) any act of slave trading; or

(ii) any commercial transaction involving a slave;

is guilty of an offence.

Penalty: Imprisonment for 25 years. […] [↑](#footnote-ref-16)
17. **270.2 Slavery is unlawful**

Slavery remains unlawful and its abolition is maintained, despite the repeal by the *Criminal Code Amendment (Slavery and Sexual Servitude) Act* *1999* of Imperial Acts relating to slavery. [↑](#footnote-ref-17)
18. *Bandhua Mukti Morcha v Union of India* [1984 SC], Writ Petition No. 2135 [1982], at <https://indiankanoon.org/doc/595099/> [↑](#footnote-ref-18)
19. *Galdikas & Ors v DJ Houghton Catching Services Ltd & Ors* [2016] EWHC 1376 (QB), See <http://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/QB/2016/1376.html&query=(galdikas>) [↑](#footnote-ref-19)
20. *Hounga v Allen and another* [2014] UKSC 47, See <https://www.supremecourt.uk/cases/docs/uksc-2012-0188-judgment.pdf> [↑](#footnote-ref-20)
21. *L, HVN, THN, T v R* [2013] EWCA Crim 991, See <https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Judgments/l-hvn-thn-t-v-r-judgment.pdf> [↑](#footnote-ref-21)