1. International legal framework on debt bondage

The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956, defines debt bondage as ‘the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined’ (art. 1 (a)). The 1956 Supplementary Convention identifies debt bondage as one of the ‘institutions and practices similar to slavery’ and considers a victim of debt bondage as a ‘person of servile status’ (art. 7 (b)). Furthermore, States are required to take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition of the institutions and practices similar to slavery, where they exist and whether or not they are covered by article 1 of the 1926 Slavery Convention (art. 1), and 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’ (art. 6 (2)).

The Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) provide that no one shall be held in servitude (art. 4; art. 8 (2)), and under the ICCPR this provision is non-derogable (art. 4 (2)). The Human Rights Committee, in its General Comment No. 31 noted that the ‘positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities’ (para. 8). The Committee also referred to the obligation of States to ensure that individuals have accessible and effective remedies to vindicate their rights (ICCPR art. 2 para. 3) and noted that ‘such remedies should be appropriately adapted so as to take account of the special vulnerability of certain categories of person, in particular children’ (para. 15).

The International Labour Organization (ILO) Forced Labour Convention, 1930 (No. 29), defines forced or compulsory 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’ (art. 2 (1)). Convention No. 29 imposes on States the obligation to ensure that forced labour is punishable as a penal offence and that the penalties imposed by law are adequate and strictly enforced (art. 25). Under Convention No. 29 States are held accountable for imposing or permitting the imposition of forced or compulsory labour for the benefit of private individuals, companies or associations (art. 4 (1)).

The Protocol of 2014 to Convention No. 29, recalls that the definition of forced labour covers forced or compulsory labour in all its forms and manifestations and is applicable to all human beings without distinction. The Protocol of 2014 provides that States ‘shall take effective measures to prevent and eliminate its use, to provide to victims protection and access to appropriate and effective remedies, such as compensation, and to sanction the perpetrators of forced or compulsory labour’ (art. 1 (1)). Moreover, the Protocol of 2014 requires States to ‘take effective measures for the identification, release, protection, recovery and rehabilitation of all victims of forced or compulsory labour, as well as the provision of other forms of assistance and support’ (art. 3).

The Abolition of Forced Labour Convention, 1957 (No. 105) provides for the immediate and complete eradication of forced labour in specific circumstances. Article 1 imposes an obligation on States parties to suppress the use of forced labour for political purposes, for purposes of economic development, as a means of labour discipline or punishment for strike action, and as a means of discrimination.

The General Conference of the International Labour Organization, in its Forced Labour (Supplementary Measures) Recommendation, 2014 (ILO Recommendation No. 203), supplementing Convention No. 29 and the Protocol of 2014, noted that States ‘should take the most effective protective measures to meet the needs of all victims for both immediate assistance and long-term recovery and rehabilitation’ (art. 9). It also refers to the obligation of States to regularly collect, analyse and make available information and statistical data on the nature and extent of forced labour (art. 2 (1)). Recommendation No. 203 further provides that, to prevent debt bondage, States should regulate, license and monitor labour recruiters and employment agencies and eliminate the charging of recruitment fees to workers (art. 4 (i)).

The ILO Convention concerning Basic Aims and Standards of Social Policy, 1962 (Convention No. 117), obliges States to take the necessary measures to ensure the proper payment of all wages earned (art. 11 (1)). Furthermore, Convention No. 117 provides that wages shall normally be paid in legal tender only (art. 11 (2)); direct to the individual worker (art. 11 (3)); and regularly at such interval as will lessen the likelihood of indebtedness among the wage earners (art.11 (6)). Convention No. 117 also outlines the obligation of States to take all practicable steps to ensure the adequateness and proper cash value assessment of essential supplies and services when they form part of the remuneration (art. 11 (7)); to take all practicable measures to inform workers of their wage rights (art. 11 (8 (a))); prevent any unauthorized deductions from wages (art. 11, (8 (b))); and regulate the maximum amounts and manner of repayment of advances on wages (art. 12 (1)).

The ILO Protection of Wages Convention 1949 (No. 95), prohibits ‘any deduction from wages with a view to ensuring a direct or indirect payment for the purpose of obtaining or retaining employment, made by a worker to an employer or his representative or an intermediary’ (art. 9). Moreover, article 12 (1) provides that ‘wages shall be paid regularly, except where other appropriate arrangements exist which ensure the payment of wages at regular intervals […]’. The Protection of Wages Recommendation, 1949 (No. 85), refers to the periodicity of wage payments including wages that are calculated on a piece-work or output basis (art. 5).

The ILO Convention on the Worst Forms of Child Labour (1999), obliges States to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency including all forms of slavery or practices similar to slavery such as debt bondage (art. 1; art. 3 (a)). The Convention on the Rights of the Child (CRC) provides that States ‘recognize 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 the child’s health or physical, mental, spiritual, moral or social development’ (art. 32 (1)), and imposes on States the obligation to take legislative, administrative, social and educational measures to ensure this (art. 32 (2)). Furthermore, the CRC establishes that in all actions concerning children ‘the best interests of the child shall be a primary consideration’ (art. 3 (1)) and imposes on States the obligation to ‘take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation or abuse […]’ (art. 39).

The CRC’s Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2000) obliges States to adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the Protocol at all stages of the criminal justice process and outlines various aspects of protection (art. 8). Moreover, the Optional Protocol provides that ‘each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis: (a) in the context of sale of children as defined in article 2: (i) offering, delivering or accepting, by whatever means, a child for the purpose of: […] c. engagement of the child in forced labour’ (art. 3 (1)).

The Indigenous and Tribal Peoples Convention, 1989 (No. 169), prohibits the exaction from members of the peoples concerned of compulsory personal services in any form, whether paid or unpaid (art.11). Moreover, Convention No. 169 imposes on States the obligation of adopting measures to ensure the effective protection with regard to recruitment and conditions of employment including measures that ensure that workers belonging to these peoples are not subjected to coercive recruitment systems, including bonded labour and other forms of debt servitude (art. 20 paras. 1, 3 (c)).

The 1998 ILO Declaration on Fundamental Principles and Rights at Work declares that all Member States, even if they have not ratified the Conventions recognized as fundamental (including Conventions No. 29, No. 105 and No. 182), have an obligation ‘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: […] the elimination of all forms of forced or compulsory labour’.

Regional instruments that refer to the prohibition of servitude include the American Convention on Human Rights (art. 6) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (art. 4). The African Charter on Human Rights provides that all forms of exploitation shall be prohibited (art. 5).

Other non binding instruments that are relevant in the context of debt bondage include the following: 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); 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; and the UN Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, 2011.

II. Measures to prevent debt bondage, protect victims and provide them with access to appropriate and effective remedies.

The Human Rights Committee in its General Comment No. 31 has noted that ‘the positive obligations on States parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities […] There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States parties of those rights, as a result of States parties’ permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities’ (para. 8).

Under the due diligence standard States are obliged to exercise a measure of care in preventing and responding to the acts of private individuals or entities that interfere with individuals’ rights[[1]](#footnote-1) –for persons in debt bondage the right not to be held in slavery or servitude (art. 4 UDHR; art. 8.2 ICCPR). The due diligence standard entered international law through the 1988 landmark decision of the Inter-American Court of Human Rights in the *Velásquez Rodríguez Case*. The Court established regarding the State responsibility for the acts of private entities that “The State has [under Article 1 of the American Convention] a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation”.[[2]](#footnote-2)

1. Rights of people in debt bondage.

The right of every person in debt bondage to be protected by the State starts with the right to be identified, a failure to identify a person in debt bondage is likely to result in a further denial of that person’s rights. A person who has been in debt bondage has a right to be rehabilitated from debt bondage and provided short-term and long-term assistance that would prevent the relapse into debt bondage. The Convention on the Rights of the Child (1989) introduced this right for children who had been exploited (in debt bondage or others forms of exploitation), establishing in article 39 that States ‘promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse […]’. The right of adult bonded labourers to be rehabilitated derives from States’ positive obligation to protect and assist people who have been in debt bondage. Furthermore, persons who have been in debt bondage have a right to access justice and to an effective remedy.

1. States’ duties to prevent debt bondage, protect victims and provide them access to appropriate and effective remedies.
2. Measures to protect people in debt bondage
3. Legislation on debt bondage

States must clearly prohibit the crime of debt bondage[[3]](#footnote-3) and provide penal sanctions against employers who hold workers in bondage, in order for law enforcement officials to determine whether a case satisfies the elements constituting the crime of debt bondage and also to allow the proper identification of victims. The legislation adopted must also include a legal provision that declares null and void any debt contracted during the period a person was held in debt bondage. Furthermore, debt bondage should be penalized independently from other crimes, particularly from trafficking in persons.[[4]](#footnote-4) It should be noted that many States that have adopted the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (UN Trafficking Protocol) and attempted to transpose it into national law, often fail to recognize that ‘practices similar to slavery’ (art. 3 (a)) refer to debt bondage and three other servile practices.

In addressing the issue of States’ obligations under the 1956 Supplementary Convention, the European Court of Human Rights in *Siliadin v. France*, a case of a Togolese young woman held in servitude as a domestic worker in France, noted that ‘each of the States Parties of the Convention [1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery] must take all practicable and necessary legislative measures to bring about the complete abolition or abandonment of the following institutions and practices: […]’.[[5]](#footnote-5)

In relation to the vagueness in law and absence of adequate penalties, the European Court of Human Rights also observed that the concerned States’ 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 victim’ finding that there had been a violation of the State’s positive obligation under Article 4 of the European Convention on Human Rights.[[6]](#footnote-6) Moreover, on the absence of detail in the law, the Inter-American Commission on Human Rights (IACHR) observed in a case of debt bondage and forced labour (*Fazenda Brasil Verde)* that the vagueness allowed the decision [by the authorities in the State concerned, Brazil] on whether the facts constituted slave labour to be arbitrary and subjective.[[7]](#footnote-7)

1. Identification

Persons in debt bondage are identified in order to stop the occurrence of this practice and so they can potentially provide evidence; and also to assist them in recovering and carrying independent lives in order to prevent their relapse into debt bondage. The Protocol of 2014 to Convention No. 29 imposes on States the obligation to take effective measures for the identification of victims of forced labour (art. 3). In the context of debt bondage this obligation could translate into ensuring that there are appropriate mechanisms in place to identify bonded labourers and that the competent authorities are trained to identify victims in order to ensure their accurate and prompt identification, this includes the development of specific guidelines and procedures for this purpose. Furthermore, if legislation prohibiting debt bondage is in place authorities need to be trained on the implementation of this legislation and understand its relation with other related laws, particularly labour laws. Independent and comprehensive surveys should also be conducted to identify the number and location of people held in bondage covering remote areas and informal workplaces.[[8]](#footnote-8) The safety of bonded labourers and their families should be ensured during identification, and they should be protected from any threats from their employers. Furthermore, instant assistance (and protection) should be available as an integral part of the identification process.

The ILO has proposed six over-reaching indicators to determine whether a particular situation could fall under forced labour, one of which specifically refers to debt bondage.[[9]](#footnote-9) Relevant elements that could indicate the existence of debt bondage include the following: whether the worker has to repay high recruitment or transportation fees and if so, whether these are deducted from the salary; whether the worker is forced to pay excessive fees for accommodation, food or working tools that are directly deducted from the salary; whether any loan or advance has been paid that make it impossible to leave the employer; whether there are work permits bound to a specific employer. One of the major challenges in the identification of victims of exploitation including victims of debt bondage is that most victims do not perceive themselves as “victims”.[[10]](#footnote-10) Consequently, authorities should be aware of the fact that the relation between victims and the offender can be complex and sometimes contradictory.[[11]](#footnote-11) In some cases, the victim may not perceive him/herself as a victim but simply as someone with no other alternatives than to be in a situation of debt bondage.

1. Protection and assistance to promote recovery and (re)integration

The Protocol of 2014 to Convention No. 29 imposes on States the obligation to take effective measures for the rehabilitation of all victims of forced labour (art. 3). Furthermore, ILO Recommendation No. 203 notes that States ‘should take the most effective protective measures to meet the needs of all victims for both immediate and long-term recovery and rehabilitation’ (art. 9).[[12]](#footnote-12) The rehabilitation of bonded labourers should include immediate physical and economic rehabilitation (e.g. housing, food, medical attention); the provision of avenues of employment or means of livelihood, and supply of productive assets; and social and economic programmes which facilitate or promote the collective organization of workers.[[13]](#footnote-13) It is essential that rehabilitation measures ensure released bonded labourers access to alternative and sustainable livelihoods that prevent them from returning to a situation of debt bondage. In furtherance of securing the best interests of the child, freed bonded children should be provided opportunities for education and in accordance with their age training in skill acquisition.

The Supreme Court of India in response to a petition by an organization representing the interests of bonded labourers (*Bandhua Mukti Morcha v Union of India*, 1984) noted the importance of providing victims adequate rehabilitation to prevent their further relapse to debt bondage, the Supreme Court concluded that ‘if the bonded labourers who are identified and freed, are not rehabilitated, their condition would be much worse than 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 bonded labourer who is released would prefer slavery to hunger […]’.[[14]](#footnote-14) The Supreme Court noted that psychological, physical and economic rehabilitation are two main components of the concept of rehabilitation. Moreover, the Supreme Court also concluded that while drawing up any scheme/programme of rehabilitation for freed bonded labourers, they must necessarily be given the opportunity to choose between the various alternatives for their rehabilitation and that such scheme/programme ‘should be finally selected for execution as would need the total requirements of the families of freed bonded labourers to enable them to cross the poverty line on the one hand and to prevent them from sliding back to debt bondage’.

1. Redress for the harm caused to bonded labourers

The Protocol of 2014 to Convention No. 29, imposes on States the obligation to take effective measures to provide victims of forced labour access to appropriate and effective remedies, such as compensation (art. 1(1)). This obligation entails ensuring that victims of debt bondage have an equal access to an effective remedy and taking all the necessary measures to ensure this right, such as providing them with information about all available remedies and about their rights, ensuring their safety from intimidation and retaliation, and making available legal means and other necessary assistance (e.g. medical, psychological, social, administrative).[[15]](#footnote-15) Furthermore, any one who has been in debt bondage has to be ensured access to a remedy including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.[[16]](#footnote-16) Some of the prejudices and damages suffered by victims of bonded labour and for which they have a right to be redressed include physical and psychological harm, and impairment to exercise their freedom of movement, freedom of expression, freedom of association and right to education.

1. Investigation of debt bondage

States have an obligation to ensure that offences involving debt bondage are investigated with due diligence. The due diligence standard imposes ‘a positive duty on States to ensure the effectiveness of their criminal law through effective investigation and prosecution’,[[17]](#footnote-17) and this duty is applicable ‘when there is an allegation of a violation by State officials and when the alleged perpetrator is a non-State actor’.[[18]](#footnote-18) In *Hadijatou Mani Koraou v The Republic of Niger[[19]](#footnote-19)*, the applicant alleged that the Republic of Niger had not taken adequate measures to protect her from slavery, although sanctioned by Niger’s law, in violation of Art. 1 of the African Charter of Human and Peoples’ Rights (1981). The Economic Community of West African States (ECOWAS) Court of Justice held the State responsible for tolerating the abuse and on account of its passivity, tolerance and abstention with regard to this practice.[[20]](#footnote-20) The European Court of Human Rights has also commented on States’ duty to investigate, in *Rantsev v Cyprus and Russia,* a case involving trafficking in persons, the Court held Cyprus and Russia responsible for not fully and effectively investigating all aspects of trafficking.[[21]](#footnote-21) The European Court noted that States’ duty to investigate does not depend on whether the victim or a relative or a representative present a complaint, noting that ‘[…] once the matter has come to the attention of the authorities they must act of their own motion […]’.[[22]](#footnote-22)The European Court also observed that 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’.

1. Measures to prevent debt bondage

States are required to act with due diligence to prevent debt bondage and this duty entails the responsibility of taking pro-active measures which address the root causes of debt bondage such as: poverty, discrimination, social exclusion, noncompliance with labour laws, and abusive recruitment practices.

1. Prevention of discrimination in the context of debt bondage

States should recognize the existence of discrimination and its link to debt bondage and introduce appropriate measures which ensure that the available legal remedies can be effectively accessed. The Committee on the Elimination of Racial Discrimination (CERD) in its General Recommendation on Descent-Based Discrimination (General Recommendation XXIX on Descent-Based Discrimination), urges States to take some of the following measures: ‘review and enact or amend legislation in order to outlaw all forms of discrimination based on descent in accordance with the Convention (1. c)); resolutely implement legislation and other measures already in force (1. d)); and formulate and put into action a comprehensive national strategy with the participation of members of affected communities, […] in order to eliminate discrimination against members of descent-based groups (1. e))’. Furthermore, States must take action to challenge institutional discrimination and societal prejudice in a concerted and pro-active manner.[[23]](#footnote-23) The duty of States to prevent discrimination entails their duty to protect vulnerable groups from debt bondage such as indigenous peoples, people of ‘low’ caste and migrant workers.

1. Regulation of the payment of wages

Regulation of the payment of wages is relevant to prevent practices associated with debt bondage such as payment of wages in kind, delays in payment of wages, and arbitrary deductions from worker’s remuneration. The ILO Convention concerning Basic Aims and Standards of Social Policy, 1962 (Convention No. 117) imposes on States the obligation to take the ‘necessary measures’ to ensure the proper payment of wages (art. 11 (1)); take all practicable measures to prevent unauthorized deductions from wages (art. 11, para. 8 (b)); and provides that the “competent authority” shall take all practical steps to ensure the adequateness and proper cash value assessment of essential supplies and services when they are part of the remuneration (art. 11 (7)). Furthermore, Convention No. 117 also stipulates that advances on wages must be regulated and their amount limited, and advances that exceed the established amount must be ‘legally irrecoverable’ (art. 12). Regarding States’ duty to protect wages, the Inter-American Commission on Human Rights commented in *Fazenda Brasil Verde*, that States must ensure that systems to protect workers’ salaries are in place and that workers are repaid the amount of money illegally deducted from their salaries.[[24]](#footnote-24)

1. Regulation of recruitment practices

Monitoring recruitment practices as part of effective migration policies will lead to the prevention of debt bondage and other forms of exploitation by preventing intermediaries, agencies and employers from trapping potential migrants into exploitative employment.[[25]](#footnote-25) The ILO Convention concerning Private Employment Agencies, 1997 (No. 181), obliges States to adopt all necessary and appropriate measures in their jurisdiction and were appropriate, in collaboration with other States, to provide adequate protection for and prevent abuse of migrant workers recruited or placed in their territory by private employment agencies (art. 8). Recommendation No. 203 notes that States should take measures to eliminate abusive recruitment practices by labour recruiters and employment agencies such as the charging of excessive fees to workers (art. 8 (a)). Furthermore, Recommendation No. 203 provides that States should take the most effective preventive measures, such as the ‘promotion of coordinated efforts by relevant government agencies with those of other States to facilitate regular and safe migration and to prevent trafficking in persons, including coordinated efforts to regulate, license and monitor labour recruiters and employment agencies and eliminate the charging of recruitment fees to workers to prevent debt bondage and other forms of economic coercion’ (art. 4 (i)).

1. Protection against business enterprises and employers

The UN Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, 2011, establish States duty to protect against abuse within their territory and/or jurisdiction by third parties, including business enterprises (Principle 1), which could be both transnational and others, regardless of their size, sector or location. This confirms States’ responsibility to protect persons who are held in debt bondage by businesses or employers, both large ones and small-scale ones. In furtherance of compliance with their duty to protect, States should consider adopting measures such as policies, legislation, regulations and providing for adjudication where violations are alleged. Furthermore, States’ duty to protect should include providing guidance on ‘how to consider effectively issues of gender, vulnerability and/or marginalization, recognizing the specific challenges faced by indigenous peoples, women, national or ethnic minorities, religious and linguistic minorities, children, persons with disabilities, and migrant workers and their families’ (Principle 3, *Commentary*).

The UN Guiding Principles also require States ‘to take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies […] including, where appropriate, by requiring human rights due diligence’ (Principle 4). In the context of debt bondage, this require human rights due diligence by business enterprises controlled by the State in preventing the use of debt bondage by their subcontractors, and by export credit agencies in preventing the use of debt bondage in the production of commodities for international trade.

1. Office of the UN High Commissioner for Human Rights. Commentary. Recommended Principles and Guidelines on Human Rights and Human Trafficking. UN, 2010, at. 77, 78. [↑](#footnote-ref-1)
2. *Velásquez Rodríguez Case,* Judgment of July 29, 1988, Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988), para. 174. [↑](#footnote-ref-2)
3. In 1949, when the United Nations decided to consider the issue of slavery, an *Ad Hoc* Committee on Slavery was appointed which surveyed the “field of slavery and other institutions or customs resembling slavery” and in 1951, called for the adoption of a supplementary convention. In the same year, the *Ad Hoc* Committee on Slavery recommended that the following principles be “incorporated in any basic legislation intended to abolish debt bondage”:

   1. all agreements for labour in consideration of a debt should be held to be legal only if reduced to writing;
   2. a procedure should be evolved whereby the correctness of the debt and the value of the services to be rendered in payment thereof should be established before a competent official and incorporated in the agreement;
   3. the proportion of the value of the service to be paid towards the elimination of the debt should also be prescribed;
   4. the debtor should in no circumstance be bound to work for the creditor under the agreement for more than a prescribed maximum number of days;
   5. the value of the work undertaken in the agreement should not be less than what is sanctioned by usage in the district;
   6. the duty of rendering services in extinguishment of the debt should not be transferable to a third person; and
   7. the agreement should not bind the heirs of a debtor.

   J. Allain, Slavery in International Law Of Human Exploitation and Trafficking (2013), at. 146, 175, 176 (Footnote 71: United Nations, Economic and Social Council, Report of the *Ad Hoc* Committee on Slavery (Second Session), UN Doc E/1998, E/AC.33/13. 4 May 1951, p. 19). [↑](#footnote-ref-3)
4. Principle 12 of the UN High Commissioner for Human Rights’ Recommended Principles and Guidelines on Human Rights and Human Trafficking provides that: “States shall adopt appropriate legislative and other measures necessary to establish, as criminal offences, trafficking, its component acts and related conduct”. See Addendum to Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council, UN Doc. E/2002/68/Add.1 (20 May 2002). The Recommended Principles and Guidelines were endorsed by the UN Human Rights Council by Resolution 14.2 (UN Doc. A/HRC/RES/14/2, 23 June 2010). [↑](#footnote-ref-4)
5. Jean Allain, Slavery in International Law, Of Human Exploitation and Trafficking, 2013, at. 148. [citing: Council of Europe, European Court of Human Rights, *Siliadin v France*, 26 July 2005, para. 125]. [↑](#footnote-ref-5)
6. *Siliadin v. France*, 73316/01, Council of Europe: European Court of Human Rights, 26 July 2005, paras. 148, 149. [↑](#footnote-ref-6)
7. The Inter-American Commission of Human Rights (IACHR) Report on Case 12,066, Admissibility and Substance, “Fazenda Brasil Verde” Workers with regard to Brazil, 3 November 2011, para. 168. [↑](#footnote-ref-7)
8. In 2002 the Working Group on Contemporary Forms of Slavery adopted a resolution in which it urged the States concerned to “carry out independent and comprehensive surveys, by regional district, to identify the number and location of people held in debt bondage; these surveys should provide a statistical breakdown of the number of men, women and children in bonded labour, including their membership of a minority group”. (Report of the Working Group on Contemporary Forms of Slavery on its twenty-seventh session, UN document E/CN.4/Sub.2/2002/33 of 17 June 2002).

   In relation to the identification of persons in debt bondage through surveys, the Supreme Court of India in a judgment of 15 October 2012 in WP (C) No. 3922, 1985-*PUCL vs the State of Tamilnadu* concluded that “fresh surveys be conducted periodically once in three years in all States/UTs in accordance with the provisions of the Act [Bonded Labour (Abolition) Act 1976] and the findings of the survey made a part of a computerized data base available on the websites of all concerned”. (para. 16, 1)). [↑](#footnote-ref-8)
9. ILO, Forced Labour and Human Trafficking, Handbook for Labour Inspector, Special Action Programme to Combat Forced Labour, 2008, at 18, 19. See http://www.ilo.org/wcmsp5/groups/public/@ed\_norm/@declaration/documents/publication/wcms\_097835.pdf

   See also http://www.ilo.org/wcmsp5/groups/public/---ed\_norm/---declaration/documents/publication/wcms\_203832.pdf [↑](#footnote-ref-9)
10. ILO, Human Trafficking and Labour Exploitation, Guidelines for Legislation and Law Enforcement, 2005, at. 39. See http://www.ilo.org/wcmsp5/groups/public/---ed\_norm/---declaration/documents/publication/wcms\_081999.pdf [↑](#footnote-ref-10)
11. ILO, Forced Labour and Human Trafficking, Handbook for Labour Inspector, Special Action Programme to Combat Forced Labour, 2008, at. 25 [↑](#footnote-ref-11)
12. Article 9 of the ILO Recommendation No. 203 provide the following examples of immediate assistance and long-term recovery and rehabilitation:

    (a) reasonable efforts to protect the safety of victims of forced or compulsory labour as well as of family members and witnesses, as appropriate, including protection from intimidation and retaliation for exercising their rights under relevant national laws or for cooperation with legal proceedings; (b) adequate and appropriate accommodation; (c) health care, including both medical and psychological assistance, as well as provision of special rehabilitative measures for victims of forced or compulsory labour, including those who have also been subjected to sexual violence; (d) material assistance; (e) protection of privacy and identity; and (f) social and economic assistance, including access to educational and training opportunities and access to decent work. [↑](#footnote-ref-12)
13. ILO, L. Mishra, A perspective plan to eliminate forced labour in India, 2001, at. 14. See http://www.ilo.org/wcmsp5/groups/public/---ed\_norm/---declaration/documents/publication/wcms\_decl\_wp\_2\_en.pdf [↑](#footnote-ref-13)
14. *Bandhua Mukti Morcha v Union of India* (1984 SC), Writ Petition No. 2135 of 1982, at 21 (para. 53). The Supreme Court specified that ‘physical and economic rehabilitation has 15 major components namely allotment of house-sites and agricultural land, land development, provision of low cost dwelling units, agriculture provision of credit, horticulture, animal husbandry, training for acquiring new skills and developing existing skills, promoting traditional arts and crafts, provision of wage employment and enforcement of minimum wages, collection and processing of minor forest produce, health medical care and sanitation supply of essential commodities, education of children of bonded labourers and protection civil rights’. [↑](#footnote-ref-14)
15. 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, arts. 11, 12; Draft Basic principles on the right to an effective remedy for victims of trafficking in persons art. 7 (c), elaborated by the Special Rapporteur on Trafficking in Persons (A/HRC/26/18). [↑](#footnote-ref-15)
16. 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, arts. 15, 18. [↑](#footnote-ref-16)
17. Office of the UN High Commissioner for Human Rights. *Commentary. Recommended Principles and Guidelines on Human Rights and Human Trafficking.* UN, 2010, at. 194. [citing: See Velásquez Rodríguez Case, paras. 173-177;

    Osman v. United Kingdom, para. 115; Akkoç v. Turkey, para. 77; SERAC and CESR v. Nigeria, para. 46; Fernandes v. Brazil, paras. 56-57; M.C. v. Bulgaria, paras. 150-153; Juan Humberto Sánchez v. Honduras, Judgment of 7 June 2003, Inter-American Court of Human Rights (Ser. C) No. 99 (2003) para. 110; Finucane v. The United Kingdom (29178/95) [2003] ECHR (1 July2003), para. 67]. See http://www.ohchr.org/Documents/Publications/Commentary\_Human\_Trafficking\_en.pdf [↑](#footnote-ref-17)
18. Id. [citing: Velásquez Rodríguez Case, para. 173-177; Osman v. United Kingdom, para. 115; Fernandes v. Brazil, paras. 56-57; M.C. v. Bulgaria, para. 150-153; Sánchez v. Honduras, para. 142; Calvelli and Ciglio v. Italy (32967/96) [2002] ECHR (17 January 2002), paras. 48-51. [↑](#footnote-ref-18)
19. *Hadijatou Mani Koraou v. The Republic of Niger*, ECW/CCJ/JUD/06/08, Economic Community of West African States (ECOWAS): Community Court of Justice, 27 October 2008. [↑](#footnote-ref-19)
20. *Hadijatou Mani Koraou v. The Republic of Niger*, ECW/CCJ/JUD/06/08, Economic Community of West African States (ECOWAS): Community Court of Justice, 27 October 2008, para. 85. See https://www.unodc.org/res/cld/case-law-doc/traffickingpersonscrimetype/ner/2008/h\_m\_\_v\_\_republic\_of\_niger\_html/Hadijatou\_Mani\_v.\_Republic\_of\_Niger\_Community\_Court\_of\_Justice\_Unofficial\_English\_translation.pdf [↑](#footnote-ref-20)
21. *Rantsev v. Cyprus and Russia*, Application no. 25965/04, Council of Europe: European Court of Human Rights, 7 January 2010, para. 307. [↑](#footnote-ref-21)
22. Id. para. 288 [↑](#footnote-ref-22)
23. Submission from Anti-Slavery International. [↑](#footnote-ref-23)
24. The Inter-American Commission on Human Rights (IACHR) Report on Case 12,066, Admissibility and Substance, “Fazenda Brasil Verde” Workers with regard to Brazil, 3 November 2011, paras. 213 and 214. http://www.oas.org/es/cidh/decisiones/corte/2015/12066FondoPt.pdf [↑](#footnote-ref-24)
25. ILO, Human Trafficking and Forced Labour Exploitation, Guidelines for Legislation and Law Enforcement, 2005, at. 31. [↑](#footnote-ref-25)