

## 2.3 National Legal Context

This table can be completed on the basis of an assessment of domestic legislation.

UNODC's online knowledge portal, SHERLOC offers insights into domestic legislation on many countries: <https://sherloc.unodc.org/cld/v3/sherloc/legdb>

| Criminalization   |  | If yes, where/which provision?<br>If no, provide further information: |
|---|--|---|
| Is trafficking in persons criminalized in domestic law?   |  |   |
| Is trafficking in persons defined in domestic law (whether in criminal law or elsewhere)?   |  |   |
| Does the definition of trafficking in persons in domestic law apply to male and female victims?   |  |   |
| Does the definition of trafficking in persons apply to forms of exploitation listed in article 3(a) of the Trafficking in Persons Protocol, including: <ul style="list-style-type: none"> <li>▪ Exploitation of the prostitution of others or other forms of exploitation</li> <li>▪ Forced labour or services</li> <li>▪ Slavery or practices similar to slavery</li> <li>▪ Servitude</li> <li>▪ Removal of organs</li> <li>▪ Other forms of exploitation</li> </ul> |  |   |
| Do the criminalization provisions in domestic law make victim consent to exploitation irrelevant? (per article 3(b) of the Trafficking in Persons Protocol)   |  |   |
| Does the definition of trafficking in persons in domestic law omit the 'means' element where the victim is a child (per article 3(c) of the Trafficking in Persons Protocol)  |  |   |
| Is smuggling of migrants criminalized in domestic law?  |  |   |
| Is smuggling of migrants defined in domestic law (whether in criminal law, immigration law or elsewhere)?   |  |   |
| Does the crime of smuggling of migrants require financial or material benefit motive? (per article 3(a) of the Smuggling of Migrants Protocol)  |  |   |
| Have aggravating circumstances been established in criminalizing smuggling of migrants? (per article 6(3) including circumstances that endanger the lives or safety of migrants or that entail inhuman or degrading treatment, including exploitation, of such migrants)  |  |   |

| <b>Non-criminalization</b>   |  | <b>If yes, where/which provision?<br/>If no, provide further information:</b> |
|--|--|---|
| Is law and / or policy in place to prevent victims of trafficking from being criminalized / punished for crimes they have committed as a result of being trafficked?   |  |   |
| Is law and / or policy in place to prevent smuggled migrants from being criminalized / punished for having been smuggled, in accordance with Article 5 of the Smuggling Protocol?  |  |   |
| <b>Human rights and gender equality</b>  |  | <b>If yes, where/which provision?<br/>If no, provide further information:</b> |
| Does the country need to enact national law for domestic courts to be able to apply international treaty obligations, and if so, has the country done so?  |  |   |
| <p>Are human rights safeguards<sup>1</sup> in place in the Constitution, a bill of rights or other domestic legislation, e.g.</p> <ul style="list-style-type: none"> <li>▪ Trafficking in Persons legislation</li> <li>▪ Smuggling of Migrants legislation</li> <li>▪ Labour legislation</li> <li>▪ Criminal legislation</li> <li>▪ Family legislation</li> <li>▪ Immigration legislation</li> <li>▪ Child protection legislation</li> <li>▪ Other legislation?</li> </ul> |  |   |
| What is the legal framework on gender equality and non-discrimination? Are gender equality safeguards in place in the Constitution, a bill of rights or other domestic legislation?  |  |   |
| Do human rights provisions apply equally to all persons without discrimination? E.g. men / women / LGBTQI+ / migrants / migrants in irregular situations / children alongside citizens?  |  |   |
| Particularly in countries with common law systems, is there any case law that serves as a source of human rights in the country?   |  |   |
| Do labour laws require equal pay for male and female employees?  |  |   |
| Are foreign workers in the country allowed to change employer without losing their residence status?   |  |   |

<sup>1</sup> Human rights safeguards is understood in this context to refer to a legal provision put in place to protect human rights or to prevent their violation or abuse including through the interpretation and application of the law itself.

|  |  |   |
|--|--|---|
| Are laws concerning trafficking in persons and related exploitation applicable to informal sectors (such as, but not limited to domestic work)?  |  |   |
| Are measures in place to protect the best interests of the child, in accordance with the UN Convention on the Rights of the Child?   |  |   |
| Are laws on marriage in place to ensure that marriage is by consent; is equal between sexes; and prohibits early, child forced or temporary marriage?  |  |   |
| Are laws on rape in place to criminalize rape of persons of any gender; to criminalize marital rape; and to not exonerate rapists who marry their victims?   |  |   |
| Is there a prohibition on child (and family) immigration detention in law, consistent with the existing obligations of the country under the UN Convention on the Rights of the Child (CRC)?             |  |   |
| <b>Non-refoulement</b>   |  | <b>If yes, where/which provision?<br/>If no, provide further information:</b> |
| Is the right to non-refoulement explicitly protected in national law, and does it apply to persons who entered the country irregularly?  |  |   |
| Are laws protecting persons from refoulement applied in practice?  |  |   |
| Is there policy or practice to demonstrate respect for the principle of non-refoulement (irrespective of whether or not the State is a party to the Refugees Convention and the Supplementary Protocol)? |  |   |