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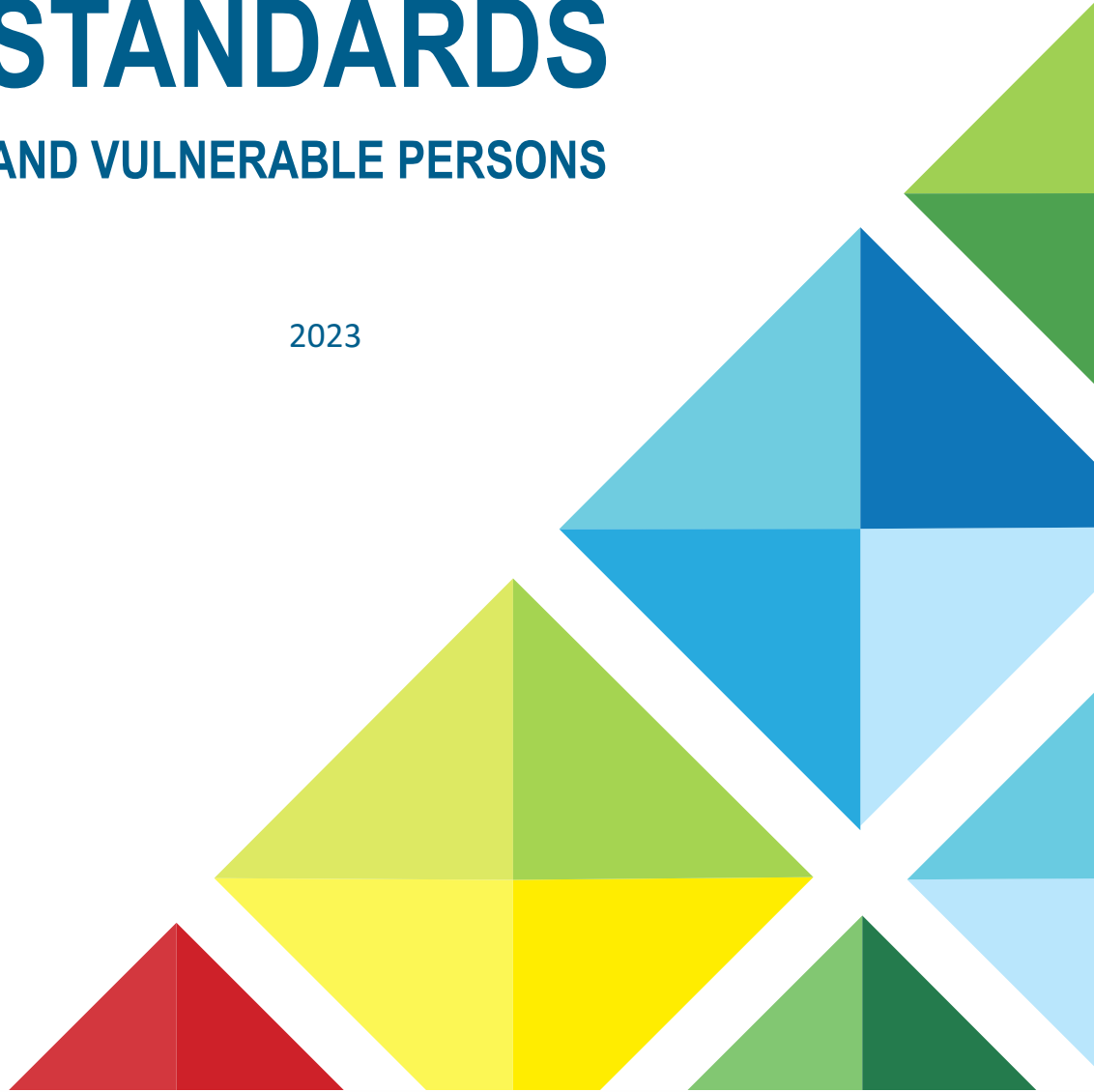
**BOMCA | БОМКА**  
BORDER MANAGEMENT PROGRAMME IN CENTRAL ASIA | ПРОГРАММА СОДЕЙСТВИЯ УПРАВЛЕНИЮ ГРАНИЦАМИ В ЦЕНТРАЛЬНОЙ АЗИИ



State Border Guard Republic of Latvia

# HUMAN RIGHTS STANDARDS AND VULNERABLE PERSONS

2023



Border Management Programme in Central Asia – Phase 10

[www.bomca-eu.org](http://www.bomca-eu.org)

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## Acknowledgements

This booklet was prepared as part of the Workshops on human rights, gender, eliminating sexual harassment and gender sensitivity held in Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan in 2022-2023, as part of Component 2 of the Border Management Programme in Central Asia – Phase 10 (BOMCA 10). The objective of this component is to enhance detection, coordination and investigation effectiveness within and between Central Asian countries. The implementation of the specific objectives of each component of the Programme will contribute to the achievement of the overall objective of enhancing security, stability and sustainable growth in the Central Asian region, as well as supporting cross-border cooperation and improving living conditions for people living in the border regions of Central Asia.

The workshops were held in cooperation with the European Border and Coast Guard Agency (Frontex) and targeted border guards and law enforcement officers. The objective of the workshops was to familiarize participants with the topic of human rights, gender issues, indicators of sexual harassment and gender sensitivity, as well as with the linkages of these issues with the context of law enforcement and border agencies and the role of non-governmental organisations in providing assistance in cases of human rights violations and gender-based violence. Both workshops were conducted by the Programme's expert team - Ms. Edita Prilepskiene, lawyer and expert of the State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania, and Mr. Marius Taparavicius, lawyer and expert at the Lithuanian Red Cross. The expert team has also authored this booklet.

This booklet is intended primarily for border guards and law enforcement officials in Central Asia, providing key information, important aspects and links to additional literature on human rights, gender sensitivity and countering gender-based violence in the context of law enforcement activities of government agencies. Also, this publication will be of interest to a wider audience as a source of well-structured and specific information on the protection of human rights.

The BOMCA 10 Programme expresses its gratitude to the Frontex Agency for its cooperation in organizing and conducting workshops; the expert team, namely Ms. Edita Prilepskiene and Mr. Marius Taparavicius, for sharing valuable experience and important knowledge with the participants of the workshops, as well as for their invaluable contribution to the development of this booklet; Mr. Donatas Skarnulis, leader of the second component of the BOMCA 10 Programme, for leading the process of drafting the booklet; to the graphic designer and author of the visual layout, Ms. Svetlana Bereza; Ms. Ekaterina Belukova, leader of the fourth component of the Programme, for recommendations on complementing the booklet, and Ms. Veronika Goncharova, Senior Project Manager, and Ms. Iuliia Subbotska, Associate Project Officer, of the International Centre for Migration Policy Development (ICMPD), serving as the Secretariat and one of the thematic implementing partners of the BOMCA 10 Programme, for coordinating efforts to publish this booklet.

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## GENERAL PART

### Human Rights. Fundamental Rights and Sources

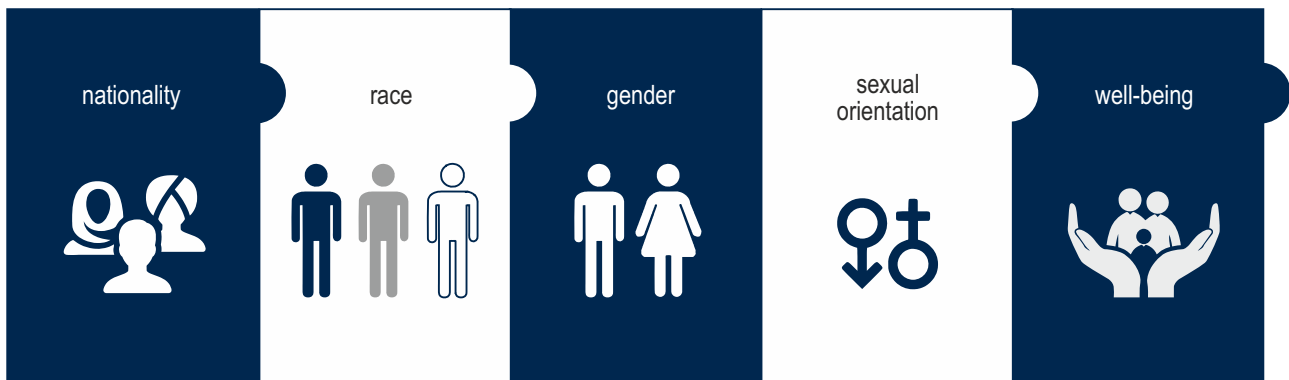
**Fundamental human rights and freedoms** are inalienable, and all human beings are born with equal rights. They are natural; the State can only regulate their implementation and establish guarantees by enacting the relevant laws. These are the opportunities (rights and freedoms) for every citizen to act and ensure their vital and socially significant needs are met.

To provide real and practical human rights, **the State has undertaken to explain and protect** them by adopting the necessary laws.

**Human rights are universal** and everyone is entitled to them without any exception; they are independent of the legal system or other local factors.

#### What do you need to know about human rights?

Rights are not linked to our:



Some rights **may** at times be **restricted**; however, **no one shall be deprived** of his or her human rights.

#### Do we have any responsibilities?

One of the primary human responsibilities is both to respect the Constitution and laws and not to restrict the rights and freedoms of others, including:

1

respect for others

2

harmonising the rights

3

cooperation

Due to the historical evolution of human rights,  
three of the most important human rights aspects have been developed:



## Generations of Human Rights

First-generation human rights include civil and political rights, also known as 'blue rights'.



### Civil rights:

- the right to life;
- the right to inviolability of personal liberty;
- the right to integrity of the person;
- the right to privacy;
- the right to freedom of expression;
- the right to information.



### Political rights:

- the right to take part in the government of his country, directly or through freely chosen representatives;
- the right to legislative initiative;
- the right to defend the State against armed aggression;
- the right to vote;
- the right to petition.

Second-generation human rights include social, economic and cultural rights that are also referred to as 'red' rights:



- the right to work;
- the right to just and favourable conditions of work;
- the right to food;
- the right to housing;
- the right to healthcare;
- the right to social security, unemployment benefits, etc.

Third-generation human rights include collective rights that are not covered by the first and second generation rights, also known as 'green' rights:



- collective rights to peace;
- the right of nations to self-determination;
- the right to a clean environment, etc.

Fourth-generation human rights deal with rights that belong not to an individual but to a social group and to the whole of humanity – i.e. the 'rights of future generations':



- genetic engineering, human genome research (the human body is inviolable for genetic testing);
- exploration and use of space;
- the right to privacy and security on the Internet;
- technological development, including artificial intelligence, digital rights and other 'new' rights not covered by the three generations of the rights listed above.

## Human Rights Protection



**The State** is the ultimate guardian of human rights and has the power to take the appropriate measures to protect human rights and the individual.

International human rights law imposes obligations on States to act or refrain from acting to ensure that the rights and fundamental freedoms of individuals or groups are not violated but protected and promoted.

Human rights are usually enshrined and guaranteed by law or regulations.

### Fundamental human rights:

- ♥ the right to life;
- 🚫 the right to the prohibition of torture and inhuman or degrading treatment;
- 🗣️ the right to freedom of expression, assembly and religion;
- 🏠 the right to privacy and family life;
- 🌍 the right to liberty;
- 🏠 the right to property;
- 📖 the right to education;
- 🏥 the right to health;
- 👷 the right to work.



## The right to life

This right has become one of the fundamental rights recognised by States today. The authors call it 'infinite and most fundamental without which no other right can be enjoyed.'

**Article 2 of the EU Charter of Fundamental Rights says:**

- Everyone has the right to life.
- No one shall be condemned to the death penalty or executed.

In all cases, analysis of the right to life emphasises the State's obligation to protect life. Article 2 of the Charter, inter alia, requires government officials to refrain from acts that may deprive a person of life. The State that restricts a person's liberty also assumes responsibility for his or her safety. It is important to know that the convention does not protect life, but the right to life.



## Prohibition of torture and inhuman or degrading treatment or punishment

**Article 4 of the EU Charter of Fundamental rights says:** 'No one shall be subjected to torture or to inhuman or degrading treatment or punishment.'

The prohibition of torture means that no one shall threaten a person in a cruel, particularly degrading and inhuman manner by forcing them to undergo physical or psychological pain or suffering.

Similar to the right to life, public authorities should act in the same way and refrain from torture and investigate complaints, claims or actions of individuals and protect those who may be subjected to torture.

Prohibition of torture has become an absolute right that cannot be derogated from even in times of war.



## Right to liberty and security

**Article 6 of the EU Charter of Fundamental Rights says:** 'Everyone has the right to liberty and security of person.'

The right to physical freedom means that a person's physical freedom shall not be restricted without a reason. The law shall clearly define the context and procedures when and how this can be done.



## Right to a fair trial

This right means that a person who decides to go to court is entitled to a fair and impartial hearing of his or her case.

Jurisprudence highlights the main principles of ensuring the right to a fair trial:

- the right to go to court;
- the right to appeal against a court decision;
- the right to appeal to an independent tribunal;
- the right to be heard;
- the right to an interpreter;
- the speed of proceedings (usefulness);
- equality of arms between the parties in the proceedings;
- equality of persons before the court;
- motivation of court decisions.





## Right to private and family life

It includes the right of the individual to decide how to build their family life and how to live, with whom to spend time; it protects the inviolability of a person's home and correspondence, guarantees the independence of a person's private life, choices, etc.

This right may be restricted by law to protect other essential interests.



## Freedom of assembly

Freedom of assembly ensures people can gather and meet, establish peaceful groups and publicly express collective ideas and communications.

This right is a way of exercising freedom of expression, so it is very important because it allows a person to share his or her ideas and communications with a wider audience.

This right may also be restricted by law.



## Freedom of expression (speech)

It is the right to seek, receive and share information and ideas without fear or interference.

This right is crucial to personal development and dignity, as well as to more diverse public interests, as a person is given the opportunity to question or criticise the Government in public.

This right, similar to the right to private and family life, may be restricted by law.



## Right to health

This right means that the State is obliged to ensure that an effective healthcare system is in place. It does not mean that we will all be healthy and that the State shall ensure this. We are all born different and our needs are different.

Nor does this right mean that the State shall provide all available healthcare services for free. However, it is important that no one is denied access to healthcare on discriminatory grounds.



## Right to education

This right entails that the state shall ensure an environment in which an effective and high quality education system is in place and available to everyone. This does not mean that education shall be provided free of charge.



## Right to work

This means that a person is allowed to work and has the opportunity to seek employment of his or her choice. It does not mean that the State shall find a job for a person or provide a desired wage.



## Right to asylum

The Refugee Convention is based on the Universal Declaration of Human Rights (1948) (Article 14) and recognises the right of persons to seek asylum in other countries.

The Refugee Convention continues to play an important role today, as it is the only instrument that obliges States to protect refugees.

It establishes a definition of a refugee and his/her rights and obligations.

According to its original wording, a person is entitled to refugee status if he has left his country of origin owing to 'a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.'

**Discrimination** is the restriction or deprivation of the rights of an individual or a category of persons on the grounds of race, nationality, language, religious or political beliefs, property or social status, birthplace, etc.



### Hate crime

It is a criminal act performed by a particular social group against a person - a victim.

This group can be identified based on different characteristics: ethnicity, language, nationality, appearance, religion, gender identity and so on.

In case of hate crimes or hate speeches the following human rights may be violated:

- the right to life;
- the right to the prohibition of torture, inhuman and degrading treatment
- the right to a fair trial;
- the right to freedom of expression;
- the right to respect private and family life.

## Key Human Rights Instruments



### I. Charter of the United Nations.

Peace preservation is the most important task of the United Nations, defining the *raison d'être* of the organisation.



1. To maintain international peace and security, and to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression;



2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples



3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion;



4. To be a centre for harmonizing the actions of nations in the attainment of these common ends.



### II. Universal Declaration of Human Rights

Article 1 and 2 of this Declaration enshrine that '**all people are born free and equal in dignity and rights**' and they are entitled to all the rights and freedoms set forth in this Declaration, 'without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion.'

### III. UN International Covenants and Conventions:

1. International Covenant on Economic, Social and Cultural Rights;
2. International Covenant on Civil and Political Rights;
3. International Convention on the Elimination of All Forms of Racial Discrimination;
4. Convention on the Elimination of All Forms of Discrimination against Women;
5. International Convention on the Rights of the Child;
6. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
7. International Convention for the Protection of All Persons from Enforced Disappearance.

### IV. European Convention for the Protection of Human Rights and Fundamental Freedoms

The Convention stipulates the following rights and freedoms:

- the right to life;
- prohibition of torture or inhuman or degrading treatment or punishment;
- prohibition of slavery and forced labour;
- the right to liberty and security;
- the right to a fair trial;
- the right to respect for private and family life;
- freedom of thought, conscience and religion;
- freedom of expression;
- freedom of assembly and association;
- the right to marry;
- the right to an effective remedy.

**V. The Charter of Fundamental Rights of the European Union** sets civil and political rights, as well as economic, social and cultural rights.

### VI. The Treaty of Lisbon or 'The Treaty of Reforms'

Signed by the EU MS leaders on 12 December 2007.

Entered into force on 1 December 2009.

The purpose is to modernise and optimise the way the European Union operates, governed by the rules established by 15 EU countries, which became ineffective as the European Union expanded to 27 members.

### VII. European Union directives. The main areas include:

- migration;
- protection of social rights;
- rights acquired at birth.

# Human Rights Organisations

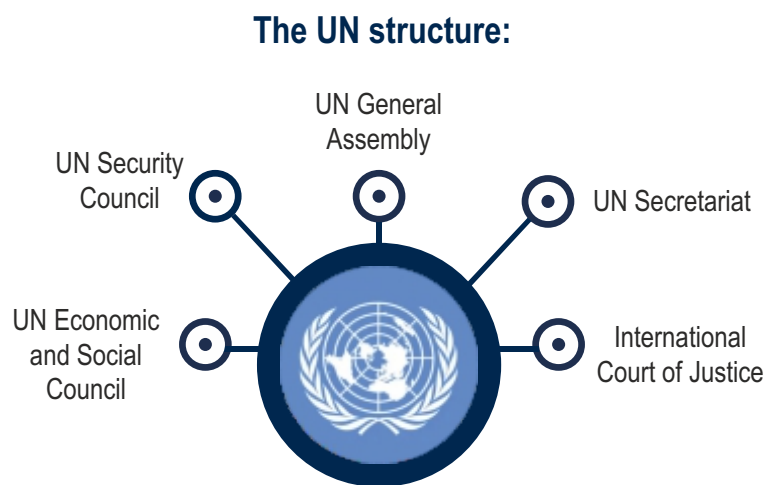
The protection of human rights can be divided into:

## 1. International - the protection mechanisms implemented by the United Nations.

**The United Nations** is an international organisation whose purpose is to maintain international peace and security, develop friendly relations among peoples and achieve international cooperation.

The UN headquarters are in New York, with other headquarters in Geneva, Nairobi, Vienna, Rome and the Hague.

It was founded on 26 June 1945.



## 2. Protection mechanisms implemented by the Council of Europe.

The European Court of Human Rights is an independent international court that deals with human rights violations.

The Court is located in Strasbourg, France; it was set up in 1959.

The purpose of the Court is to ensure compliance with obligations of the Contracting Parties under the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

## 3. Protective mechanisms implemented by the European Union:

**European Parliament Subcommittee** on Human Rights is responsible for human rights, minority protection and the promotion of democratic values in third countries.

**European Parliament Petitions Committee:** the right of European citizens and residents means that everyone can exercise their right to petition to the European Parliament at any time.

**European Union Agency for Fundamental Rights** assists in ensuring and protecting the fundamental rights of people in the European Union.

**The European Ombudsman** investigates communications (complaints) of the EU citizens, businesses, NGOs, associations and other organisations related to maladministration of EU institutions, bodies, offices and agencies.

## 4. The National level – protection mechanisms at the national level.

### Human Rights. Migration and Detention

Migrants, regardless of their legal status (asylum seekers, refugees, migrant workers, etc.) are in a vulnerable situation. Migrants are particularly vulnerable in places of detention. Border and migrant control comes under the sovereignty of the State. International law establishes general rules and standards applicable to detention of migrants that cannot be disregarded.

Any administrative detention in the context of migration shall be used as a measure of last resort that can be justified by a legitimate aim, such as registration and record of identity. Any form of detention in migration shall be approved by court or similar institution.



The migrant shall appear before a judicial institution in a timely manner and shall have access to an automatic review of detention to assess necessity, legality and arbitrariness.



The migrant shall be informed on the reasons for detention, period of detention, and the possibility of appeal in a language he/she understands.



Particular attention shall be paid to migrant women in detention facilities. Conditions shall be in place to enable women and girls to exercise their right to challenge their deprivation of liberty and to obtain prompt and appropriate remedies available. Appropriate measures shall also be in place to address their needs.



Migrants shall also be informed of their right to asylum and the possibility to contact a consul. Conditions should be created for constant contact with the outside world, family and friends.



In addition, medical services, including psychological assistance, should be made available.



Detention of children on the basis of their parents' migration status will always mean a violation of children's interest and rights. Nor should children be separated from their parents or guardians. Children should not be detained for the purpose of maintaining their family, and an alternative measure to detention shall apply to the entire family. The vulnerability of migrants shall be taken into account. Women should be kept separately from men at all times if they are not family members.

## Vulnerable Persons and Principles of Work

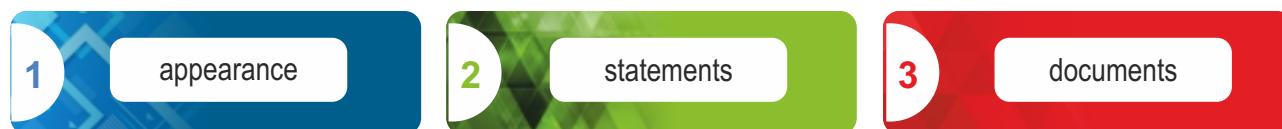
**Vulnerability** is a person's individual situation when due to personal circumstances, such as health, mental condition, age or social status, he/she may have a limited access to rights and obligations.



Vulnerability is linked to **personal circumstances**, e.g. **age, gender, sexual identity, disability, serious illness, mental disorders, victim of violence.**

## Identification and operation

Vulnerability can be identified and recognised by:



For example, a sexually abused woman may feel **ashamed, humiliated and guilty**. These feelings may cause a woman to remain silent in the presence of law enforcement officials. **Fear, depression, mood changes, concentration problems, shame and powerlessness** are common among survivors of torture. **Post-traumatic stress disorder** is the most common consequence, including:

- sleep disorders (a person has trouble sleeping, has nightmares or experiences insomnia);
- attacks of aggression and nervousness;
- problems with concentration;
- psychogenic amnesia (the person cannot remember important episodes of the trauma);
- anxiety and tension;
- fear overreactions.

Previous experiences are severely traumatising, which subsequently limits the person's ability to **communicate, explain and remember**.

A **wide range of professionals** can be involved in working with vulnerable people: social workers, psychologists, representatives of specialised national and international non-governmental organisations (NGOs). The involvement of these professionals and representatives creates a favourable environment for cooperation and work with a vulnerable person.


## Gender-based Violence

The term gender-based violence (GBV) was first used to describe violence against women and gender-based discrimination, and it was defined as 'violence against a woman because she is a woman or having a disproportionate impact on women.'

Gender-based violence is not only considered a violation of human rights as such: it is also an extreme form of discrimination that falls under the provisions of the Convention on the Elimination of All Forms of Discrimination against Women.

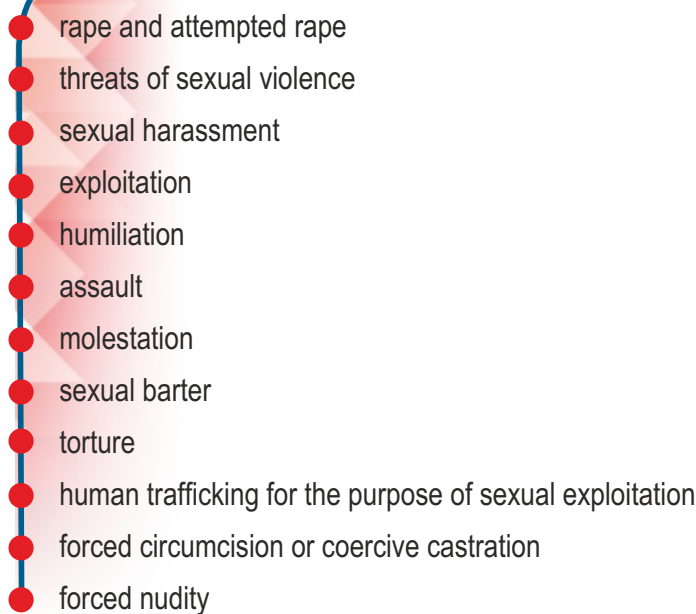
The UN Declaration on the Elimination of Violence against Women established a standard of 'due diligence', which requires States to 'exercise due diligence to prevent, investigate and punish acts of violence against women in accordance with the national law'. States should ensure that appropriate measures are taken regardless of whether such violence is committed by state actors (such as police or penitentiary services), private persons or detainees/prisoners.

In some predominantly male groups, such as detention facilities, the GBV is also used to humiliate, insult and control men and boys.



**Sexual violence** is a specific form of GBV and includes any sexual acts or attempts to obtain such acts; sexually suggestive remarks or harassment; acts of trafficking in persons or other acts against a person through coercion from any individual, regardless of the victim's relationship to him or her and under any circumstances. Sexual violence is inherently a gender-based crime mainly caused by gender inequality and gender stereotypes.

**Sexual and gender-based violence may include the following types of violence and abuse:**

- 
- rape and attempted rape
  - threats of sexual violence
  - sexual harassment
  - exploitation
  - humiliation
  - assault
  - molestation
  - sexual barter
  - torture
  - human trafficking for the purpose of sexual exploitation
  - forced circumcision or coercive castration
  - forced nudity

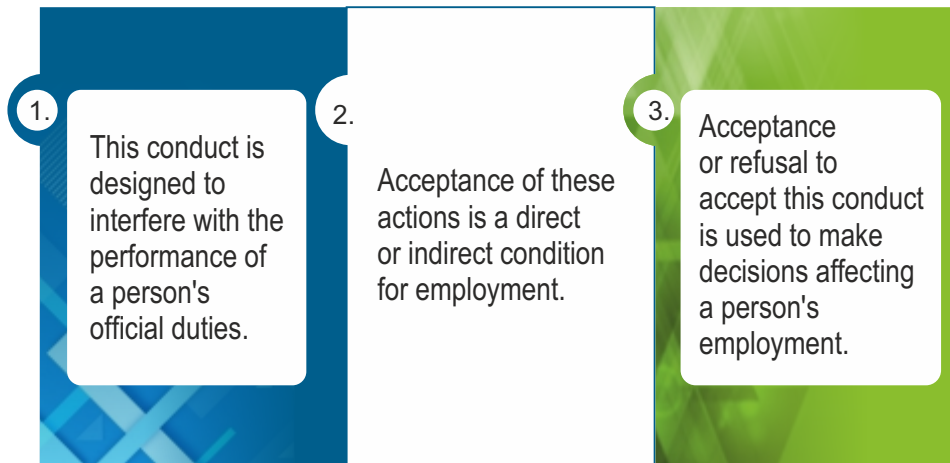
Non-offensive vocabulary shall be used to demonstrate a positive attitude towards diversity of sexual orientation and gender identity, especially in the migrant's mother tongue. The use of offensive language can become an element of harassment, in particular, in acts of intimidation or hostility. Even neutral or scientific terms at first glance may have the same impact as derogatory words. For example, although the term 'homosexualist' is widely used, in some countries it is considered offensive.

## Sexual Harassment

Some behaviours may seem acceptable or may be perceived as such in the past. This does not mean that they are acceptable to the people we work with in the present.



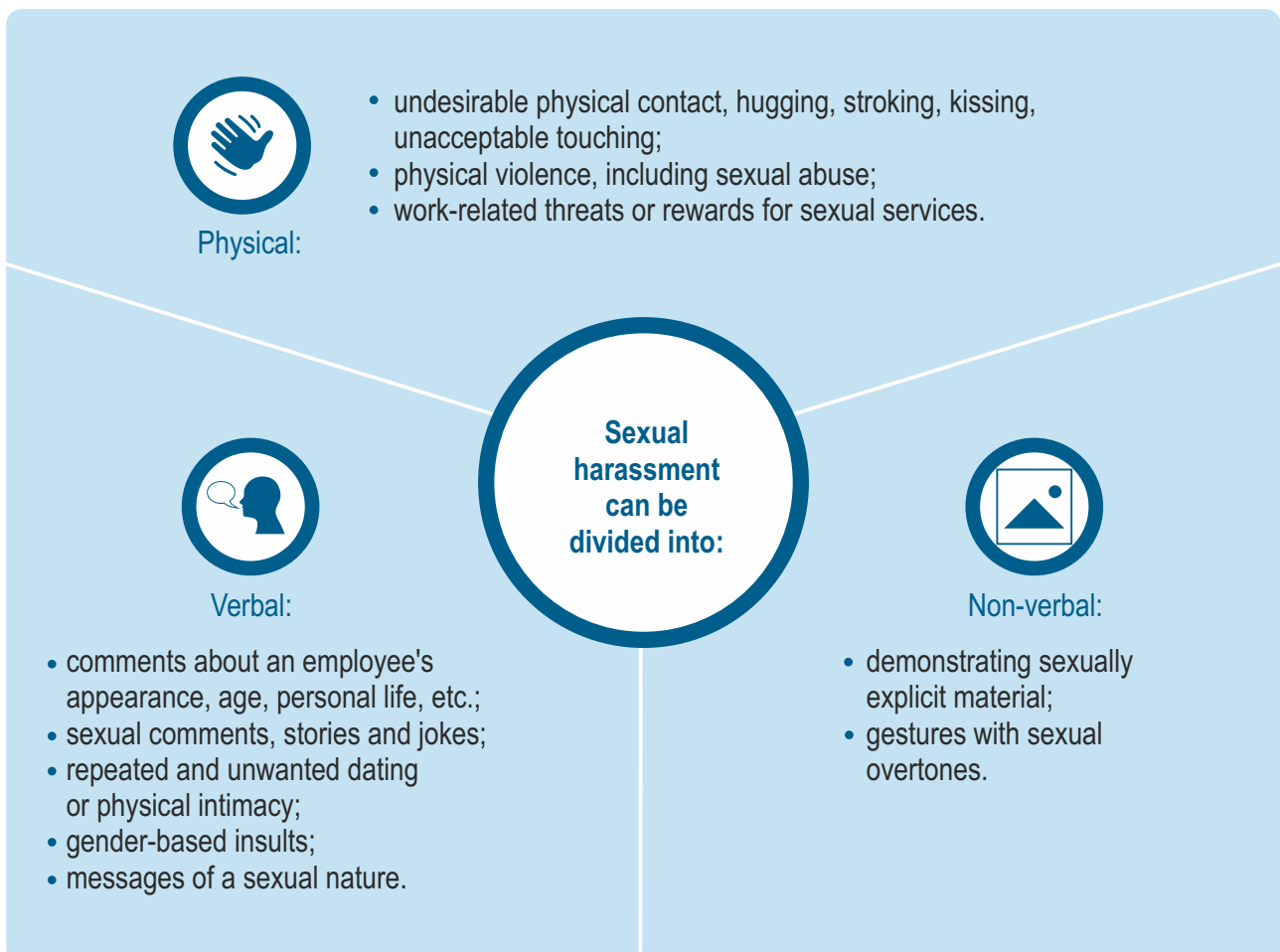
Sexual harassment includes undesired behaviour that is of a sexual nature when:



'Quid pro quo' - sexual harassment includes offers by an official to improve working conditions in exchange for sexual services.

Employees can be sexually harassed through calls, text messages, photos, emails or social media.

Harassment may occur at any time and at any place where employees perform their job duties, including on travel (site visit), during an event, training or conference.



Specialized NGOs can help to identify cases of sexual harassment when the victim seeks help. NGOs can also be used as a resource for training and assistance in combating sexual harassment.

## Sexual Orientation and Gender Identity

The Yogyakarta Principles address a broad range of human rights standards and their application to issues of sexual orientation and gender identity. The Yogyakarta Principles were adopted by a group of experts (judges, academics, former UN High Commissioner for Human Rights, UN Special Rapporteurs, members of treaty monitoring committees, NGOs and others) in Yogyakarta, Indonesia, on November 6-9, 2006.



**Sexual orientation** is understood to refer to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender. An individual's sexual orientation is determined, inter alia, by genetic, hormonal, developmental, social and (or) cultural factors (or a combination thereof); most people do not feel free to choose their sexual orientation.



**Gender identity** is understood to refer to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerism.



**Gender norms** are standards and expectations that typically correspond to gender identity and exist within the limits of a given society, culture and community at a given time.

## ADDITIONAL SOURCES AND MATERIALS

**Charter of the United Nations (UN) (June 26, 1945)**

<https://www.un.org/ru/about-us/un-charter/full-text>

**Universal Declaration of Human Rights (December 10, 1948)**

[https://www.un.org/ru/documents/decl\\_conv/declarations/declhr.shtml](https://www.un.org/ru/documents/decl_conv/declarations/declhr.shtml)

**International Covenant on Economic, Social and Cultural Rights (December 16, 1966)**

[https://www.un.org/ru/documents/decl\\_conv/conventions/pactecon.shtml](https://www.un.org/ru/documents/decl_conv/conventions/pactecon.shtml)

**International Covenant on Civil and Political Rights (December 16, 1966)**

[https://www.un.org/ru/documents/decl\\_conv/conventions/pactpol.shtml](https://www.un.org/ru/documents/decl_conv/conventions/pactpol.shtml)

**International Convention on the Elimination of All Forms of Racial Discrimination (December 21, 1965)**

[https://www.un.org/ru/documents/decl\\_conv/conventions/raceconv.shtml](https://www.un.org/ru/documents/decl_conv/conventions/raceconv.shtml)

**Convention on the Elimination of All Forms of Discrimination against Women (December 18, 1979)**

[https://www.un.org/ru/documents/decl\\_conv/conventions/raceconv.shtml](https://www.un.org/ru/documents/decl_conv/conventions/raceconv.shtml)

**Convention on the Rights of the Child (November 20, 1989)**

[https://www.un.org/ru/documents/decl\\_conv/conventions/childcon.shtml](https://www.un.org/ru/documents/decl_conv/conventions/childcon.shtml)

**International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (December 18, 1990)**

[https://www.un.org/ru/documents/decl\\_conv/conventions/migrant.shtml](https://www.un.org/ru/documents/decl_conv/conventions/migrant.shtml)

**International Convention for the Protection of All Persons from Enforced Disappearance (December 20, 2006)**

[https://www.un.org/ru/documents/decl\\_conv/conventions/disappearance.shtml](https://www.un.org/ru/documents/decl_conv/conventions/disappearance.shtml)

**European Convention for the Protection of Human Rights and Fundamental Freedoms (November 4, 1950)**

<https://www.coe.int/ru/web/compass/the-european-convention-on-human-rights-and-its-protocols>

**European Court of Human Rights**

<https://www.echr.coe.int/Pages/home.aspx?p=home>

**Charter of Fundamental Rights of the European Union (December 7, 2000)**

<https://eulaw.ru/treaties/charter/>

**The Treaty of Lisbon (December 13, 2007)**

<https://eulaw.ru/treaties/lisbon/>

**Office of the UN High Commissioner for Human Rights (OHCHR): Working Group on Arbitrary Detention**

<https://www.ohchr.org/ru/special-procedures/wg-arbitrary-detention>

**OHCHR: Women's Rights and Gender Equality**

<https://www.ohchr.org/ru/women>

**OHCHR: Principles and guidelines on the human rights protection of migrants in vulnerable situations.**

<https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf>

**Organisation for Security and Co-operation in Europe, Preventing and Addressing Sexual and Gender-Based Violence in Places of Deprivation of Liberty**

<https://www.osce.org/files/f/documents/5/3/451444.pdf>

**UN Women: Sexual Harassment at Workplace: Challenges and Responses**

<https://www.gcedclearinghouse.org/sites/default/files/resources/190349rus.pdf>

**Yogyakarta Principles**

<http://yogyakartaprinciples.org/principles-ru/>

**Handbook on European law relating to asylum, borders and immigration**

[https://echr.coe.int/Documents/Handbook\\_asylum\\_RUS.pdf](https://echr.coe.int/Documents/Handbook_asylum_RUS.pdf)

