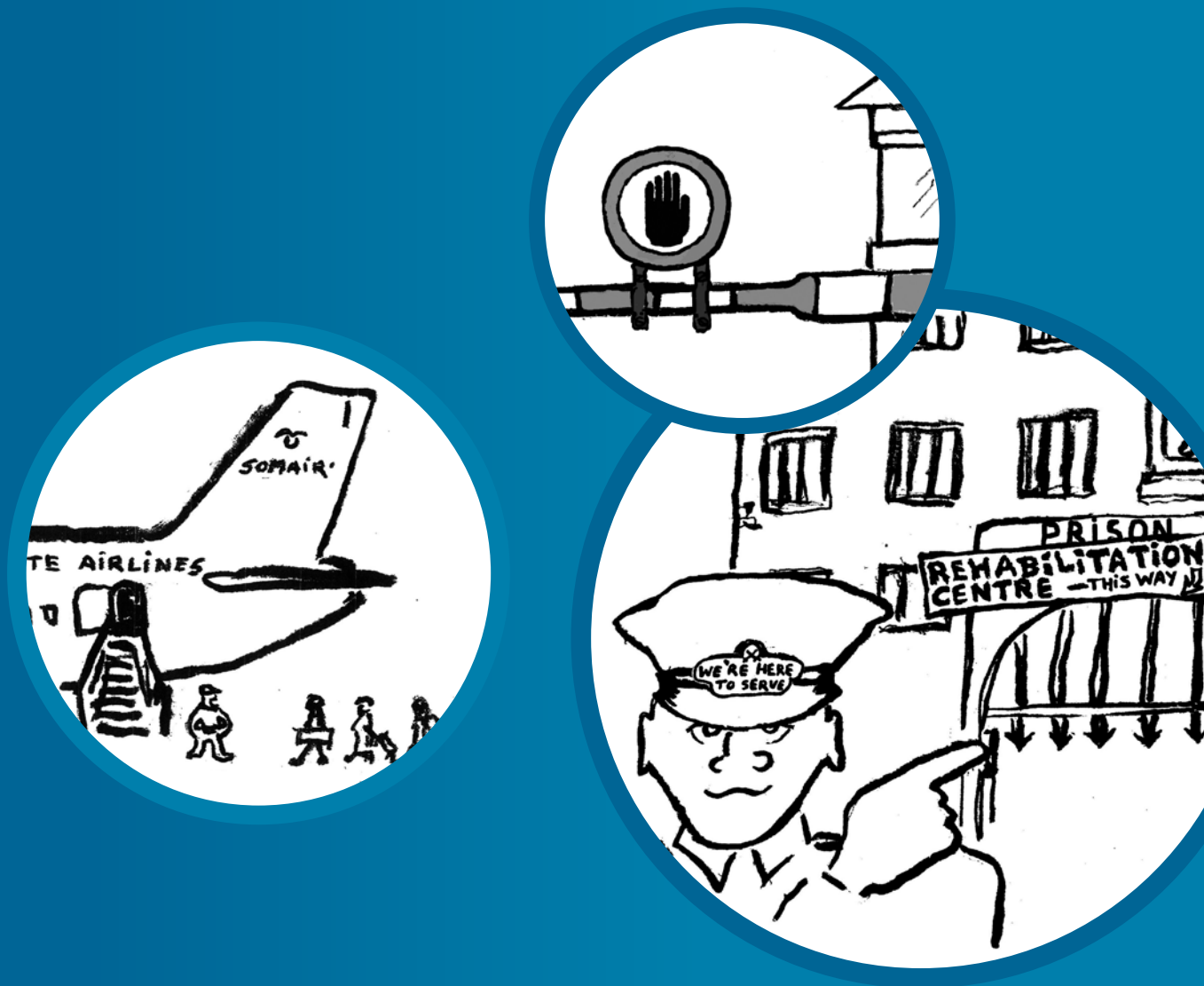


The RightT Guide

A tool to assess the human rights impact
of anti-trafficking laws and policies



This tool has been jointly developed by Aim for human rights (the Netherlands), La Strada Czech Republic, La Strada International and SCOT-PEP (UK).

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Ministry of Foreign Affairs of the
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THEY'RE YOURS.
USE THEM.



Who made The Right Guide and why?

The Right Guide, a tool to assess the human rights impact of anti-trafficking policies, was developed by Aim for Human Rights, together with anti-trafficking, sex workers' rights and migrants' rights organisations in Europe and in other parts of the world. They all shared a growing concern about negative effects of anti-trafficking interventions on the human rights of trafficked persons and other people affected by anti-trafficking laws, policies and practices, like sex workers and migrants. An illustration of these concerns is the 2007 report of the Global Alliance Against Traffic in Women 'Collateral Damage: the impact of anti-trafficking measures on human rights around the world'. The report documents a wide range of examples of how anti-trafficking policies negatively affect the people they are supposed to benefit. These concerns, and the need for policies that respect the human rights of all people affected by trafficking and anti-trafficking policies, gave rise to the development of this tool.

The aim of the toolkit is to provide NGOs and other civil society organisations with an instrument they can use to assess the intended and unintended effects of anti-trafficking policies on the human rights of the people affected by those policies. The outcomes will provide them with evidence-based information to lobby for more effective measures that combat trafficking and exploitation while respecting and promoting human rights.

The development of this toolkit was a joint project undertaken by Aim for human rights in the Netherlands, La Strada Czech Republic, La Strada International and SCOT-PEP (UK). They were assisted by an advisory group consisting of: Victoria Nwogu on behalf of GAATW (Global Alliance Against Traffic in Women) based in Thailand; Sabine Craenen and Jan Knockaert from OR.C.A. (Organisation for Clandestine Workers) in Belgium; and Kaoru Aoyama, Ponponmaru and Yukiko Kaname from SWASH (Sex Work and Sexual Health) in Japan. Tom Etty contributed his extensive experience as a trade union official with the Dutch confederation of trade unions, FNV, and the International Labour Organisation. Many others helped to make the tool, coming from diverse backgrounds: human rights, sex workers' rights, migrants' rights and labour rights. We want to thank them all for sharing their expertise, enthusiasm and time. Without their input and confidence in the project, this tool would never have been realised. We made use of the experience of Aim for human rights in developing human rights impact tools, in particular the Health Rights of Women Assessment Instrument (HeRWAI), but also of other organisations. We are particularly indebted to Rights & Democracy, International Centre for Human Rights and Democratic Development in Canada.

In 2010, the draft tool was tested by several organisations working against trafficking and in defence of sex workers' rights and migrants' rights in Europe, Asia and Latin-America. La Strada Czech Republic, Solidaritas Perempuan in Indonesia, X:talk in the UK and COSWAS (Collective Of Sex Workers And Supporters) in Taiwan carried out the full assessment process. In addition, Pro Tukipiste in Finland and Trajeto in Brazil conducted a three-day workshop to test the short version of the tool. The development and testing of the tool was financed by the Daphne Programme of the European Union, the Dutch Ministry of Foreign Affairs, Cordaid and the Maria Stroot Foundation. We want to thank them for enabling us to undertake this challenge.

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Utrecht, October 2010

PART I - Introduction

1. About The RightT Guide

This toolkit consists of three parts. Part I introduces the tool, a human rights approach to trafficking, the international human rights system and the [UN Trafficking Protocol](#).

Part II provides a quick scan to help you decide if conducting a [Human Rights Impact Assessment](#) (HRIA) is a good strategy for you to achieve the change you want.

Part III is the actual assessment tool, starting with the preparation. Each of the tool's 7 steps consists of a number of key questions and sub-questions. The data you collect in each step will feed into the report you will write during and at the end of the assessment. When you have collected all your data, you will formulate your recommendations and action plan in step 7.

In a separate part of the toolkit you will find a set of **factsheets**. These provide additional information about what human rights are, the UN Trafficking Protocol, standards that States have to meet in order to combat trafficking and protect the rights of trafficked persons, and the various specific human rights you will deal with when undertaking a HRIA. Also included is a factsheet on methods for collecting and analysing information. In several places, the text will refer to these factsheets. At the end of the tool you will find a glossary which explains the terms and abbreviations used. All the [words that are highlighted in blue](#) are explained in the glossary.

The tool in 7 steps:



Why this tool?

Since the adoption of the [UN Protocol on trafficking in human beings](#) in 2000, efforts to stop trafficking have mushroomed around the world. The intentions may have been good, but, in many cases, the effects have been less positive. Whereas [States](#) have given priority to the prosecution and punishment of traffickers, measures have largely failed to safeguard the [human rights](#) of people who have been trafficked. Not only NGOs, but also the US State Department's 2010 Trafficking in Persons Report, observe that, since the passage of the UN Trafficking Protocol, in many cases the '3 P's' of prevention, protection and prosecution, seem to have given way to the '3 D's' of detention, deportation and disempowerment. In many cases, [trafficked persons](#) are detained and deported without protection against their traffickers and without credible opportunities to seek legal redress, adequate psychological assistance, longer-term residency and work. Or they are, in the name of protection, confined in public or private shelters or 'rehabilitation centres', sometimes for years, under conditions no different from detention.

Many anti-trafficking efforts even undermine or negatively affect the human rights of the people they are supposed to benefit or of other groups, affected by these measures. In some cases, they lead to direct violations, for example, when prevention of trafficking is used to limit the freedom of movement

of specific groups of women, or to justify discriminatory measures against migrant domestic workers or [sex workers](#).¹

In 2002 the then United Nations High Commissioner for Human Rights, Mary Robinson, issued a set of [Recommended Principles and Guidelines on Human Rights and Human Trafficking](#), where she established as a key principle that the human rights of trafficked persons should be “at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to trafficked persons”. These guidelines stress that “anti-trafficking measures should not adversely affect the human rights and dignity of persons, in particular the rights of those who have been trafficked, and of migrants, internally displaced persons, refugees and asylum seekers”. However, despite an increasing number of European and international policy documents that call for a [human rights based approach](#), the concerns of the people affected by anti-trafficking laws and policies are often still ignored.

To be effective in lobbying for better policies, organisations need to clearly demonstrate where and how rights were being violated. Instruments to assess the impact of anti-trafficking interventions on human rights are lacking, however. This toolkit aims to address that gap. It provides NGOs with an instrument to assess the impacts of anti-trafficking laws and policies, and to voice their concerns more effectively.

How does it work?

The assessment process is divided into 7 steps. Each consists of an explanation and a set of questions to guide the data collection and analysis. Explanations, examples and checklists facilitate the answering of the questions and the collection of information. Based on this information and analysis, you can then formulate a set of recommendations and an action plan to address the issues you have identified.

The toolkit is built on a number of key principles:

- **State accountability:** most States have undertaken binding human rights commitments by ratifying human rights treaties. You can hold your government accountable for living up to their human rights commitments. In most countries, there is still a big gap between having rights in theory and enjoying those rights in practice. A Human Rights Impact Assessment [exposes](#) that gap by linking what actually happens in daily life with what should happen according to the State’s human rights obligations.

EXAMPLES OF ANTI-TRAFFICKING EFFORTS WITH NEGATIVE EFFECTS

- To prevent trafficking, some States prohibit all young women from travelling abroad for certain types of work. Instead of preventing women from migrating, such bans are likely to put them at greater risk of trafficking and exploitation – the very concerns that drive such bans. They propel women into perilous migration strategies, infringe on their right to freedom of movement, and are disproportionate to their aim.
- ‘Rescue’ operations, in the form of police raids on brothels, disrupt the lives and work of sex workers. They often lead to the arbitrary arrest and detention of sex workers and massive deportations of migrant sex workers. They expose sex workers to police abuse and fail to include them in the process of finding effective solutions to coercive and exploitative practices in the sex industry.
- Measures tying work permits to a specific employer place migrant domestic workers in a situation of dependency, making them more vulnerable to abuse and exploitation.
- Some countries oblige NGOs supporting trafficked persons to report their clients to the authorities. The absence of confidentiality prevents victims who fear the police from seeking help.
- In many countries around the world, it is common practice for victims of trafficking to be effectively imprisoned in government or private shelters or rehabilitation centres, sometimes for years. This violates their right to freedom of movement, the prohibition of arbitrary detention and the prohibition of sex-based discrimination, since it disproportionately affects women and girls. It also undercuts any rapport service providers or investigators might build with them.
- Forced repatriations without protection against reprisals or harassment from traffickers, or the authorities, endanger trafficked people’s lives and security, and expose them to the risk of being re-trafficked.
- Sometimes anti-trafficking policies exist on paper but are not implemented, for example when, in practice trafficked persons are never identified and therefore do not receive adequate protection and support.

¹ The examples in the text and box are taken from *Collateral Damage: The impact of anti-trafficking measures on human rights around the world*, GAATW 2007; *Detention of Trafficked Persons in shelters. A legal and policy analysis*, Anne Gallagher & Elaine Pearson, 2008; the 2010 US State Department TIP report, and the experiences of the authors.

- **Knowledge/evidence based action:** the tool aims to go beyond ideological debates. It requires rigorous data-collection as a basis for analysing and understanding the actual impact of anti-trafficking efforts on the human rights of those affected by these laws and policies.
- **Participation:** the tool requires the participation of groups affected by anti-trafficking policies. This is a fundamental principle and an essential element in the process of collecting evidence and understanding the impact of a policy.
- **Bridging movements and building alliances:** in many countries, anti-trafficking organisations, groups working to defend the rights of sex workers and (undocumented) migrants, labour rights and human rights organisations do not work together. The tool facilitates the bridging of these divisions by presenting human rights principles as applying to these various groups and movements in specific, yet universal, ways.

The Right Guide focuses on adults, that is to say persons 18 years and over. This is not because children are not affected by trafficking and anti-trafficking measures, but because they have a different legal position from adults and, consequently, specific rights within international law. However, we encourage you to take from the tool what is useful and to adapt the guide to your needs where possible, while taking into account the additional treaties that apply to children in particular, the Convention on the Rights of the Child and the Convention on the Worst Forms of Child Labour.

Who can use The Right Guide and for what purpose?

The toolkit is designed for NGOs and other civil society organisations working against trafficking in human beings, as well as for groups who themselves are affected by anti-trafficking laws and policies, such as trafficked persons, sex workers or migrants. Using The Right Guide to analyse a policy will help you to:

- gain a better understanding of the situation;
- make a direct link between the policy and relevant human rights issues;
- assess the human rights impact of the policy on the people affected;
- build alliances with other stakeholders and community-based groups;
- draw evidence-based conclusions about what the government does and what it should do to meet its human rights obligations;
- make an action plan for using the outcomes of the assessment to advocate better policies;
- increase your knowledge about human rights and enhance the capacity of your organisation to use a human rights framework.

LIMITATIONS OF A HUMAN RIGHTS IMPACT ASSESSMENT

Carrying out a Human Rights Impact Assessment does not mean that things will change overnight. A HRIA allows you to identify problems and possible solutions. Actions based on the outcomes can bring about change. To ensure the findings are used, you can, for example, distribute your report widely, engage in dialogue with those responsible for the policy, and submit the report to various local, national and international authorities.

How can you use the outcomes?

The outcomes of the analysis can be used at all levels: local, national and international. You can use them to:

- advocate policy reforms and hold your government accountable for fulfilling its human rights obligations;
- inform a large group of people about the situation, and communicate your concerns more effectively to the competent authorities;
- lobby international institutions and UN agencies;
- compile shadow reports on the various human rights conventions.

For what kind of policies can you use the tool?

You can use The Right Guide not only to analyse anti-trafficking laws, policies or measures, but also to analyse policies that do not directly address trafficking but have an impact on the rights of people who are, or might be, trafficked and exploited. These include laws and policies on migration, prostitution, (migrant) labour, public order or combating crime. You can use it to analyse existing policies as well as to anticipate the impact of a policy that is being planned. If the government does nothing to address the problem, you can use the tool to analyse the consequences of a lack of policy.

Why does The Right Guide focus on government policies?

States, and governments as their representatives, hold primary responsibility for the protection of human rights. This is the reason why States are called ‘**duty bearers**’ in human rights language: they have a duty to respect, protect and fulfil the human rights of all persons on their territory. The latter are called ‘**rights holders**’. If a State fails to fulfil its human rights commitments, it can be held accountable for its (lack of) action. State responsibility also implies that the government is responsible for directing other actors involved in implementing anti-trafficking policies and ensuring that they respect human rights. These can be regional or local governments or authorities, but also intergovernmental organisations or service providers that operate on the territory of the State.

How much time and resources do you need?

A HRIA is most useful and successful when the problem selected is closely related to the overall work of your organisation. The full assessment process will take 4 to 6 months, depending on the size of the team carrying out the assessment and the capacity of your organisation. Doing the quick scan will take your team about 1 or 2 days. Data collection is the most time-consuming part of the process, but will be easier when integrated into the overall work of your organisation, for example using already planned meetings to conduct interviews, or doing interviews while providing services. The level of information required might vary from situation to situation, so might the accessibility of information. You may reduce your time investment by selecting the questions that are most relevant for your situation, or cooperate with other organisations to share the workload. However, keep in mind that sound lobbying arguments need to be based on facts, which means that you need to reserve sufficient time for data collection.

The financial resources required vary depending on the country involved, the scope of the analysis, accessibility of information, and whether additional staff must be hired and/or travel or other costs paid. A full assessment is likely to cost between Euro 8.000 and 12.000.

Different ways to use the tool

You can do the **full assessment** or just undertake the parts that suit your organisation or situation. There are several other ways in which you can use the toolkit:

- You can use the **quick scan** in Part II as a stand-alone exercise if you want to do a quick mapping of the problem, its causes and consequences. The quick scan will also help you to determine whether carrying

out a HRIA will help you to achieve the change you want.

- You can use the toolkit as a **resource guide** to learn more about human rights, help you implement a rights based approach in your work, or ask the right questions in establishing or evaluating your lobbying strategy. Included in the toolkit is a set of **factsheets on specific rights and their application**. These provide more information about human rights and the human rights standards States must meet in addressing trafficking and exploitation.
- If you want to check whether the anti-trafficking policies of your State are in compliance with the **minimum standards that States must meet in addressing trafficking**, you can use the standards listed in step 4 (question 1) in combination with factsheet 7.

An alternative to the full analysis is the **short version workshop** which aims to go through the different steps in 3-4 days with a number of organisations. During the workshop you will analyse a particular topic that has the interest of all organisations. The results can be used to advocate for change on the policy level. The workshop should bring together organisations with different knowledge, skills and expertise on the subject. This helps to do an in-depth analysis.

Assistance to users

The toolkit can be used independently, but for many NGOs working within a human rights framework is new. To help you get started, we provide an **introductory workshop** on human rights and the use of The Right Guide. We can also give support to users during an assessment. For more information, please contact info@humanrightsimpact.org or see www.humanrightsimpact.org/trafficking



2. A human rights based approach to trafficking

Trafficking and its **forced labour** and slavery-like outcomes are generally recognised as serious human rights violations. This implies that, under **international human rights law**, States have a duty to **prevent, investigate and punish** trafficking, and to **protect and assist** trafficked persons. This extends to violations committed by both State and non-State actors. Trafficked persons should be treated as individuals whose rights have been infringed, and should be provided with access to **adequate remedies**, including assistance, protection, legal aid and compensation. Up to now, however, States have mostly concentrated on law enforcement and migration control measures, while victim assistance and protection are largely lagging behind. Many advocates of a human rights based approach have therefore focused on the protection of the human rights of trafficked persons.

SOME OF THE RIGHTS THAT YOU MAY DEAL WITH WHEN MAKING A HRIA ARE:

- The right to life, liberty and security
- The right to be free from slavery, forced labour and servitude
- The right to freedom of movement
- The right to privacy and family life
- The right to work, to free choice of employment and to just and favourable conditions of work
- The right to health
- The right to peaceful assembly and association
- The right to equal protection of the law

However, a human rights based approach is about more than protecting the rights of trafficked people. Policies to prevent trafficking should address these factors that increase people's vulnerability to trafficking, such as inequality, poverty, discrimination, stigmatisation and prejudice. Measures should aim at strengthening the ability of vulnerable groups to exercise their human rights and support their organisation and self-representation. Measures that add to marginalisation or stigmatisation must be avoided. They can easily be at odds with the protection of human rights, and may create or exacerbate existing situations that cause or contribute to trafficking in persons.

Within a human rights based approach, human beings are seen as active actors seeking to change their situation, rather than as powerless pawns or victims 'in need of rescue'. Interventions should aim at giving people the power, capacity, capability and access they need to change their situation, to speak up for their

own rights and, in the case of trafficked persons, to take back control of their lives (**empowerment**).

A human rights based approach also implies respecting a number of principles related to the process of policy making, that is the system by which policies, programs and measures are developed, implemented and evaluated. A cross-cutting principle is **participation**. Individuals have the right to be involved in the development and **implementation** of policies and measures that affect their human rights. This is considered an essential condition for the development of effective change strategies.

WHAT DOES PARTICIPATION MEAN?

Participation implies involving those who are affected by anti-trafficking policies in the development, implementation and evaluation of these policies. Failure to obtain the input of those groups can mean that even well-intentioned national and international efforts to address trafficking do not contribute to solving the problem or may even have negative effects.

Of special importance to the situation of irregular migrants and other vulnerable or marginalised groups is respect for the **principle of non-discrimination**. This implies that anti-trafficking measures should not be used to directly or indirectly discriminate against women, migrants, sex workers or other groups. It also means that protection for trafficked persons should be applied without discrimination based on **gender**, ethnicity, immigration status, and/or the fact that an individual may have been trafficked in the past or worked in the sex industry.

Moreover, all anti-trafficking measures should **comply with the existing human rights obligations** of States, as set forth in the major human rights instruments, for example the right to liberty and security, the right to privacy and family life, the right to freedom of movement and the right to association. At a minimum they must not conflict with, or otherwise undermine, human rights ('do no harm').

Finally, States should establish **mechanisms to monitor** the human rights impact of anti-trafficking laws, policies, programmes and interventions. A human rights based approach thus means that anti-trafficking policies should:

- aim to change the conditions that give rise to trafficking and the exploitation of human beings under forced labour or slavery-like conditions;

- stop the abuse and investigate, prosecute and punish the perpetrators;
- provide adequate remedies to trafficked persons.

Moreover, anti-trafficking policies should:

- ensure participation of those most affected in their development, implementation and evaluation, and aim to strengthen the ability of people to shape the policies that govern their lives;
- comply with existing obligations of States under international human rights law, as set forth in the major human rights treaties and other standards-setting instruments;
- not undermine or otherwise negatively affect human rights ('do no harm');
- not be used to directly or indirectly discriminate against women, migrants, sex workers or other groups.
-

3. Introducing human rights

Human rights treaties are the foundation of a human rights based approach. Working according a human rights framework means analysing a situation based on the rights laid down in the [Universal Declaration of Human Rights](#) (UDHR) and in international and regional human rights treaties. This chapter discusses the basic notions of human rights and the human rights system. More information is available in the factsheets.

What are human rights?

Human rights are the rights possessed by all human beings by virtue of their common humanity. They were first defined in the Universal Declaration of Human Rights in 1948. The UDHR is the 'mother' of all major human rights treaties. The Declaration recognises the inherent dignity and equality of all human beings, a notion that lies at the heart of human rights. The most important features of human rights are listed below.

- **Human rights are fundamental:** Individuals need them to survive, to develop and to contribute to society. They are the primary means for every person to develop his or her full potential.
- **Human rights are inherent:** Every individual has human rights and is entitled to all of his or her human rights by virtue of being a human being.
- **Human rights are universal:** Human rights apply to everybody without distinction of any kind. They are inherent to all human beings, whatever his or her nationality, place of residence, gender, national or ethnic origin, colour, religion, language, or any other status.
- **Human rights are inalienable:** They cannot be taken away, except in specific situations and according to due process. For example, the right to liberty may be restricted if a person is found guilty of a crime by a court of law.

- **Human rights are indivisible:** All human rights – social, economic, cultural, civil and political – are indivisible, interrelated and interdependent.

Other important principles are:

- **Accountability:** States (duty bearers) are responsible for fulfilling their human rights commitments. This implies that citizens (rights holders) can hold their government accountable when it fails to do so. In case of violations of their rights, they should have access to an effective remedy.
- **Non-discrimination:** All human beings are equal and no person should be subjected to discrimination. This reflects the right to equality before the law and to equal protection by the law.
- **Proportionality:** Most human rights are not absolute. That means States may take measures that restrict a certain right, but only if the measure is proportional to the aim for which it is taken (proportionality), if there are no other means to achieve that aim that do not or less violate the right (necessity), and if the exception is laid down in the law (legality). For example: prohibiting all young women from travelling abroad in order to protect some women from trafficking is disproportionate to its aim. There are other ways to protect women that do not violate fundamental rights.

What is international human rights law?

International human rights law refers to the body of international law designed to promote and protect human rights at the international, regional and domestic level. It lays down the human rights standards that States and State actors are bound to respect. By becoming a party to an international treaty (also called ratification), a State assumes the obligation to respect, protect and fulfil the human rights laid down in that treaty.

- The **obligation to respect** means that States must refrain from interfering with, curtailing or undermining the enjoyment of human rights.
- The **obligation to protect** requires States to protect individuals and groups against human rights abuses and to take measures to prevent human rights violations. This includes measures to prevent third parties from violating rights.
- The **obligation to fulfil** means that States must take positive action to facilitate the enjoyment of basic human rights.

These obligations are also called [negative](#) and [positive obligations](#). A negative obligation means that laws, policies and practices should not interfere with the exercise of a right. A positive obligation implies that States have to provide the conditions for the exercise of a right to the best of their capacity.

Human rights treaties form the foundation of international human rights law, but also other international human rights instruments, such as Declarations, Guidelines and Principles, help to understand and implement them. Although these are not legally binding on States, they are politically binding and can be invoked in lobbying activities. In addition, several regional human rights conventions exist, for example the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

Human rights violations occur when States transgress, or fail to protect, the rights enshrined in national, regional or international human rights law. The term **'State'** includes all actors that exercise public functions, such as (national, regional or local) administrations, public services, national courts, the police and the army. Although quantitative information is important, the number of people affected does not decide whether or not a human right is violated. A violation of a human right is a violation of human rights, regardless of the number of people affected.

How are human rights enforced?

International human rights law can be enforced at domestic, regional or international level. States that ratify human rights treaties commit themselves to respecting those rights and ensuring that their domestic law is compatible with their treaty obligations and duties. The enforcement of international human rights law is the primary responsibility of national States. When other actors (including national or international organisations, companies or NGOs) commit a violation, it is the responsibility of the State to protect its people and take measures to ensure that their human rights are respected. All major human rights treaties and conventions have international committees of independent experts, called **'treaty bodies'** that monitor if and how States comply with their obligations under the treaty concerned. They can issue **General Recommendations** which explain how the treaty must be interpreted, but they can also make recommendations to individual States. States have to report to them on a regular basis, usually every four years. Also NGOs can submit reports to them, called **shadow reports**. Sometimes it is also possible to file complaints with the **treaty body**.

What are the main international human rights instruments?

The Universal Declaration of Human Rights (UDHR) formed the basis for the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Together, they comprise the so-called International Bill of Human Rights. The other core human rights treaties are:

- Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- Convention Against Torture (CAT)
- Convention on the Rights of the Child (CRC)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW)
- Convention on the Rights of People with Disabilities (CRPD)
- International Convention for the Protection of All Persons from Enforced Disappearance (ICAED)

The factsheets provide more information about these treaties and the rights they protect.

Human rights & trafficking in human beings

Trafficking and the exploitation of human beings under forced labour or slavery-like conditions are generally recognised as serious **human rights violations**. They violate the most fundamental of human rights: the right to life, to equality, dignity and security; the right to freedom of movement; the right to be free from forced labour, **slavery** and **servitude**; and the right to be recognised as a person before the law.

Although trafficking and its forced labour and slavery-like outcomes affect both men and women, it is not gender-neutral. Women are affected in different ways from men, in regard to the sectors they end up in, the forms of abuse they suffer, and the consequences thereof. Women are, for instance, more likely to end up in domestic labour or sex work, while men are often trafficked into the construction sector or agricultural work. Women are particularly vulnerable due to their economic and social position, to a gendered labour market that relegates them to informal and unprotected labour sectors that are not or only partially recognised as work, and to the lack of formal means of migration open to them. Effective and rights based anti-trafficking measures take these factors into account.

Human rights & sex work

Different approaches have been adopted across Europe and other parts of the world regarding the sex industry and sex workers, ranging from the acceptance of sex work as labour, to the **criminalisation** of a wide range of practices associated with sex work and sometimes sex workers themselves, their partners or their clients. Some people argue that sex work in itself is a human rights violation, irrespective of the conditions and of what sex workers themselves say. However, in line with the views of sex workers themselves, and the human rights principles stated before, this tool takes the stand that (adult consensual) sex work, in itself, is not a violation of human rights, but conditions of deceit, coercion or abuse can make it a human rights

violation. It thus makes a clear distinction between sex work, defined as the rendering of sexual services in exchange for money, and trafficking, which is defined by the presence of coercion, deception, [debt bondage](#), abuse of authority, or any other form of abuse related to conditions of recruitment and/or conditions of work.

States should ensure that anti-trafficking measures do not violate sex workers' human rights, that their rights are not violated by others and that they can enjoy and exercise all the human rights that have been agreed upon in international treaties and covenants on an equal footing with other citizens.

Over the last years, repressive measures that restrict the fundamental rights and freedoms of sex workers have been proliferating, often claiming to be in the interest of combating trafficking. However, the definition of trafficking in the UN Trafficking Protocol makes a clear distinction between trafficking and prostitution. There is no obligation for States to combat prostitution under the Trafficking Protocol. Moreover, many measures are in violation of the obligation of States to respect, promote and protect the human rights of all people within their territory without discrimination. These include the right to privacy, to family life, to legally leave and return to one's country, to be free from inhumane and degrading treatment, [arbitrary arrest and detention](#), and the right to freedom of expression, information, association and movement.²

Under international law, it is a fundamental human right that "all persons are equal before the law and are entitled without any discrimination to the equal protection of the law". Sex workers are entitled to the same protection of their human rights as all other human beings, including protection against discrimination, violence and other abuses.

Human rights & migrant workers

Despite the evidence that shows [migrant workers](#) in all sectors face increasing levels of abuse and exploitation, responses to international migration have focused on restrictive legislation, with little attention to the protection of migrants' rights and freedoms. Only very few States have ratified the UN's International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

This does not mean that migrant workers have no rights. Non-discrimination, equality before the law, and equal protection of the law constitute basic human rights principles, which apply to all migrant workers, whether they are documented or not. According to the Universal Declaration of Human Rights, all persons, regardless of their nationality, race, colour, sex, language, legal or other status, are entitled to fundamental human rights and basic labour protections. This includes migrant workers and their families.³ Basic rights include the right to health care, to fair labour conditions, to organise, to family life and to moral and physical integrity.

Human rights & smuggling

Although people who are smuggled can become victims of human rights abuses, unlike trafficking, [smuggling](#) is not a human rights abuse in itself. The aim of smuggling is the illegal crossing of borders, whereas the aim of trafficking is the exploitation of another person's labour. In other words, the issue of smuggling primarily involves the protection of the State against irregular migration, while the issue of trafficking primarily involves the protection of individual persons against exploitation and abuse. Moreover, the crossing of borders is not required for trafficking.

Repressive & empowering strategies

Strategies to address trafficking generally move between two poles. On the one hand, there are repressive strategies, which aim at suppressing (organised) crime, (illegal) migration and/or prostitution. On the other hand, there are empowering strategies, used primarily by NGOs, which aim at helping people to speak up for themselves and strengthening their rights. Both repressive and empowering strategies can be of value. However repressive strategies require caution, as they run a major risk of turning against the people they are supposed to benefit. Repressive strategies tend to combine other State agendas, such as counteracting migration, with combating trafficking. Moreover, they easily give rise to unintended, undesirable side effects. At worst, they can cause repercussions which have repressive rather than emancipatory effects on the already precarious position of the people affected. For example by restricting women's freedom of movement or by using trafficked persons as witnesses against organised crime without providing them with the necessary protection.

² See also: The Declaration of the Rights of Sex Workers in Europe, www.sexworkeurope.org.

³ See also: Platform for International Cooperation on Undocumented Migrants: www.picum.org.

4. UN Trafficking Protocol

In November 2000, the UN General Assembly adopted the *Convention against Transnational Organised Crime* and two additional protocols, one on smuggling and one on trafficking. *The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* (sometimes called the [Palermo Protocol](#), having been signed in Palermo) contains the first internationally agreed definition of trafficking in human beings:

“The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.

In the case of persons under the age of 18, the use of any of the coercive or deceptive means listed in the Protocol is not required, as the legal status of children is different from adults.

This definition allows NGOs and governments to assist people trafficked into all economic sectors and industries, including agricultural or construction work, garment work or other factory work, sex work, domestic work, etc., whether within the country or across borders.

Significantly, this consensus was achieved, not in a human rights document, but in a UN Convention against organised international crime. The Protocol is primarily a law enforcement instrument intended to promote cross-border co-operation by governments, and to ensure that all countries have adequate laws to address these crimes. However, art. 2 of the Protocol states as its purposes:

“to prevent and combat trafficking in persons, paying particular attention to women and children; to protect and assist the victims of such trafficking, with full respect for their human rights; and to promote co-operation among States Parties in order to meet the above objectives”.

The definition of trafficking in the Protocol is very complicated and difficult to read. Moreover, some of its terms are not defined in international law, for instance, ‘exploitation of the prostitution of another’ and ‘sexual exploitation’. This is because it was the result of long and complicated negotiations between governments that had different interests and views. In

practice, this means that the adoption of the definition in national law often leads to misinterpretations or misapplications. One source of confusion is the distinction between trafficking and sex work. It is important to note that the Protocol only addresses the exploitation of prostitution when one of the coercive or deceptive means listed is used. It does not require States to criminalise sex work. Different legal systems – whether decriminalising, legalising or regulating sex work – can all be in full compliance with the Protocol.

The confusion between trafficking and sex work is reinforced by the distinction the Protocol draws between trafficking for sexual exploitation and trafficking for forced labour or services. However, this does not mean that forced labour cannot occur in the sex industry. The International Labour Organisation (ILO) has regularly dealt with forced prostitution and sexual exploitation under the forced labour conventions.

A fundamental feature of the Protocol is its focus on the way people arrive in a situation of exploitation, i.e. through trafficking, rather than on the exploitation itself. However, from a human rights perspective, the primary concern is to stop the exploitation of human beings under forced labour or slavery-like conditions, no matter how people arrive in that situation, and no matter whether it involves a victim of trafficking, a smuggled person, an illegal migrant, or a lawful resident. This is in accordance with international human rights law which prohibits any form of forced labour, servitude and slavery-like practices. Consequently, from a human rights perspective, the distinction between trafficking, smuggling and illegal migration is utterly problematic.

In practice, this distinction often leads to discriminatory measures which deprive some categories of people from exercising their freedom of movement and their right to a livelihood because they *might* get trafficked, while excluding others who have actually been subjected to forced labour, slavery-like practices or servitude from any protection or support because they do not fall under the trafficking definition.

PART II – Quick scan

1. Introduction

The purposes of the quick scan are:

- to identify the policy or policies that are the cause of the problems you wish to address;
- to decide whether carrying out a HRIA is a useful strategy for you to achieve the change you want.

During the quick scan you will look more closely at:

- the problem, its causes and consequences;
- its relation with anti-trafficking policies;
- the change you want to achieve, and who will benefit from that change;
- which of the policies that are related to the problem has the most potential for change;
- whether doing a Human Rights Impact Assessment would fit into your strategy to achieve that change.

Participation starts right at the beginning. If your organisation does not contain people from the group(s) directly affected by the problem or policy you want to address, ensure that you include their views and concerns. What do they view as the most important issue or problem? What change do they want? How would they benefit from this change? The best way to ensure their input is to engage them in your discussions from the very start. During your preparation in step 1 (question 5) you will look more closely at how to organise participation.

To do the quick scan will take your team 1 or 2 days. Some of its questions will resurface in the analysis, at which point you will research them more in depth. You can also use the quick scan as a 'stand alone' if you want to make a quick analysis of your problem, its root causes and consequences, how it is related to anti-trafficking policies, and its potential for change.

In the questions, we use the terms laws, policies, practices and measures with specific meanings.

- **Laws:** are national and laid down in law books, such as the Penal Code or the Civil Code. To change them you have to go through politicians, the parliament, etc.
- **Policies:** a policy is a purposive course of action followed by an actor or a set of actors. Policies are instituted to enforce laws, solve problems, or achieve a positive benefit. They are often laid down in official documents and are implemented by civil servants, the police, etc. Policies can be national, regional or local. They are easier to influence than laws.
- **Practices:** refers to the way things are habitually or customarily done. This may be based on religious or social custom, but not necessarily so.
- **Measures:** any concrete action to enforce a law or policy. Measures are mainly undertaken at the local level. They are the most concrete, and often the easiest to change.

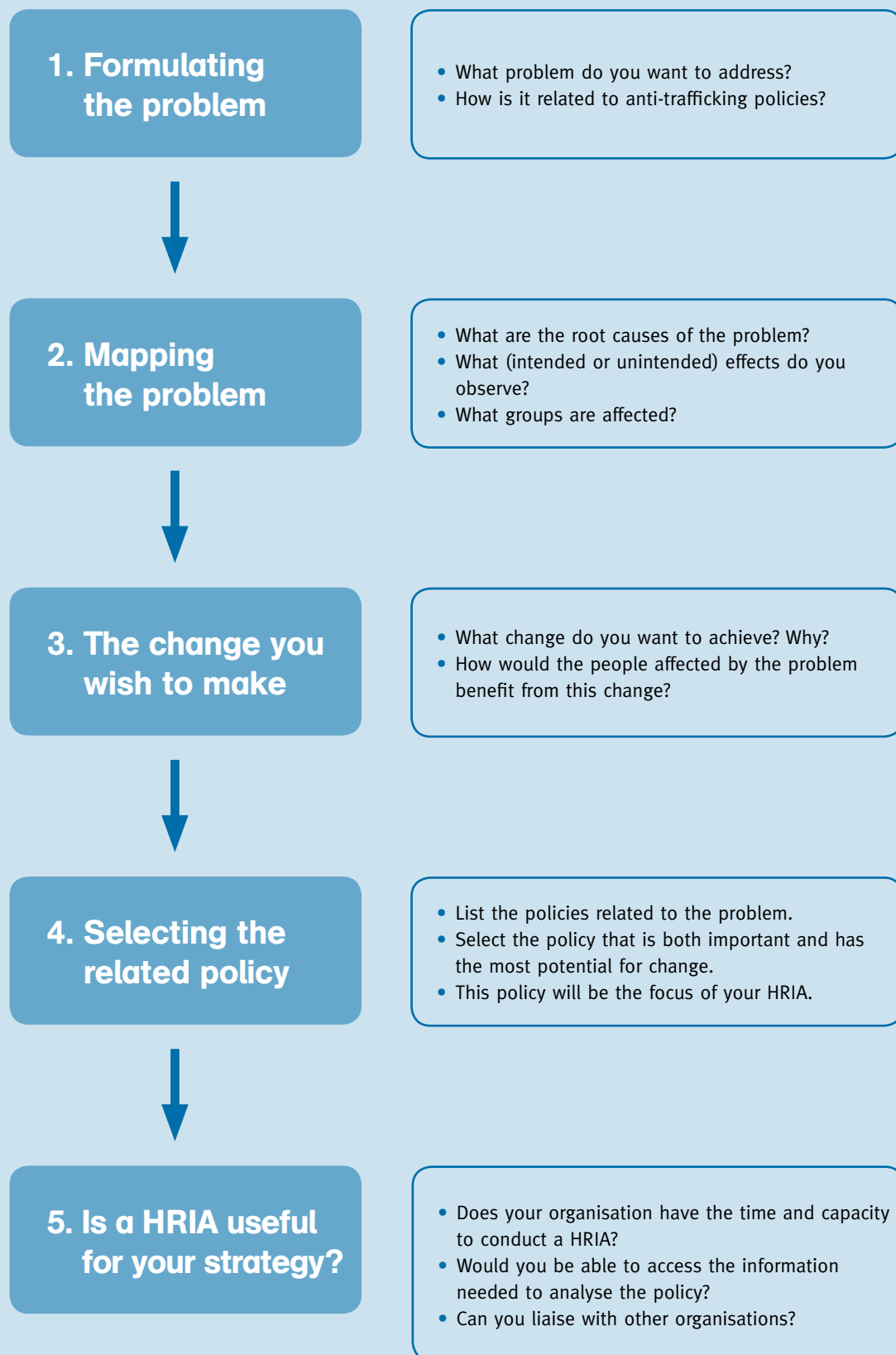
By implementation, we mean the way a law, policy or measure is applied in practice.

For reasons of simplicity and brevity, we will often use the term 'policy' as a general term, referring to all kinds of actions undertaken by the national or local government or other authorities, ranging from laws, national strategies or action plans, policies or practices, to specific measures, decisions to allocate resources, etc.



It is important to discuss the following key questions before you start the assessment, but keep in mind that these questions are meant to help you make the decision whether or not to do a HRIA. You will do the full study later if you decide to do a HRIA. For the quick scan, you can discuss the questions based on the experience and knowledge you already have. You can use the scheme at the end of the quick scan to fill in the answers. Do not make it too complicated: just use the knowledge you already have!

2. Key questions quick scan



3. Explanation

1. What problem do you want to address and how is it related to anti-trafficking policies?

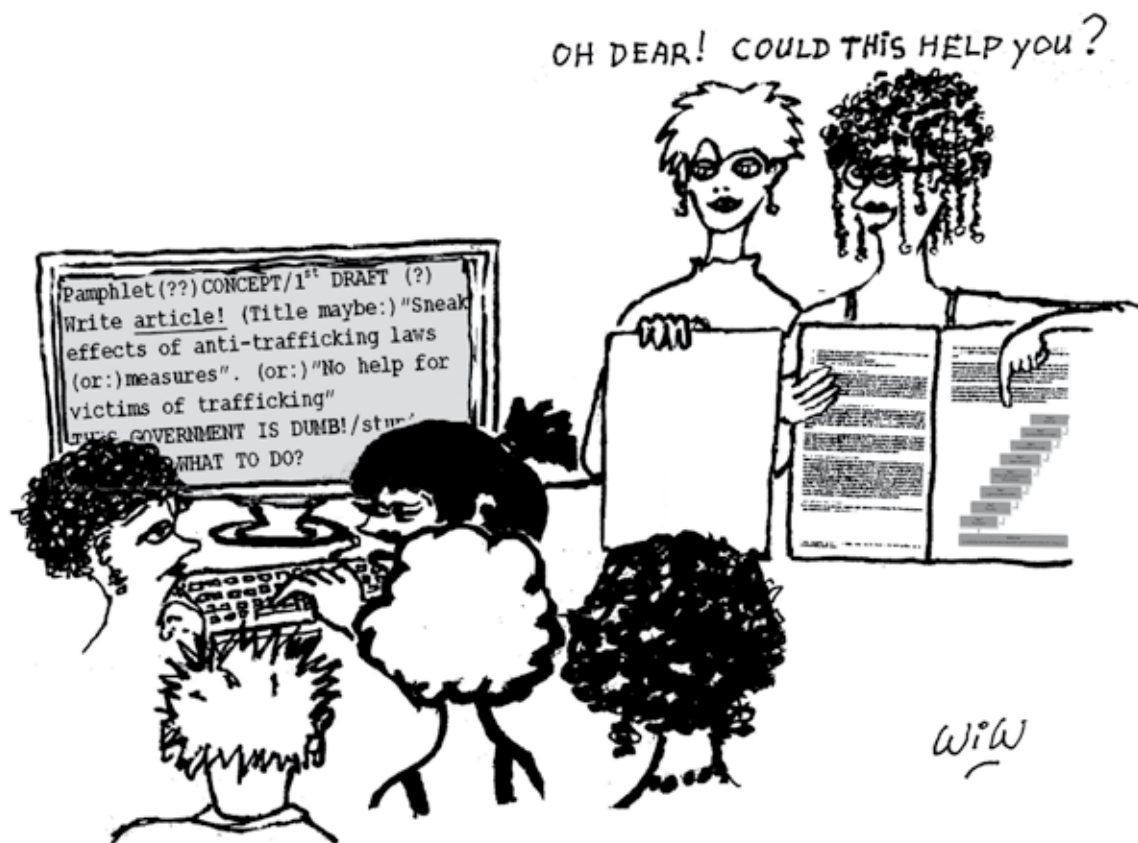
The first step is to formulate the problem you want to address. It is important to consider if and how the problem is related to anti-trafficking policies. If it is not related, this tool is not useful to you, since it specifically focuses on the impact of anti-trafficking interventions. Examples of problems related to anti-trafficking policies are: detention and deportation of trafficked persons; policies that prohibit young women from migrating for work without the consent of their husbands or male relatives; raid-and-rescue operations on brothels to rescue (alleged) victims of trafficking and the criminalisation of sex workers' clients to combat trafficking.

However, keep in mind that sometimes policies unrelated to trafficking can still have an impact on trafficking issues. An example is policies that tie the work permits of domestic workers directly to their employer, making it impossible for them to leave an abusive situation without risking deportation. The

problem can also be the lack of a policy, or that existing laws or policies are not implemented, or that they are wrongly implemented. For example, the criminal law might lack adequate provisions for the protection or compensation of trafficked persons, but it is also possible that the existing provisions are not applied. Or measures that may be meant to target traffickers are, in practice, used to target sex workers or migrant workers. If the problem is the nonexistence of a policy, you will have to adapt some of the questions. If the problem is a law or policy that is still in its planning phase, you will have to think about its potential effects.

2. What are the root causes of the problem? What (intended or unintended) effects do you observe? What groups are affected?

A method for analysing a problem with your team is to make a 'problem tree'. In a problem tree-analysis you define the focal problem, that is, the issue you consider to be at the centre of the overall problem, its



root causes, and its consequences. The focal problem becomes the trunk of the tree. The causes are the roots, the branches the consequences of the problem. A problem tree analysis helps you to break the problem down into manageable chunks, prioritise factors, and develop a shared analysis of the problem and its underlying causes and consequences. Once you have analysed the problem, you can make a decision about the level at which you want to tackle the issue. What is the part of the tree where you can make a change?

A problem tree analysis consists of a number of steps:

Formulate the focal problem

Have all the members of your team write down on small cards what they see as the focal problem. Put the cards in the middle and discuss a common definition of the focal problem. The focal problem is written in the centre of the flipchart and becomes the 'trunk' of the tree. Avoid describing the problem as the absence of a solution (e.g. 'there are no provisions in the law to compensate trafficked persons' or 'anti-trafficking policies make no distinction between trafficking and sex work'), but describe the problem in terms of an existing negative state (e.g. 'trafficked persons are deported without compensation' or 'sex workers are

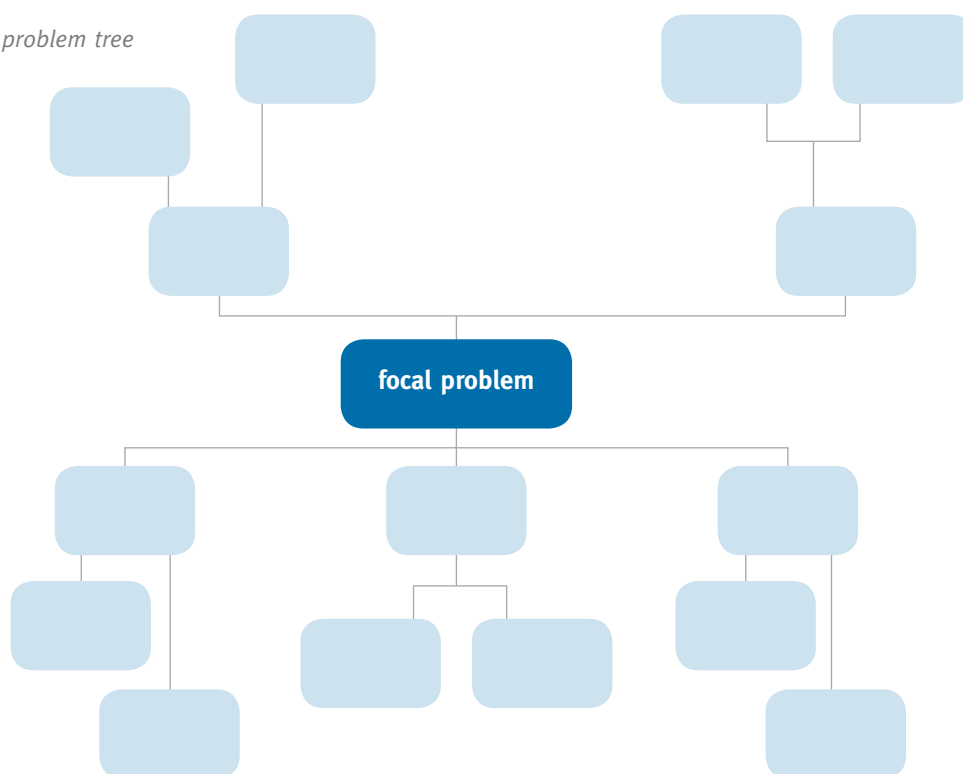
arbitrarily arrested and jailed during raids to rescue [alleged] victims of trafficking').

Identify the root causes and the consequences of the problem

Ask everybody, individually or in pairs, to write on small cards the major causes and consequences of the problem. Then arrange the cards in a problem tree. The immediate and direct causes of the focal problem are placed in parallel beneath it; the immediate and direct consequences or effects of the problem are placed in parallel above it. For each major cause, think about the underlying causes leading to it, till you have identified the complete chain of major causes leading to the problem. By doing this, your tree grows and will illustrate the cause and effect relationships between the various causes/problems.

Now do the same for the consequences of the problem. What are the consequences of the problem? What groups are affected and how are they affected? Remember that the problem can affect more than one group, and can have a different impact on different groups of people. Remember, also, that policies may have the effects they are intended to have, but often have (positive or negative) unintended side effects.

Example of a problem tree



- what are the root causes of the problem? -



Arrange and re-arrange the cards, or add new ones, till you agree that all essential information has been included that explains the main cause and effect relationships characterising the problem. Record related ideas and points that come up on a separate flipchart under titles such as 'solutions', 'concerns' and 'decisions'. They might be useful at a later point in the discussion.

Identify the root causes that are both important and changeable

Ask everybody to identify the most important root causes, for example by having each participant give 5 points to the root causes s/he thinks most important, 4 to the next important one, etc. Now rearrange the root causes that you identified as the most important in order of changeability, from most changeable to least changeable. The root causes that are both important and changeable might be the target of the HRIA.

**3. What change do you want to achieve and why?
How would the people affected by the problem benefit from this change?**

To help you discuss the specific change you want to achieve, you can transform the problem tree into an Objectives Tree (solutions for the problems). To do this, you rephrase, working from the top, all the elements of the problem tree into positive desirable outcomes, as if the problem had already been solved. For example: 'NGOs have to notify the police about their clients,' becomes 'NGOs are authorised to keep the identity and personal data of their clients confidential'. In this way, you transform the negative 'cause-effect' into positive 'means-ends' statements. These positive statements can serve as potential objectives for change.

Your aim may be to improve a policy, abolish it, or to lobby for different policies or for a change in the law. Keep in mind, however, that there are many steps you can take before a complete change is possible. These might be:

- to establish a dialogue with the government;
- to develop recommendations to help ensure that the policy does not violate human rights;
- to use the outcomes to build a media campaign (think also of facebook, twitter and blogs);
- to change the discourse and insert arguments into the debate that were missing before;
- to have the views of the concerned groups better represented in the media;
- to create new alliances, etc.

To help you choose your objective, you can focus on the root causes you identified as both important and changeable. You may want to structure your objectives into short, medium and long-term objectives, and work on steps that are feasible towards the longer-term change you wish to achieve.

Remember that it is more difficult to change a law than a policy, practice or measure, and that, often, the first step towards changing a law or policy is to influence public opinion or make politicians more aware of the impact of a certain law or policy. Sometimes you may not be able to change the law or policy itself, but you may be able to influence the way it is implemented.

How would the people affected by the problem benefit from the change you want to achieve?

Who would benefit from the change you want to achieve and how? Sometimes a change is good for one group, but bad for another. So it is important to discuss possible negative impacts of the change you want, and how to avoid those.

In the beginning, it is important to limit yourself and look at where you can make a change. However, during the assessment, you might identify other solutions or changes that are more important or feasible. So, at some point during the assessment, you might want to look back and reconsider what changes are needed.

4. List the policies that relate to the problem and select the policy that is both important and has the most potential for change. This policy will be the focus of your HRIA.

List the policies that relate to the problem and your objective(s). Please remember that policies can take the form of laws, national strategies, measures, etc. Usually, there is a whole package of laws, policies and measures that influences a problem. For example, the problem of arrest and deportation of trafficked persons may be related to the criminal law, the aliens law, the lack of training of police, etc. Since it will not be possible to address all these policies at once, you will need to select one policy as the focus of your analysis. The following questions may help you decide:

- Which of these policies is/are (the most) important in relation to the problem you selected, and to the change you wish to make?
- Which of these has the most potential for change?

Select a policy that both has potential for change, and is likely to succeed in addressing the problem. This will be the focus of your analysis. Sometimes the most important or obvious policy is not one that can be easily changed. If a policy has very limited or no potential for change, it might be wise to select another policy that is related to the issue, but has more perspective for change.

To examine the **potential for change of a policy**, you can ask the following questions:

- Who makes decisions relating to this policy? Who has the power to change it? This can be a State authority, for example the parliament (if it is a law), the city council, the prosecutors' office, or the police, but it may also be an influential non-governmental organisation. If you want to change the policy of an NGO, think about State agencies that support this policy.
- Can you influence those who have the power to change it?
- Do you have potential partners or allies, for example other NGOs, unions or perhaps a human rights institute in your country?
- What is the general public and political climate? Is the policy widely supported, or is it contested? Are there politicians who are sympathetic to your cause? Can you use the media?
- Are decision makers sensitive to human rights arguments? The general public?

When you have decided on the policy you will analyse, briefly write down the problem you selected, its consequences, your objective in conducting a HRIA, the policy you selected for analysis and its

relationship with anti-trafficking efforts. It is important to clearly formulate the policy, or the part of the policy the analysis will focus on. If you narrow your focus, it becomes easier to come up with concrete recommendations for your government at the end of the analysis.

5. Will conducting a HRIA help to achieve the change you want?

A Human Rights Impact Assessment is based on the idea that those who are responsible for the policy are sensitive to human rights arguments. There are many ways to use human rights arguments. You can directly lobby the (national or local) government or authority responsible for the policy, or build up political or public pressure, for example through the media, or via other organisations or unions. You can also use a HRIA to put international pressure on your government, for example, by using your research to write a shadow report. A HRIA will help you to build strong arguments you can use to lobby the government or other actors. But sometimes a HRIA is not the best course, for example, if you think that drawing attention to the problem might have counterproductive, instead of positive, effects.

Another thing to consider is how urgent the change is that you want. Carrying out a HRIA and building up evidence takes time and will not lead to changes overnight. If you are dealing with a crisis or emergency situation, a HRIA is probably not advisable.

Does your organisation have the time and capacity to conduct a HRIA?

Conducting a HRIA is an investment in time, capacity and resources on the part of an organisation. It is important to recognise in advance the quantity of work involved and make sure you are able to perform the analysis (see step I in for more information on the resources needed to conduct a HRIA). Performing the analysis is not the aim in itself. It should provide rights based arguments that can aid in the advocacy and work of your organisation.

Will your organisation be able to access the information needed to analyse the policy? Can you liaise with other organisations?

Collaboration with other organisations may help in collecting the necessary information, sharing the burden of work, and strengthening your lobby and advocacy activities later in the process.

Conclusion: is a HRIA a good strategy for you in addressing the problem and achieving the change you want?

You can use the table below to summarise your answers to the questions. Putting the answers in a scheme may help you to decide if a HRIA is a useful strategy for you to achieve the change you want.

Table 1: Summary of your findings

Problem	
Relation to anti trafficking policies	
Most important causes	
Most important consequences	
People/groups affected	
Change you wish to achieve	
Benefits for the people affected by the problem	
Policy that will be the focus of your analysis	
Potential for change on the short term	
Potential for change on the long(er) term	
Potential partners or allies	
Public/political climate	
Decision makers sensitive to HR arguments	
General public sensitive to HR arguments	
Other ways to use HR arguments to exert pressure	
Urgency of the problem	
Shorter route to achieve your aims	
Time & capacity	
Access to information	
Possibilities to collaborate with other organisations	
Conclusion: is a HRIA useful for you?	

PART III – The assessment in 7 steps

Introduction

The process of data collection and analysis is divided into 7 steps, beginning with your preparation in step 1. Each step consists of a set of questions and an explanation. In step 2 to 6 you will collect and analyse information. In step 7 you will formulate your recommendations, draft your report and prepare your action plan. When relevant, you will be referred to the factsheets included in the toolkit. Each step ends with a summary of your main findings and conclusions. As you work, you may want to go back and forth between the different steps.

How to use the tool in a flexible way

For each step, a set of questions is provided. This does not mean that you have to answer every question. Some may not fit your particular situation. Do not hesitate to adapt the process to your own needs. You may also find that a different order of steps is more suitable to your purposes, that some steps need to be revisited, or that you can skip parts of steps. Feel free to do so. It is also possible that, based on your findings, you need to go back during the course of the assessment to review your focus or objectives, or to add information. This is a natural process.

Collecting data

Where possible, collect **quantitative** and **qualitative** data demonstrating the impact of the policy. Reliable data support your arguments. Please be aware, though, that quantity does not decide whether or not human rights are violated. If discrimination or other violations take place, these are violations of human rights, no matter how small or large the number of people discriminated against, or whose rights are violated.

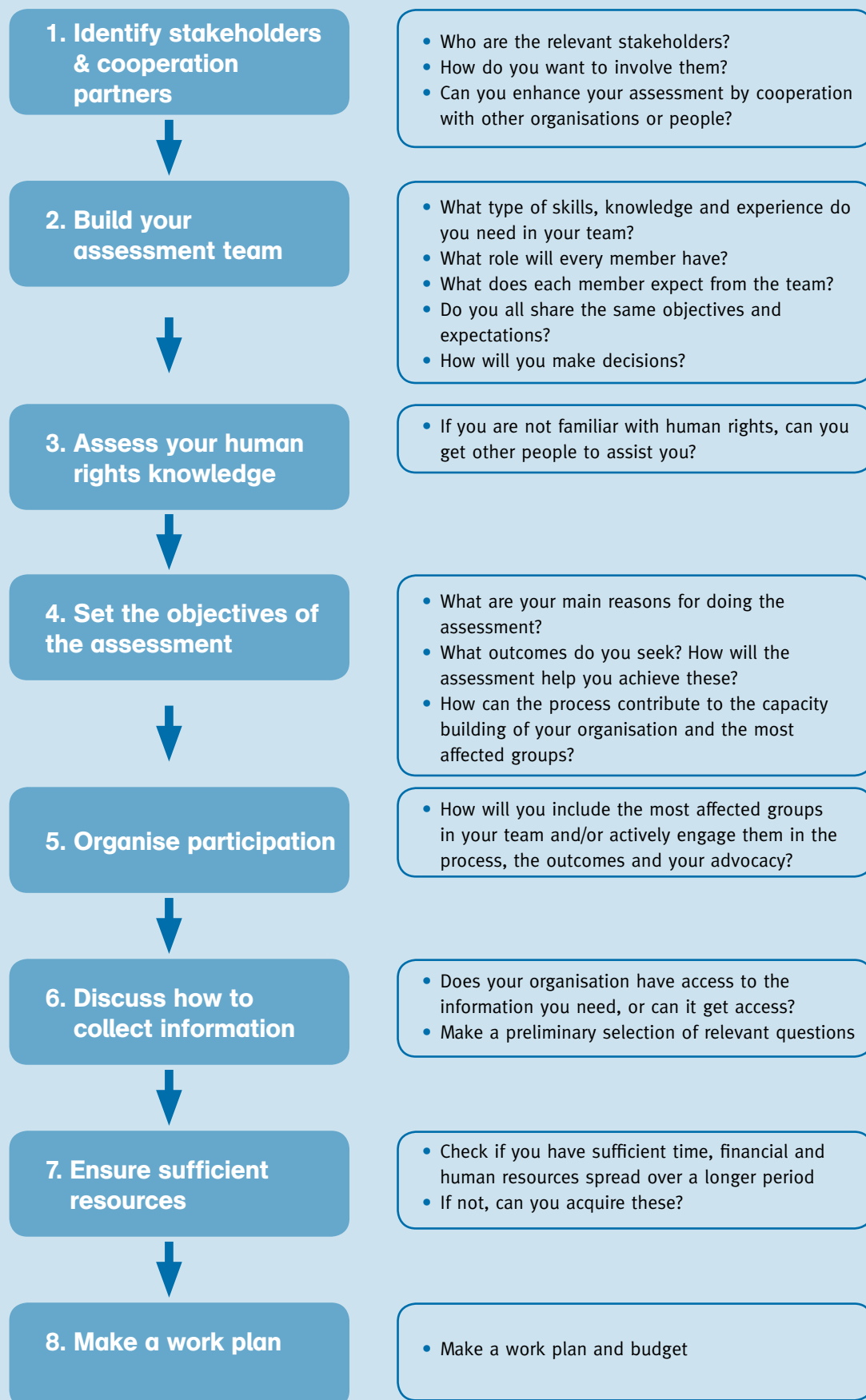
Possible sources of information are indicated at each step, as well as in the factsheets and resource list at the end of the tool. Other methods for collecting information are interviews, meetings, and **focus groups**. During the process, you will discover that it is sometimes very difficult to find the right information. Governments might not collect data or not be willing to make it publicly available. If no information is provided, this is also part of your analysis. No information is also information. It shows how capable the government is, how much value it places on providing accurate and public information about its policies, and on meeting its human rights obligations. Carefully record all the sources of information you use from the outset. You will have to list all the resources you used in your final report to demonstrate its credibility. List, also, the information you sought but could not find, or could not get access to. This is important information for your report.

How does the analysis fit into the work of your organisation?

Undertaking an analysis is a laborious process. It is most effective when it is closely connected to the work of your organisation. It should contribute to the overall strategy and activities of the organisation, and be carried out within a set time-frame. This will ensure that time, capacity and resources are allocated. In addition, the process can be experienced as a learning experience for the whole organisation. Going through a rights based analysis process will strengthen your general research, analytic and advocacy skills.

Step 1. Preparation:

1. Key questions step 1



2. Explanation

This step will help you to prepare the analysis. Undertaking an analysis becomes easier when it is organised in advance and all relevant **stakeholders** are brought on board. The questions in step 1 explain the preparatory tasks and issues you need to consider. Some of the questions build on the discussions you had when doing the quick scan.

1. Identify relevant stakeholders and cooperation partners

Who are the relevant stakeholders? How do you want to involve them?

Before you start, it is useful to identify the relevant stakeholders, including those with different or opposing views or interests. Consider which of them you want to involve in the assessment, who you want to contact before or in the course of the assessment, and what role they (can) play. By performing this (partial) stakeholders analysis in advance, you can consult different experts, organisations and other agencies, and discover whether they will contribute to, or obstruct, your process. Keep in mind that identifying stakeholders may be an ongoing process as you research the specific policy in greater detail.

Stakeholders are all persons, groups or organisations whose interests are affected, or will be affected, by the policy. The primary stakeholders are the people directly affected by the policy, e.g. trafficked persons, refugees, migrant workers or sex workers. In the tool, we will refer to them as the most, or directly, **affected groups** (See also question 5). Other stakeholders might be government agencies (including local authorities and the police), other NGOs, lawyers, health workers and other service providers, religious groups, unions, companies, donors, academics, or experts who play a role in shaping the debate, etc.

Involving stakeholders in the process can help provide knowledge and resources in areas where your organisation has less experience or access to information. By communicating early with important and supportive stakeholders, you can ensure that they understand what you are doing and engage their support when necessary. You also might want to contact stakeholders to inform them that you are planning to undertake the assessment. Discuss with your team which stakeholders you want to contact, what a good time is to do so, and how you want to do this.

Be prepared for the fact that stakeholders, including potential allies, can have conflicting interests or views. They can, for example, share a human rights perspective, but have very different views on sex work or migration.

Discuss how you want to deal with conflicting interests and views. Also, when some stakeholders are not willing or able to participate in the assessment, it is important to record their positions so that you can demonstrate that you made an effort to take the perspectives of all stakeholders into account. You need to understand their position to be able to deflect or avoid any obstructions they may place in your way.

Can you enhance your assessment by cooperation with other organisations or people?

Are there other organisations/people you can cooperate with to increase the capacity of your organisation, facilitate data collection, and/or strengthen your analysis and advocacy? These might be other NGOs or civil society groups, a human rights institution in your country, a university that is willing to support you, etc.

2. Build your assessment team

It is good to have people with different backgrounds, skills and knowledge in your team: people who are good at collecting and analysing information, organising meetings, conducting interviews, advocacy or writing, or who have specific legal or human rights expertise etc. It is also important to have one or more key persons central to the operation of the project who are part of and have the 'feel' of the various types, styles, stances and cultures of those affected. Members from the assessment team may come from your own organisation as well as from outside your organisation. Take time for each member of the team to state clearly what she or he expects of the assessment. This avoids misunderstandings, and will help you function better as a team. Also think about support systems for the members of your team and other participants, especially when conducting interviews or managing focus groups.

When building your team, it is good to think about the following questions:

- What type of skills, knowledge and experience do you need in your team?
- What role will every member have?
- What does each member expect from the team?
- Do you all share the same objectives and expectations regarding the analysis?
- How will you make decisions?

You might want to form a core group and appoint a coordinator. The coordinator and core group are responsible for the day-to-day activities of the larger assessment team. Another issue to think about is whether you want to form a steering group or appoint an advisory board.



3. Assess your human rights knowledge

If you are not familiar with human rights, can you get other people to assist you?

It is not necessary for all members of the assessment team to be familiar with human rights. One of the benefits of the toolkit is that you will learn about human rights while doing the assessment. However, if you are not familiar with human rights, consider getting the support of another organisation or other people with human rights knowledge, e.g. committed individual experts or students. When you enlist outside support, be clear what their role will be, at what point you want to involve them, what you expect from them, and what they can expect from you. It is also possible to do an introductory workshop on human rights and the assessment process (see Part I.I).

4. Set the objectives of the assessment

Before you start, take time to discuss the objectives of the assessment in greater depth with your team to ensure that everybody shares a common goal and

expectations. You might want to (re)consider the following questions:

- What are your main reasons for carrying out the assessment?
- What outcomes do you seek (objectives) and how will the assessment help you achieve these?
- How can the process contribute to the capacity-building of your organisation and the groups that are affected?

Write down your reasons for carrying out the assessment and the goals you agreed on. This will help you focus and make choices throughout the assessment. 'Reasons' and 'objectives' will also be part of your final report, so your aims will be clear to readers and other stakeholders.

5. Organise participation

How will you include the most affected groups in your team and/or actively engage them in the process, the outcomes and your advocacy?

Participation is a key principle in human rights.

This also applies to a human rights based analysis. Involving the most affected people in the analysis process gives it validity and ensures that the analysis reflects the views and concerns that are key to improving the policy. It is also closely connected to the issue of ownership over the outcomes of the process. Participation of affected groups is needed in all stages.

- When **selecting the problem**, it is important to work collaboratively with the people who are most affected and discover what they find to be the most important issue to address.
- When you link the problem to a policy, it is important to let **the most affected groups** know which policy the analysis will focus on, how long it will take, and how participation is organised.
- **During the analysis**, they are the primary people providing information on the actual situation, on what is happening, and on what violations take place. This can be achieved through discussions, interviews, focus groups, etc.
- At the final stage of the assessment, they should be involved in the **formulation of recommendations**. What is the message that should be taken to the government?
- Finally, they should participate in developing the **advocacy strategy**.

If your organisation does not include members of the group(s) affected by the policy, discuss how you will ensure their participation in your team and throughout the process. One way to do this is by forming an advisory group, with representatives of the groups affected, which should approve all important decisions, or by holding regular consultations with members of the affected group(s). Preparation for such collaboration should include a process which supports participants of the affected group(s) and a process for feedback, financial support and dealing with cross-cultural communications and cultural sensitivities.

Also when your team is made up of people from the affected groups, you have to think of how you include the wider community in the assessment process. Remember that more than one group is often affected by the policy, and that they may not necessarily all share the same views or concerns. Within each group, views and concerns can also differ.

In all cases, you have to think carefully about protecting people's safety and privacy, but this is especially true for trafficked persons, sex workers and undocumented migrants.

6. Discuss how to collect information

Does your organisation have access to the information you need, or can it get access?

Before you start, think about how you are going to collect information, and if and how you can get access to it. If your organisation has limited access to information, are there other organisations that do have access with which you can liaise?

Make a preliminary selection of relevant questions

To get an idea about the information you need and the activities you will need to undertake to collect it, go through all the questions and make a preliminary selection of the questions that are relevant in your situation, and those you can skip. Questions that may help to make a selection are:

- Can we think of a general answer to this question?
- Do we know where and how to find the information we need for answering it?

If the answer is no, this might mean that the question is not relevant to you. Make a preliminary inventory of the information you will need, available sources, and methods for collecting the information. Keep in mind that gathering information is not a linear process. Sometimes you will have to go back and talk to the same people again, collect additional information or go back to documents you previously consulted.

7. Ensure you have the necessary resources

Check that you have the necessary resources:

- Sufficient time spread over a longer period.
- Financial and human resources.
- If you do not have the funds, do you know ways to acquire them?

A full assessment will take 4 – 6 months. Depending on the scope of the analysis, accessibility of information, and whether or not you need to hire additional staff and/or pay for travel or other costs, you will need a budget of about Euro 8.000-12.000 to do a full assessment (see also Part I.I).

You do not want the interpreter
to choose his or her own line.

[illegible]

..well.. probably...

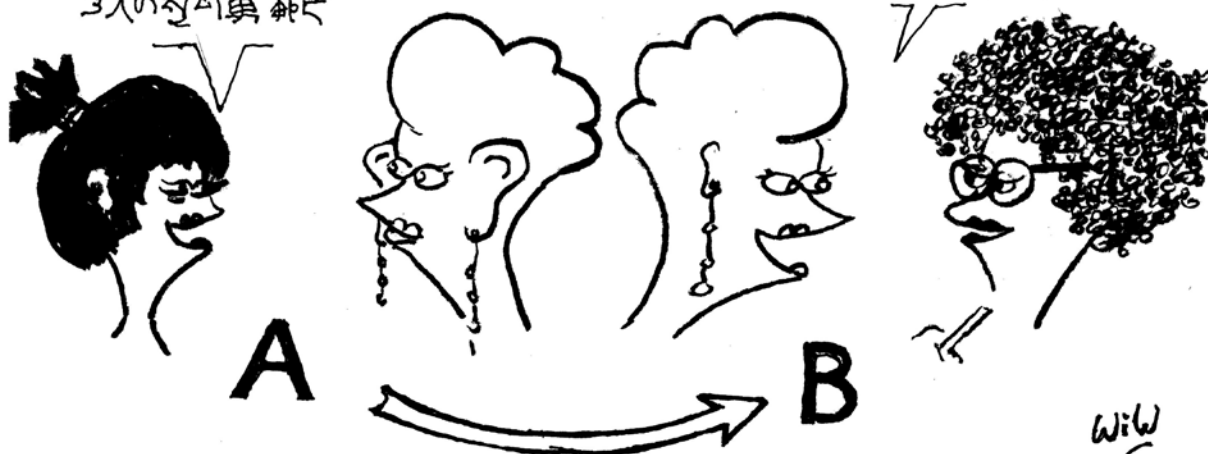


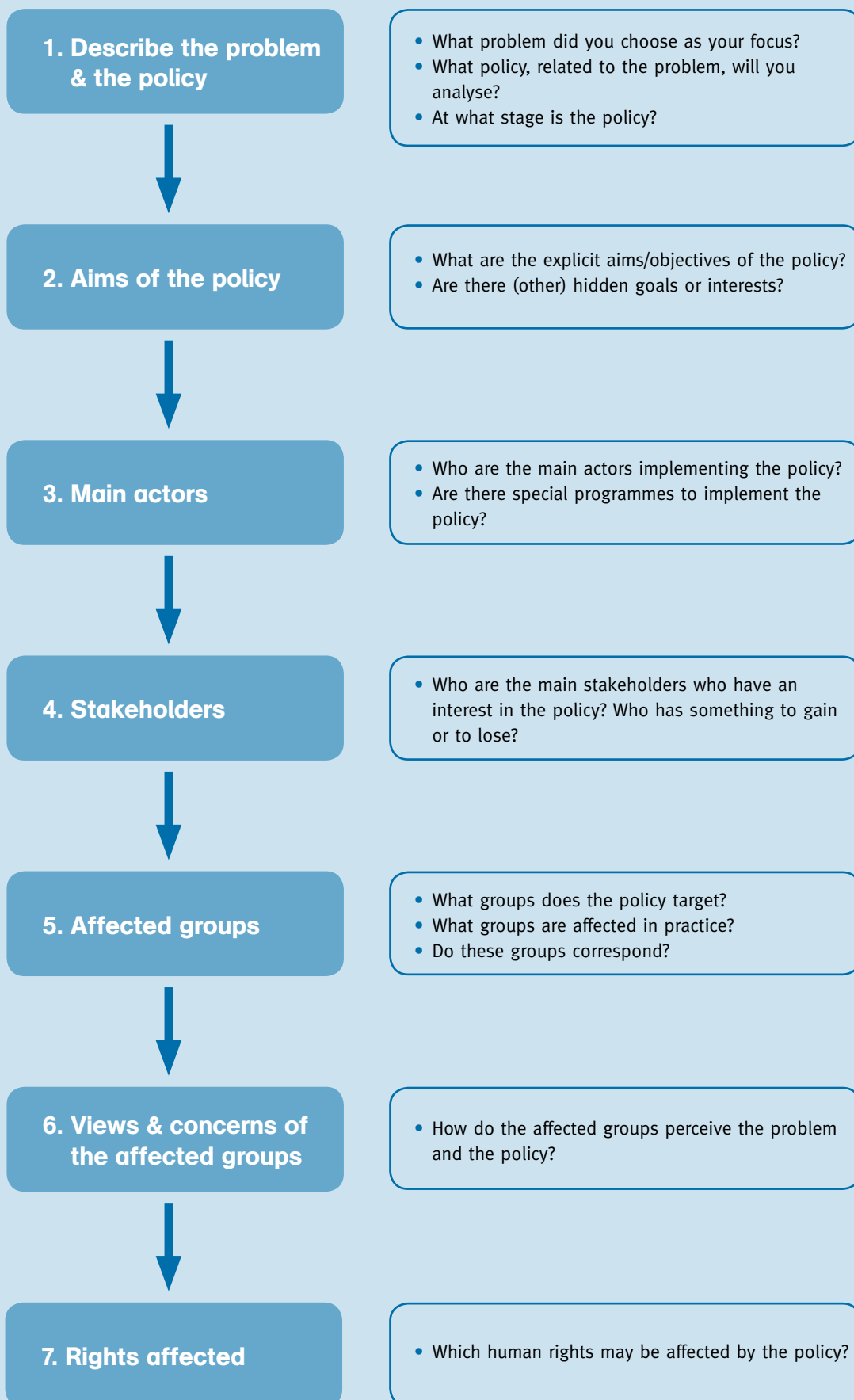
Table 2: Format to make a work plan

Task	Purpose	Main activities	Start date	End date	Who to involve ⁴
Quick scan	Select a policy, find out if a HRIA is useful for you	Team discussion			
1. Preparation	Identify stakeholders & cooperation partners; build your team; set objectives, organise participation, make a work plan & ensure resources	Team discussion; establishing contacts with selected stakeholders & cooperation partners; if needed, fundraising			
2. The policy	Identify the official and unofficial aims of the policy, the main actors and stakeholders, the most affected groups, their views & concerns, and the potentially affected rights	Data collection: document research; interviews & meetings; team discussion			
3. Legal, political & social context	Identify laws, policies, practices & measures that contribute to your problem or that you can use for change	Data collection: document research; interviews & meetings; team discussion			
4. Human rights commitments of your government	Identify the international & national human rights commitments of your government; participation mechanisms and mechanisms for redress	Data collection: document research; interviews & meetings; team discussion			
5. Impact of the policy	Research the impact of the policy	Data collection: document research; interviews & meetings; team discussion			
6. Accountability of the State	Link the impact to the human rights obligations of your government	Team discussion; additional data collection if needed			
7. Recommendations, report & action plan	Formulate your recommendations, write report & make action plan	Team discussion; sharing findings; discussing recommendations with affected groups & other selected stakeholders; writing report; making action plan			

⁴ This may include people from your assessment team, your own organisation, other organisations, the government and/or the groups affected by the policy.

Step 2. The policy:

1. Key questions step 2



2. Explanation

In this step, you will look more closely at the policy you decided to analyse. You do this by researching the official and hidden aims of the policy, the main actors implementing the policy, the affected groups and the rights involved. You examined some of these questions while doing the quick scan. Here, you go into greater depth and take notes. The answers form the basis for your further analysis. You can also use this information to clarify for others what is included in the analysis and what is not. Depending on your situation, you may find it more practical to do step 3 first and look at the legal and political framework before you focus on the policy itself. A better understanding of the context might lead you to reconsider your choice of policy for focusing your assessment.

Before you start, keep in mind that the collection of data is a crucial, but also a time-consuming, process.

The following guidelines can help you to avoid getting lost:

- **Focus:** Try to focus on the information that is relevant to your analysis;
- **Selectiveness:** Answer only the questions you find relevant. Only go into detail if you think this is necessary for your analysis or lobbying;
- **Work plan:** Use your work plan as guidance;
- **Flexibility:** Remember that you can always adapt questions to your specific situation, go back to previous steps and questions to review or add information, and change your work plan if necessary.

BOX 1: WHERE TO FIND INFORMATION?

- Laws, parliamentary papers
- Government policy documents, reports & websites
- National Action Plans on trafficking
- Government & NGO reports to treaty bodies/UN bodies
- Articles, studies & reports describing the policy
- Press articles
- Websites run by human rights organisations
- Organising interviews, meetings, consultations & focus groups

Human rights aspects of government policies

On the basis of international human rights law and the UN Trafficking Protocol, States have the duty to prevent, investigate and punish trafficking, and to provide adequate remedies to trafficked persons, including assistance, protection and compensation. Measures

must comply with their international human rights commitments and not undermine or otherwise negatively affect human rights. Measures against trafficking may not be used to, directly or indirectly, discriminate against certain groups of people. Moreover, States should ensure the participation of the most affected in the development, implementation and evaluation of anti-trafficking policies. NGOs and other national and international organisations must also respect human rights, not benefit from human rights violations, and not be complicit in human rights violations on the part of the State.

1. Describe the problem and the policy

What problem did you choose as your focus?

Describe the problem in a maximum of one page. If you have discussed the issue with the groups affected by the problem, describe why they find this the most pressing issue that needs to be addressed.

What policy will you analyse and why?

Describe the policy you choose and how it is related to anti-trafficking efforts. Explain why you made this choice. What is the link between the policy and the problem? If there is a difference between the policy on paper and how it is applied in practice, describe both. If other related policies are relevant, describe why you choose this one. Describe only the chosen policy in depth, while briefly referring to the others.

At what stage is the policy?

It is important to know the policy's stage of development. Policy processes generally follow a number of stages (at least in theory):

- Agenda setting: the process by which problems come to the attention of the government (or other authority responsible for the policy);
- Policy formulation: the process by which policy options are formulated by the government;
- Decision making: the process by which the government adopts a certain course of action (or non-action);
- Policy implementation: the process of putting the policy into effect;
- Policy evaluation: the process for monitoring the policy's results, both by the government and by civil society, which may lead to a new cycle of policy development.

A HRIA can play a role at all of these stages. However, possibilities for NGOs to influence the process vary. During agenda setting, policy formulation and evaluation, NGOs may have a strong role. At other stages, this might be more difficult. It is important to realise that stages may sometimes overlap or be skipped entirely.

2. Aims of the policy

What are the explicit aims or objectives of the policy?

The officially stated aim of the policy (e.g. preventing persons from being trafficked), may differ from what the government actually wants to achieve (e.g. restricting migration). Most of the time, official government policy documents will declare the aim of a law, policy or measure. For a law, this will be stated in the law itself, in explanatory papers or in minutes of the parliamentary debate. For other policies or measures, it might be more difficult to find official documents. Sometimes there is a [National Action Plan](#) on Trafficking that you can use. In other instances there might be press articles or interviews with officials that state the aim. To clarify the aim of the policy, you may need to interview the officials concerned.

It is important to know the official aim since you can use this later in the assessment to contrast the official goal with the de facto impact of the law. For example, if the policy is formally meant to identify and protect victims of trafficking, but in reality leads to arbitrary arrest, detention and deportation of migrant workers, then that is an important conclusion.

Are there (other) hidden goals or interests?

Behind the official aims of a policy there are often other (unexpressed) interests, for example restricting migration, deporting non-documented workers or suppressing prostitution. Sometimes these are quite open, at other times they are more hidden. To find out what interests might play a role, you can, for example, look at who took the initiative to the policy, who profits from it, how it fits into the general agenda of the government or specific political parties, etc. Take into account the fact that different actors (the government or other national or local authorities) may have different interests.

3. Main actors

Who are the main actors implementing the policy?

The main actor(s) implementing a policy should not be confused with those responsible for the policy. For example, while the government may be responsible for the article in the aliens' law that allows victims of trafficking temporary residence permits, the police might be the main actor implementing it. If the policy does not clearly identify the actors responsible for its implementation, this is a conclusion in itself. However, you might still want to contact the ministry responsible to see whether they can provide you with more information.

Actors may be local, regional, national or international. Think, for example, of local or national governments (specify which ministry, department, district or governmental agency), police, non-governmental organisations, private enterprises, service providers, professional associations, training or research institutes. There may also be international actors involved, such as multinational or transnational corporations, international NGOs, donors, or international financial institutions.

If NGOs or private actors play an important role in the implementation of the policy, think about what State actors are supporting them or are otherwise involved. Keep in mind that NGOs and other private organisations must also respect human rights, and that it is the responsibility of the State to ensure they do so.

Are there special programmes to implement the policy?

There are often special programmes to flesh out a policy. They specify in detail how it should be implemented, who is responsible for what action, and what human and financial resources are allocated to the (implementation of the) policy. One instance of this would be a National Action Plan on Trafficking.



4. Stakeholders

Who are the main stakeholders? Who has something to gain or to lose?

During the preparation, you have already been asked to consider which stakeholders are relevant. By asking who has something to gain or to lose, you map out political interests relevant to the (implementation of the) policy, and who your (possible) allies or antagonists are. Allies can help you later in promoting your recommendations, and may provide you with information during the analysis. It is also interesting to know if there are conflicting interests.

To make a stakeholders analysis, look at the stakeholders you identified during your preparation, and answer the following questions for each stakeholder:

- Interest: how strong is his/her interest in the policy?
- Power: how much influence or power has he/she over the policy?
- Support: will he/she support you in achieving change?

People who have power, a strong interest in the policy, and are sympathetic to your cause, are important stakeholders and potential allies. Conversely, it is important to identify people who have power, a strong interest, but will oppose change, since you will have to take them into account when making your action plan in step 7. Remember that, although stakeholders may be both (governmental or non-governmental) agencies and individuals, ultimately you can only communicate with individual people. So try, as far as possible, to add names of significant individuals within a stakeholder organisation.

5. Affected groups

What groups does the policy target? What groups are affected in practice? Do these groups correspond?

When outlining the policy, it is important to describe who is or will be affected by it. The groups most affected by the policy are the ones you should focus on in the following steps. The affected groups may be the same, or may differ from, the groups the policy officially targets. In addition, you need to examine whether certain groups are excluded from the beneficial effects a policy may have. In many countries, for example, trafficked sex workers are excluded from the protection and assistance available to other trafficked persons.

Three questions are important here:

- What is the officially stated target group of the policy?
- What groups does the policy actually affect

(positively or negatively)?

- Are the groups who are actually affected the same as the official target group(s)?

Generally, a policy has a specific target group. This is often laid down in official documents, for example parliamentary papers, a National Action Plan, or a policy document produced by the relevant government agency. If this is not the case, this is a conclusion in itself! In practice, however, there may be a difference between the group(s) the policy officially targets, and the people who are really affected. Groups the policy might affect in practice might include:

- trafficked persons;
- sex workers;
- migrants;
- (undocumented) migrant workers in general or in specific labour sectors;
- refugees and asylum seekers;
- people living with HIV/AIDS;
- local citizens/workers;
- other groups, such as ethnic minorities;
- relatives of these groups.

It is important to be precise about the (sub) groups affected by the policy, as the same policy may affect different groups, or specific subgroups within a wider group, in different ways. Consider, in particular, the impact on the most vulnerable or marginalised groups, who are more likely to experience negative effects and to be excluded from positive effects, for example, migrant sex workers or sex workers working on the streets. They also have fewer opportunities to claim their rights. Consider also whether the policy intentionally or unintentionally excludes certain groups, for example people trafficked or exploited in other sectors than the sex industry. If different groups are affected by the policy, the data to be gathered in the rest of the assessment process should be disaggregated according to these groups (e.g. trafficked persons in different labour sectors, male, female and transgender sex workers, or male and female migrant workers).

6. Views and concerns of the affected groups

How do the affected groups perceive the problem and the policy?

It is essential to include the perceptions of the groups affected by the policy. When your team is part of the group(s) affected, this may make it easier to establish contacts with the wider community and involve them in the process. If the group(s) affected by the policy are not yet involved in your assessment team, take steps **NOW** to include them. Keep in mind that a Human Rights Impact Assessment requires the acknowledgement and inclusion of the real-life

experiences and knowledge of the affected groups, as well as the sharing of essential information with them so as to increase their capacity to decide on actions to claim their rights.

There are several ways to find out the views and concerns of the group(s) affected. You can organise meetings, hold consultations, conduct interviews, draw up questionnaires, as well as search for documents that express their views, concerns and experiences. If it is really impossible to directly contact (all) the affected group(s), contact NGOs or grassroots organisations that are in direct contact with them.

Not all groups, or people within a group, will be affected in the same way, or will share the same views. These differences should be represented and analysed in the assessment process. Depending on the situation, you might want to discuss the following questions with them:

- What do they know about the policy? Did they receive adequate information?
- Were they involved in the development, implementation and/or evaluation of the policy?
- What positive and/or negative impacts of the policy do they experience? What consequences does the policy have for them?
- What effects do they consider to be most problematic/most positive?
- What solutions do they propose to counter the negative aspects?
- What changes do they want?
- What do they expect from the government or the responsible authorities?

If you conduct interviews or organise meetings or focus groups, there are a number of **ethical and safety issues** that may arise. **Factsheet 4** gives you some basic guidelines. Take time to discuss issues such as anonymity, privacy and confidentiality, informed consent, the safety of your team and your respondents, possible conflicts of interest, who has control over the information and how it is used etc. You might want to establish your own guidelines for your team.

7. Which human rights may be affected by the policy?

Trafficking and anti-trafficking policies may touch on a wide range of human rights, such as the right to life, liberty and security, the right to an effective remedy, freedom of movement, the prohibition of discrimination etc. In this step, you will make a first rough assessment of the rights affected by the policy. In step 5 you will research the impact of the policy on the rights identified. **Factsheet 2** contains a list of the major human rights that may be involved, and a short description of these

rights. The most important of these rights and principles are described in separate factsheets. Table 3 (below) gives some examples of anti-trafficking interventions and the human rights that may be affected by them. Keep in mind that these are examples. There are many more examples and, depending on the circumstances, other rights than those listed may be involved.

Checklist of possible rights involved

- ☐ Right to non discrimination, equality before the law & equal protection by the law
- ☐ Right to justice & access to effective remedy
- ☐ Right to participation & access to information
- ☐ Right to gender equality
- ☐ Right to life, liberty & security of the person
- ☐ Right to be free from forced labour, slavery, slavery-like practices & servitude
- ☐ Right to be free from torture & cruel or degrading treatment or punishment
- ☐ Right to freedom of movement & to choose a residence
- ☐ Right to privacy & family life, reputation and honour
- ☐ Right to marry and found a family
- ☐ Right to property/no arbitrary deprivation of property
- ☐ Right to seek asylum and to be protected from torture & inhuman or degrading treatment (non-refoulement)
- ☐ Right to a fair trial
- ☐ Right to an adequate standard of living
- ☐ Right to free choice of employment and to just and favourable conditions of work
- ☐ Right to peaceful assembly & freedom of association
- ☐ Right to freedom of opinion and expression
- ☐ Right to freedom of thought, conscience or religion
- ☐ Right to participate in cultural life
- ☐ The right to participate in public affairs
- ☐ Right to health
- ☐ Right to adequate housing
- ☐ Right to education
- ☐ Right to food

Outcomes: what are your main findings?

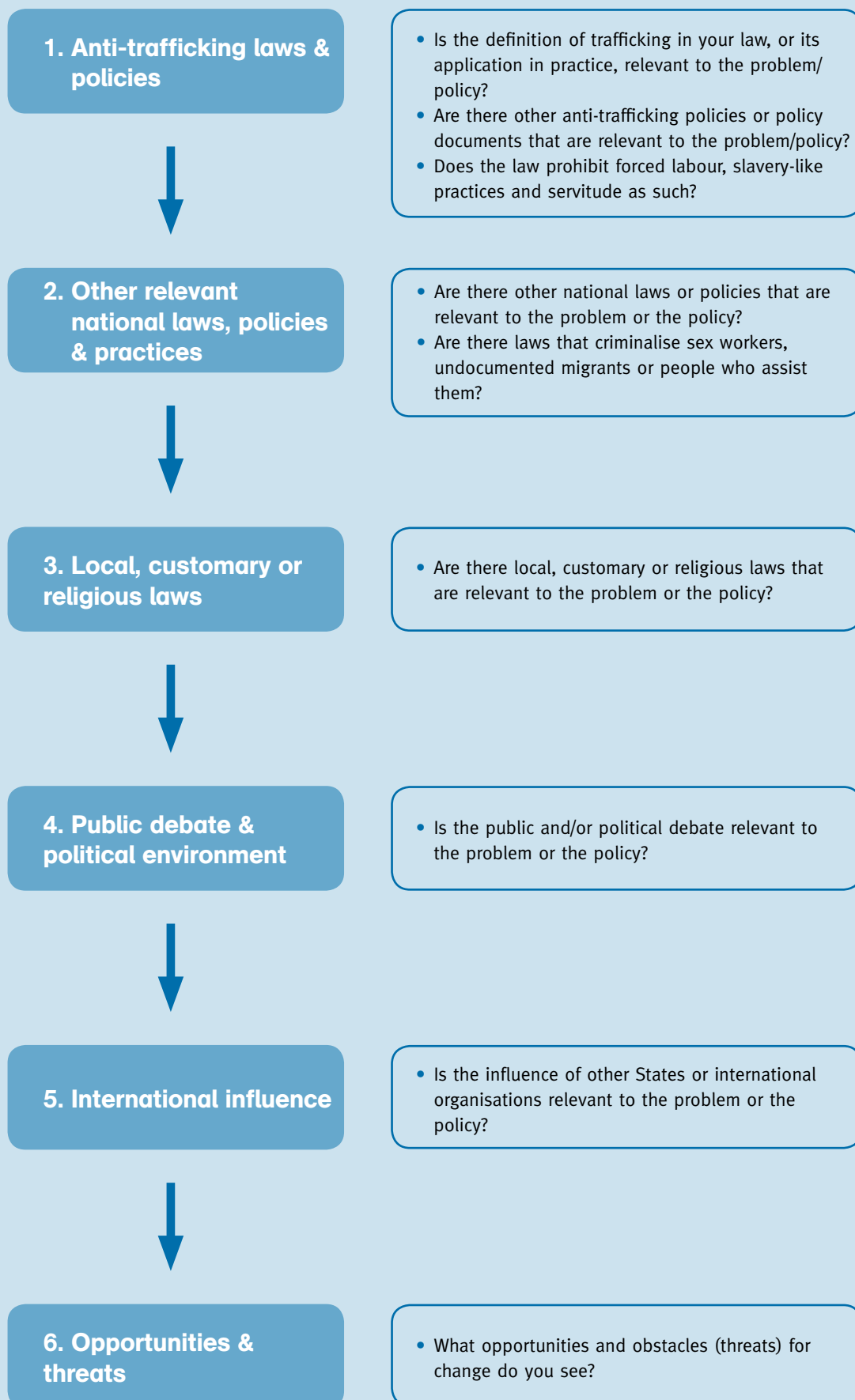
Summarise your main findings with the help of the key questions. Clearly formulate the focus of the analysis. This will help you to keep your focus in the next steps. Note the official and hidden aims of the policy, the main actors implementing it, the stakeholders and the groups affected, in theory and in practice. Describe the views and concerns of the affected groups, and which rights may be affected by the policy. Making a summary of your main findings at each step will help you in step 5, when you will analyse the impacts of the policy.

Table 3. Examples of anti-trafficking policies and possible rights affected

Interventions	Rights which may be affected (directly or indirectly)
Arrest, detention & (immediate) deportation of trafficked persons; forced repatriation; access to (temporary) residence, assistance & protection is restricted to certain categories of trafficked persons and/or dependent on their cooperation with the authorities	Right to justice & access to effective remedy (incl. protection, assistance & compensation) Right to life, liberty & security Right to seek asylum/ non-refoulement Right to own property Prohibition of discrimination
Lack of action & protective measures against trafficking, forced labour, slavery-like practices (incl. debt bondage) and servitude	Prohibition of forced labour, slavery-like practices and servitude Prohibition of torture, inhuman or degrading treatment or punishment Right to life, liberty & security Prohibition of discrimination
Closed shelters; 'safe custody'; 'protective homes'; forced rehabilitation	Right to life, liberty & security; prohibition of arbitrary detention Freedom of movement Right to justice & access to effective remedy Prohibition of sex-based discrimination
Restrictions on the freedom to move within one's country; discriminatory restrictions on travel & visa; discriminatory border controls	Freedom of movement Prohibition of discrimination
Public disclosure of identity without permission; mandatory or forced HIV testing; no confidentiality of test results	Right to privacy & family life Right to life, liberty & security Right to health Prohibition of discrimination
Workplace raids leading to arbitrary arrest, detention and/or deportation; violence, abuse or extortion by the police or other authorities; confiscation or destruction of personal belongings; no chance to collect personal belongings	Right to life, liberty & security Right to equal protection of the law Right to justice & access to effective remedy Right to seek asylum/non-refoulement Right to property Prohibition of discrimination
Negative messages about migrants or sex workers; stereotyping all sex workers as victims	Right to non-discrimination, equality for the law & equal protection by the law Right to participate in cultural & public life
Prohibition of assembly & peaceful gathering; exclusion from participation in the development, implementation & evaluation of laws & policies affecting one's life	Right to peaceful assembly and association Right to participation
US anti-prostitution pledge	Right to health Right to participate in public life Right to freedom of speech and opinion Prohibition of discrimination

Step 3. Legal, political and social environment

1. Key questions step 3



2. Explanation

In this step, you will examine the legal, political and social environment within which the policy operates. This will help you to better understand your 'playing field', and to identify opportunities for change as well as possible obstacles (threats). The answers to these questions may also help you to design your action plan in step 7.

1. Anti-trafficking laws and policies

Is the definition of trafficking, or its application in practice, relevant to the problem/policy?

Most anti-trafficking policies are based on the definition of trafficking in your criminal code. This implies that it is important to check if, and how, the problem or policy is related to the definition of trafficking in your law, or its application in practice. If your country has ratified the UN Trafficking Protocol, it has the obligation to bring its national law in line with the definition in the Protocol. (See for the definition of trafficking Part I and **factsheet 3**). Some of the problems that may arise are listed here:

- The definition only covers trafficking for the sex industry but not for other sectors, such as domestic work, agricultural, factory or construction work. People who are trafficked and exploited in these sectors are excluded from assistance and protection;
- The definition only covers trafficking across borders but not within the country, excluding internally trafficked people;
- The definition conflates trafficking and prostitution. All sex work is considered to be trafficking and/or all sex workers are considered to be victims, thus denying agency to people working in the sex industry;
- Or the opposite: sex workers are never considered to be victims of trafficking, even if they are recruited and/or exploited under coercive or abusive conditions, thus depriving them from protection and assistance.

BOX 2: WHERE TO FIND INFORMATION?

- Laws, parliamentary papers
- Government policy documents, reports & websites
- National Action Plan on Trafficking
- Articles, studies & reports
- Press articles
- Interviews with relevant government officials (e.g. the Ministry of Justice or other ministries responsible for combating trafficking), police, prosecutors or lawyers
- Do not forget the internet!

If the problem or policy is related to the definition of trafficking in your law, the following checklist may help you to determine whether your national definition, and/or the way it is applied, is in accordance with the international definition of trafficking in the UN Protocol.

Checklist regarding compliance of the national definition of trafficking with the UN Protocol

Does your national definition of trafficking cover:

- ☐ trafficking of women, men & children (persons below 18);
- ☐ the use of all coercive or deceptive means listed in the Protocol;
- ☐ trafficking for all sectors respecting all types of work or services;
- ☐ trafficking for all forms of exploitation as listed in the Protocol;
- ☐ trafficking across & within borders;
- ☐ trafficking with & without the involvement of organised crime.

Does your national definition make an effective distinction between:

- ☐ adults and children;
- ☐ trafficking and sex work;
- ☐ trafficking and smuggling.

☐ Is the (lack of) a definition of 'exploitation', 'exploitation of the prostitution of others' and/or 'sexual exploitation' related to the problem/policy? If so, in what way?

☐ If the definition in your law is in compliance with the UN Protocol, is the way it is applied in practice related to the problem/policy? If so, in what way?

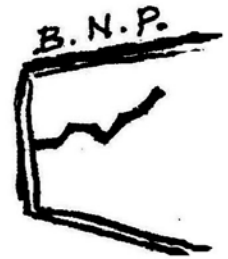
Are there other anti-trafficking policies or policy documents that are relevant to the problem or policy?

Many countries have a National Action Plan on Trafficking. If this is the case for your country, is the National Action Plan, or the way it is implemented, related to the problem or policy? If so, how? Are there other anti-trafficking policies, or policy documents, that are relevant to the problem/policy?

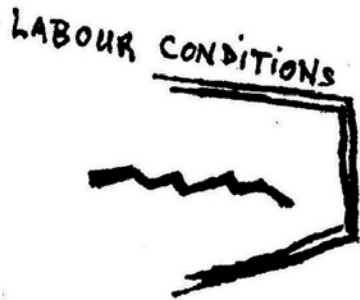
Does the law prohibit forced labour, slavery-like practices and servitude as such?

One of the problems attached to the definition of trafficking in the UN Trafficking Protocol is that it focuses on the way people arrive in a situation of exploitation (i.e. through trafficking). It does not address the exploitation of people under forced labour or slavery-like conditions as such. However, forced labour, slavery-like practices and servitude are prohibited under various international human rights treaties, which most countries have ratified. This

NATURALLY WE'RE CONSTANTLY KEEPING
OUR EYES ON THOSE SUBJECTS



OF COURSE WE ALWAYS KEEP THESE
MATTERS IN VIEW



SURE WE LOOK AT SUCH
THINGS ALL THE TIME



W:W

implies that they have to take measures to address these violations, independent of whether or not people are trafficked. **Factsheet 9** explains the concepts of forced labour, slavery-like practices and servitude.

2. Other relevant national laws, policies and practices

Are there other national laws that are relevant to the problem or the policy? Are there laws that criminalise sex workers, undocumented migrants, or people who assist them?

Apart from anti-trafficking policies, other policies may also affect the problem or the policy. Some examples are laws and policies regarding (forced) labour, sex work, (illegal) migration, public order, health and safety, etc. An influential factor may be laws or policies that criminalise sex workers or their clients, undocumented migrants, or people assisting them.

3. Local, customary or religious laws

Are there local, customary or religious laws that are relevant to the problem or the policy?

In addition to official, written laws, local, customary or religious laws, policies or practices might also influence your problem or policy. These may be written or unwritten and are often based on tradition. Even if these 'laws' are not recognised by the government, they may have considerable influence. In many countries, for example, men have to authorise travel for women.

4. Public debate & political environment

Is the public and/or political debate relevant to the problem or the policy?

A policy is never created and implemented in a vacuum. The surrounding public and political debate influences

whether politicians and stakeholders are sensitive to the issue. Consider if these debates are relevant for the analysis and if they provide opportunities, or constitute obstacles to change.

5. International influence

Is the influence of other States or international organisations relevant to the problem or the policy?

Sometimes other States may put pressure on your government to undertake particular measures or adopt certain policies. The annual Trafficking in Persons Report (TIP-report) of the US State Department, for example, assesses countries' anti-trafficking efforts and puts them in one of three tiers. Economic support from the US is dependent on the tier the country is placed in. This is a powerful means to exert pressure with regard to national anti-trafficking policies, especially when it comes to poorer countries. Another example is the [US anti-prostitution pledge](#), which requires organisations that receive HIV/AIDS or anti-trafficking funds to adopt an organisation-wide policy opposing prostitution and 'sex trafficking'.⁵ This requirement, aimed at the eradication of prostitution, has been in place since 2003, and has since been heavily criticized as counterproductive, reinforcing stigma and discrimination against sex workers and preventing organisations from working with sex workers. International or inter-governmental organisations, such as the International Organisation for Migration (IOM), can also play an important role in shaping national policies.

6. What opportunities & obstacles to change do you see?

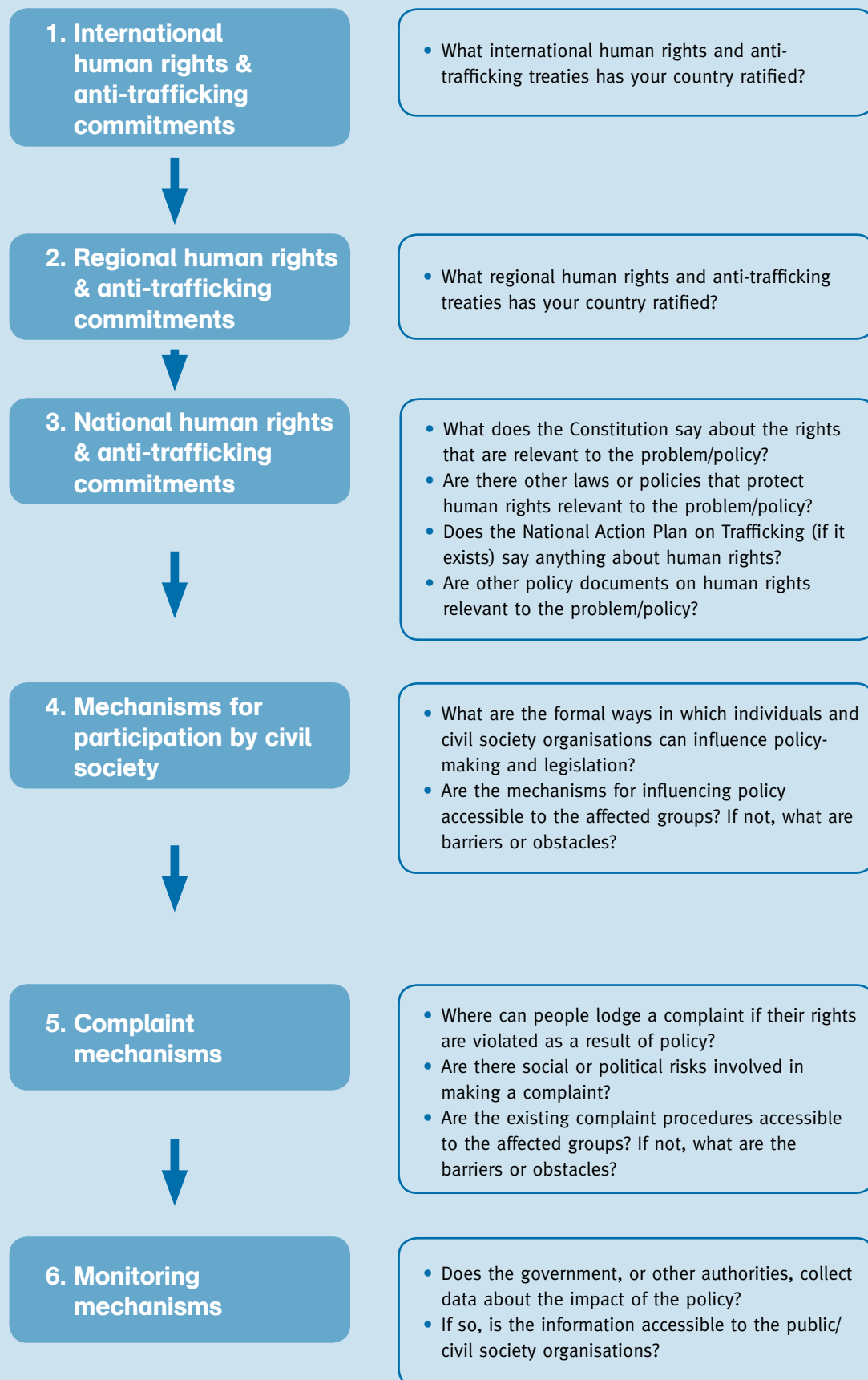
What opportunities and obstacles for change do you see?

If you examine your answers, what are opportunities for change? What might be obstacles? At this point, you may also want to go back to your work plan and check whether the answers to the questions lead you to adapt your work plan or objectives.

⁵ The Act states among others that "No funds [...] may be used to promote or advocate the legalization or practice of prostitution or sex trafficking."; "No funds [...] may be used to provide assistance to any group or organization that does not have a policy explicitly opposing prostitution and sex trafficking."

Step 4. Human rights in theory: human rights commitments of your State

1. Key questions step 4



2. Explanation

The basic question in this step is: what human rights commitments has your State made? You will explore what national, regional and international human rights obligations your State has committed itself to. The purpose is to find out what standards you can use to hold your government accountable for the possible negative (or lack of positive) effects of the policy.

The focus in this step is on what is on paper, the so-called **de iure** situation. In step 5 you will compare the obligations of your State on paper with what actually happens, the so-called **de facto** situation, (the gap between human rights on paper and in practice).

Human rights aspects of State commitments

Many of the commitments States make by ratifying human rights treaties require changes on the national level. States must recognise the rights in the treaties they ratified in their political and legal system, and adapt their domestic laws to bring them into conformity with the treaty. This implies that when you find out that implementation is lacking in your country, you can refer to the international obligations of your State under the treaty concerned. All core human rights treaties, as well as the UN Trafficking Protocol, contain a non-discrimination clause, requiring States to abandon any laws, policies or measures that have a discriminatory impact in relation to the rights protected by the treaty concerned. Inclusion of the provisions of a treaty in national legislation makes it easier for people to claim their rights.

Treaties

Practically all States are bound by international and regional human rights treaties. Most States are also party to the UN Trafficking Protocol. If a State has **ratified** a treaty, it is legally bound to implement its provisions. A State often **signs** the treaty before ratification. This implies a commitment to ratify, and obliges the State to refrain from acts that defeat the object and purpose of the treaty, or undermine it. This means that, even when your government has only signed the treaty but not (yet) ratified it, you can still hold it to its intentions. Sometimes a State has made **reservations**, which limit the scope of application of the human rights protected by the treaty in question. However, reservations are only valid when they are compatible with the object and purpose of the treaty. This implies, for example, that a State cannot ratify the Women's Treaty (CEDAW) and make a reservation to the obligation to pursue an active policy to eliminate discrimination against women. You can check on the website 'What law' (see box 3) whether your State has made reservations to one or more of the major human rights treaties.

BOX 3: WHERE TO FIND INFORMATION?

- The full text of all the core human rights treaties and lots of other information can be found on the website of the High Commissioner for Human Rights: www2.ohchr.org/english/law/
- 'What law' provides a list of all treaties ratified by a particular country, including possible reservations. You can search by country, by right, by treaty body and by type of affected persons: www.whatlaw.org/
- The Universal Human Rights Index gives easy access to the observations & recommendations of the treaty bodies:: www.universalhumanrightsindex.org/
- A specialised multilingual human rights search engine is: www.hurisearch.org
- To find out if your country ratified the major ILO treaties, you can look at the website of the ILO: www.ilo.org/ilolex. You can search by country and by treaty.
- An overview of the relevant regional treaties and organisations can be found at: www.humanrightsimpact.org/whr_resources
- Council of Europe Convention on Trafficking: www.coe.int/trafficking
- EU legislation on trafficking: http://ec.europa.eu/home-affairs/doc_centre/crime/crime_human_trafficking_en.htm
- Inter-American Commission on Human Rights: www.cidh.org
- African Union: www.africa-union.org
- African Commission on Human and People's Rights: www.achpr.org
- Wikipedia is a handy website for all kinds of questions you may still have
- Organise interviews with relevant government officials, lawyers, the national human rights institution, if there is one.

Even if your country has ratified very few human rights treaties, some international agreements are considered to be binding for every State, such as the prohibition on torture. The Universal Declaration of Human Rights is also considered to be binding for all member States of the UN, even if it is a Declaration and not a treaty.

Apart from treaties, **consensus documents** are also relevant. These are documents adopted by the General Assembly of the UN by declaration. Though they are not legally binding, States have a moral obligation to abide by them, as they are based on political agreement. An example is the Beijing Platform for Action and the Declaration on the Elimination of Violence Against Women.

The **International Labour Organisation** (ILO) plays an important role in developing **international labour standards**. The ILO consists of representatives of national governments, employers' organisations and trade unions.

It is the global body responsible for drawing up and overseeing international labour standards. These are either conventions, which may be ratified by member States, or recommendations, which serve as non-binding guidelines. The most important ones for this assessment are those on forced labour, freedom of association and migrant workers.

You will find an overview of the main human rights treaties in **factsheet 1**. The full text of all the core human rights and labour rights treaties can be found on the websites of the UN High Commissioner for Human Rights and the ILO.

1. What international human rights and anti-trafficking treaties has your country ratified?

The checklist below lists the main international human rights, labour rights and anti-trafficking treaties.

Checklist major international treaties

- ☐ International Covenant on Civil and Political Rights (ICCPR)
- ☐ International Covenant on Economic, Social and Cultural Rights (ICESCR)
- ☐ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- ☐ Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- ☐ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- ☐ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)
- ☐ Forced Labour Conventions, ILO C no. 29 & 105
- ☐ Freedom of Association and Protection of the Right to Organise Convention, ILO C no. 87
- ☐ Right to Organise and Collective Bargaining Convention, ILO C no. 98
- ☐ Convention on Migrant Workers, ILO C no. 143
- ☐ UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (also called Trafficking Protocol or Palermo Protocol)

2. What regional human rights and anti-trafficking treaties has your country ratified?

Regional treaties can play an important role in complementing and reinforcing the international human rights system. Most regional treaties are monitored by a court or regional commission that can make legally-binding decisions. The human rights protection system in Europe is comprised of various organisations: the Council of Europe (47 Member States), the European

Union (27 Member States) and the Organisation for Security and Cooperation in Europe (56 Member States). All Member States of the Council of Europe and the European Union are party to the European Convention on Human Rights (ECHR), and are bound by the judgements of the European Court of Human Rights (ECtHR). The main human rights bodies in the Americas are the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. In Africa, it is the African Commission on Human and People's Rights. In Asia, there is no regional human rights body. Below, you will find a checklist of the most relevant regional treaties and other legally binding instruments.

Checklist most relevant regional treaties

Europe

Council of Europe Member States (including all EU Member States):

- ☐ European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)
- ☐ European Social Charter
- ☐ Council of Europe Convention on Action against Trafficking in Human Beings

EU Member States:

- ☐ Charter of Fundamental Rights of the European Union
- ☐ Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities
- ☐ Council Framework Decision of 19 July 2002 on combating trafficking in human beings
- ☐ Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings

Africa

- ☐ African (Banjul) Charter on Human and Peoples' Rights
- ☐ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003) (Maputo Protocol)

The Americas

- ☐ American Convention on Human Rights
- ☐ Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (Protocol of San Salvador)
- ☐ Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belém do Pará)

Asia

- ☐ SAARC Convention on Preventing and Combating Trafficking in Women and Children in Prostitution (Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia)

3. National human rights and anti-trafficking commitments

What do the Constitution and other national laws or policy documents say about the rights relevant to the policy? Does the National Action Plan on Trafficking, if it exists, say anything about human rights?

Generally, a country's Constitution contains a number of fundamental human rights protections. It enshrines, for example, the principles of equality and non-discrimination. Other laws that might protect specific human rights, and may be relevant to the problem or policy, are labour laws, anti-discrimination laws, laws on sexual and reproductive rights, etc. Sometimes, there is a special Human Rights Act. If the government has a National Action Plan on Trafficking, this also might contain references to human rights.

Questions to consider:

- What does the Constitution say about rights relevant to the problem/policy?
- Are there other laws or policies that protect specific human rights that are relevant to the problem/policy?
- If your country has a National Action Plan on Trafficking, does this say anything about the protection of human rights?
- Are there other policy documents on human rights that are relevant to the problem/ policy

4. Mechanisms for participation by civil society

What are the formal ways in which individuals and civil society organisations can influence policy-making and legislation? Did the affected groups participate in the formulation of the policy? Are the mechanisms for influencing policy accessible to them? If not, what are the barriers or obstacles?

An important human right is the right to **participation**. There are several ways in which participation of civil society in policy processes can be organised: through voting in referenda and elections, through associations and volunteer organisations, NGO platforms, consultation processes, reports to international organisations, national and international conferences, press/media, labour unions, etc.

The following levels of participation can be identified⁶:

- **Initiated by and shared decision-making:** projects or programs are initiated by the affected groups and taken up by the government. Both parties share equally in decision-making power. This is the most empowering form, as the affected groups are setting the agenda.
- **Consulted and informed participation:** the

government consults affected group(s), who can give advice on projects and programmes designed and run by the government. They are informed about how their input will be used, and on the outcomes of the decisions made by the government. This is a more common form.

- **Assigned but informed participation:** the affected groups are assigned a specific role and informed about how and why they are being involved.

A risk attached to all forms of participation is that it turns into tokenism. Affected groups are asked for their opinion, but their input is not taken seriously. In cases of manipulation, the government pretends to have the support of the affected group(s), but ignores their actual needs.

Taking the above into account, what level of participation applies to the policy at hand? Did the affected groups participate in the formulation of the policy? Are mechanisms for influencing policy accessible to the affected groups? If not, what are barriers or obstacles?

5. Complaint mechanisms

Where can people lodge a complaint if their rights are violated as a result of the policy? Are there social or political risks involved in making a complaint? Are the existing complaint procedures accessible to affected groups? If not, what are the barriers or obstacles?

Another element is the possibility for people to submit a complaint if their rights are violated as a result of the policy, including complaints about their treatment by State authorities. Formal complaint mechanisms include complaint procedures at ministries, the police, (administrative) courts, etc. Some countries have a special human rights institution or commission, or an Ombudsman. Do members of the affected groups have access to existing complaint procedures if their rights are violated, and do these offer an effective remedy? If they are not accessible, what are the barriers or obstacles? Another important question is whether it is safe to make a complaint. Human rights defenders, in particular, may run a higher risk, as their work often touches sensitive issues, and they may have to operate in a hostile political or social environment. But other people can also run risks if they complain.

⁶ Based on Roger Hart's Ladder of Participation. See www.mcs.bc.ca/ya_ladd.htm.

6. Monitoring mechanisms

Does the government or other authorities collect data about the impact of the policy?

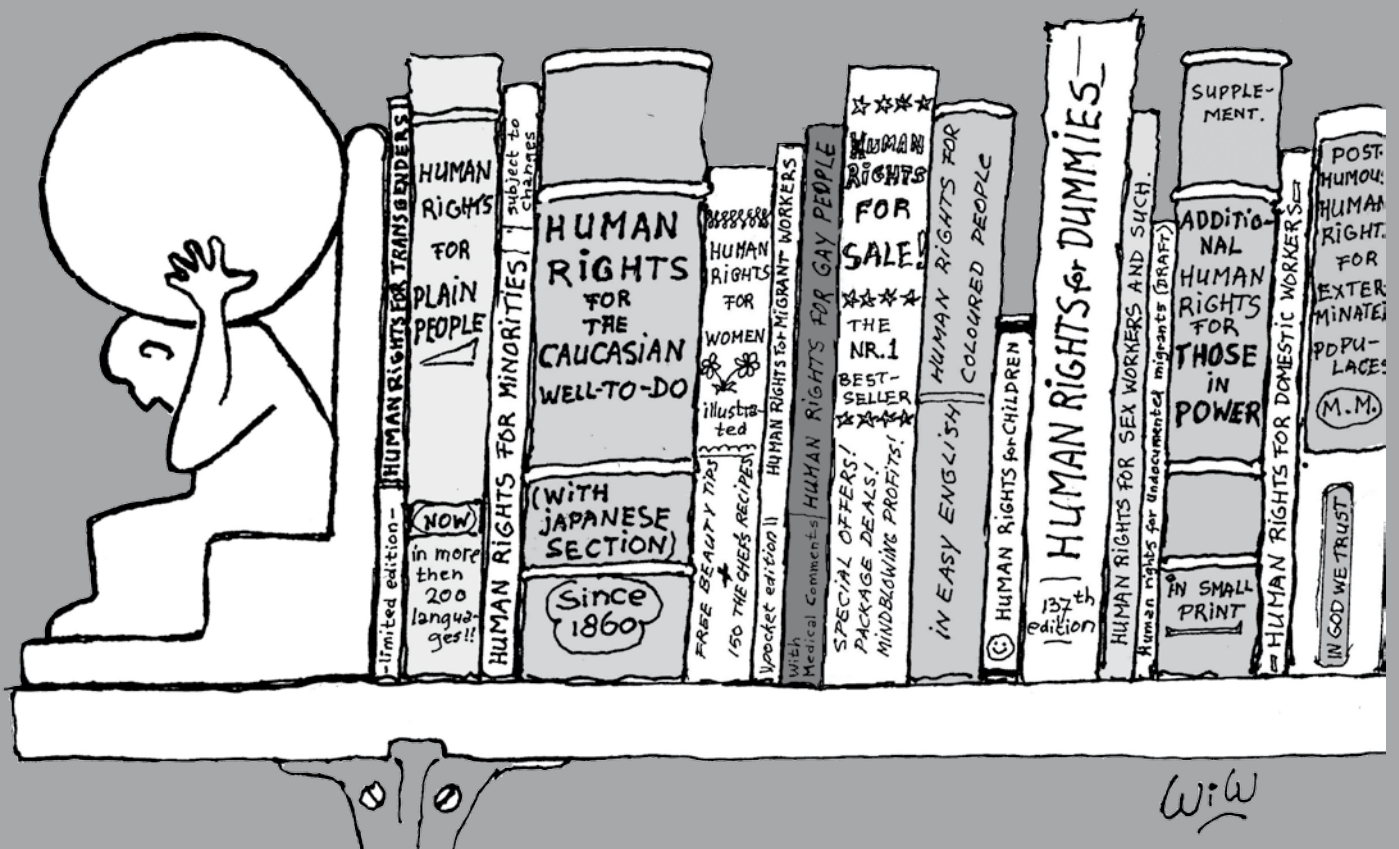
There are various ways in which the government or other authorities can collect information on the impact of a policy. Mechanisms include gender impact assessments, evaluation studies carried out by the government itself or commissioned to a research institute or via a monitoring system. Some countries, for example, have a National Rapporteur on trafficking in human beings who collects information on trafficking, and on the implementation of anti-trafficking policies. If you do not know the answer to these questions, try to find out from an organisation that specialises in trafficking, through a friendly official, or through interviews with the relevant authorities, such as the ministry or department responsible for trafficking issues.

Questions to consider:

- Is there an evaluation or monitoring system for the policy? If so, what do these documents say about the impact of the policy on the affected group(s)?
- If there is no evaluation or monitoring mechanism, does the government collect information in another way? Is this information public?
- If your government does not collect information on the impact of the policy, why not?

Outcomes: what are your main findings?

Summarise your main findings. What are the most important human rights commitments on the part of the government in relation to the problem or policy? What opportunities does civil society have to influence the policy-making process? How has civil society, in particular the affected groups, participated in the policy-making process?



W+G

Step 5. Human rights in practice: the impact of the policy

1. Key questions step 5

1. Impact on combating trafficking & related abuses

- What is the impact of the policy, or the way it is implemented, on the prevention of trafficking, the prosecution and punishment of traffickers, and the protection and assistance of trafficked persons?
- Do the practical effects of the policy correspond with what it officially sets out to achieve? If not, where does it fail?



2. Impact on human rights: Do no harm

- What is the impact of the policy on the human rights of the people affected by the policy?
- Does the policy, or the way it is implemented, respect and protect their human rights or does it undermine, negatively affect or violate them?



3. Compliance with human rights principles

- Do or did the groups affected by the policy participate in its development, implementation and evaluation?
- Does the policy discriminate against particular groups, is it applied in a discriminatory way, or does it have discriminatory effects?
- Does the policy affect women differently from men?
- Does the policy, or the way it is implemented, (negatively) affect the possibilities for affected groups to seek justice in case of trafficking or other human rights violations? If yes, how? What are barriers or obstacles?



4. Conclusion

- Does the policy negatively affect, undermine or violate human rights or principles? If yes, how?
- Did you also discover positive effects?

2. Explanation

In step 4, you looked at the promises your government made on paper (de iure situation). This step assesses what actually happens in practice (de facto situation) and whether the policy results in a violation of people's rights or has a discriminatory impact.

This step will require you to collect a lot of information. Before you start, please read **factsheet 4** which gives you guidelines on how to conduct interviews and group meetings. It also gives tips on how to organise and analyse your findings.

When researching the impact of the policy, try to look for both **quantitative data** and **qualitative data**. Quantitative data contains numbers and frequency, for example the number of people arrested or provided assistance. Qualitative data documents meaning and experience, such as in depth descriptions of particular situations or experiences gained, for example, via interviews, focus groups or case studies. Try to be as specific as possible about the groups and rights that are affected, and how this occurs. Where possible, try to give concrete examples. The more concrete and precise you are, the more convincing your arguments will be. Carefully note your sources and distinguish, where applicable, between the information you get from different stakeholders.



This step is the most rigorous part of your data collection process. However, remember that you do not need to answer all the questions. We advise you to first go through all the questions and select those relevant to the policy you analyse. You may find that you need to adapt some questions to your particular situation, or perhaps add new ones.

Human rights aspects of the impact of the policy

This paragraph explains the obligations of States that may be relevant to the policy you are analysing. Firstly, States have the obligation to prevent, investigate and punish trafficking, forced labour, slavery-like practices and servitude, and to provide victims with adequate and appropriate remedies, including assistance, protection and compensation. This implies that anti-trafficking policies should:

- address the conditions that give rise to trafficking and the exploitation of people under forced labour or slavery-like conditions, such as inequality, corruption, poverty, lack of employment opportunities, discrimination and social exclusion (obligation to prevent);
- stop the abuse and investigate, prosecute and punish

BOX 4: WHERE TO FIND INFORMATION?

- Interviews, meetings or focus groups with the groups or communities affected by the policy, their organisations, service providers, NGOs that work with the affected groups, lawyers, police, and other relevant stakeholders
- Government documents & statistics
- Reports from local, national or regional NGOs, academics, service providers, the National Rapporteur on Trafficking (if existing) and journalists
- Reports from human rights organisations. On the websites of e.g. Amnesty, Human Rights Watch and Freedom House you can search per country and issue: www.amnesty.org/en/human-rights; www.hrw.org; freedomhouse.org
- Reports of UN Special Rapporteurs: www.ohchr.org/EN/Pages/WelcomePage.aspx (fill in your country in the box 'human rights per country', go to 'full list of documents in the Charter based Bodies Database')
- Reports of the government and NGOs (shadow reports) to treaty bodies: www.ohchr.org/EN/Pages/WelcomePage.aspx (go to 'full list of documents in the Treaty Body Database')
- Observations and Recommendations of treaty bodies: www.universalhumanrightsindex.org/

the perpetrators (obligation to investigate and punish);

- provide victims with assistance, protection and compensation (obligation to provide adequate remedies).

Secondly, States have the obligation to respect, protect and fulfil the human rights laid down in the treaties they have signed and ratified, of all persons within their country. At the minimum, anti-trafficking policies should not undermine or negatively affect human rights ('do no harm'). If the policy has a negative impact on people's human rights, States are in violation of their obligations under those treaties. Violations can occur through an act or through a failure to act (omission). An example of a violation through an act is when the police abuses people in custody. An example of a violation through a failure to act is when trafficking cases are not taken seriously and duly investigated. When the policy has a mix of positive and negative impacts, it is relevant to ask what should happen to strengthen positive impacts and avoid negative ones.

Thirdly, policies have to comply with the key human rights principles of participation, non-discrimination, **gender equality** and access to justice.

These 3 sets of obligations form the basis for the key questions in this step:

1. What is the impact of the policy on the prevention of trafficking, the prosecution & punishment of traffickers, and the protection & assistance of trafficked people?
2. What is the impact of the policy on the human rights of the people affected by the policy? Does it respect and protect their human rights, or does it undermine, negatively affect or undermine them?
3. Does the policy, and/or its effects, fulfil the principles of participation, non-discrimination, gender equality and access to justice?

1. Impact on combating trafficking and related abuses

What is the impact of the policy, or the way it is implemented, on the prevention of trafficking, the prosecution & punishment of traffickers and the protection & assistance of trafficked persons? Do the effects of the policy in practice correspond with what it officially sets out to achieve? If not, where does it fail?

The first criterion for any anti-trafficking policy is, logically, whether or not it helps in combating trafficking. In answering this question, it is important to distinguish between the official aim of the policy (which you researched in step 2), how the policy is implemented in practice, and what its effects are on the groups affected by the policy. The last 2 issues you research in this step. For example, the official aim may be to punish traffickers (obligation to investigate and punish), but in practice the policy may be used to arbitrarily arrest and detain migrants workers or sex workers (violating their right to liberty and security). This may result in them being more vulnerable to trafficking and exploitation since it may deter them from seeking justice for fear of arrest (obligation to protect and prevent trafficking). Or, a policy may officially aim at preventing migrants from becoming victims of trafficking, but, in practice, restrict the freedom of movement of particular groups of women (violating both the principle of non-discrimination and the right to freedom of movement). This may lead to their increased reliance on middlemen for seeking work abroad, which adds to their vulnerability to trafficking and other forms of abuse rather than protecting them (obligation to protect and prevent). Another example is the mandatory registration of sex workers and the criminalisation of unregistered sex workers and their clients in order to prevent trafficking. According to the [Supervisory Committee](#) of CEDAW, in practice this may lead the majority of sex workers to work illegally, including migrant sex workers who do not have the possibility of registering. Rather than improving the situation of sex workers, it might therefore undermine efforts to combat the sexual exploitation of women and

increase the vulnerability of those not able or willing to register, by worsening their working conditions and exacerbating their social exclusion. It may also create serious risks for registered sex workers' privacy and safety (Concluding Observations on The Netherlands, CEDAW, 5 February 2010, commenting upon the Regulation of Prostitution Bill).

Below, you will find a checklist of the minimum standards that States must meet in addressing trafficking. These standards can be used as indicators to determine whether or not the State meets its obligations. For a more detailed overview, including the international human rights and anti-trafficking instruments from which these standards are derived, please see **factsheet 7**.

Checklist minimum standards for the prevention, investigation & prosecution of trafficking and the assistance & protection of trafficked persons

Obligation to criminalise trafficking and its related offences and to investigate & prosecute trafficking cases

- ☐ Trafficking (as defined in the UN Protocol), forced labour, slavery, servitude, debt bondage, forced marriage and forced prostitution are criminal offences. Proportionate penalties are applicable to these offences and are applied.
- ☐ Guidelines & procedures are in place for the quick and adequate identification of (possible) victims.
- ☐ The relevant State authorities are trained in correct identification procedures, including the application of guidelines.
- ☐ Law enforcement agencies are trained in the investigation & prosecution of trafficking cases.
- ☐ Complaints are taken seriously and duly investigated.
- ☐ Positive incentives for victims to cooperate are developed, put in place and used.
- ☐ Law enforcement agencies, prosecutors and the judiciary demonstrate an understanding of trafficking and its human rights dimensions and an ability to work together.
- ☐ Data are available on the number of complaints, arrests, prosecutions and convictions.

Obligation to assist & protect trafficked persons

- ☐ Trafficked persons are accurately identified and are not automatically detained or deported.
- ☐ Trafficked persons have immediate access to (emergency) shelter, medical assistance and legal advice. Basic assistance & protection (including housing, material, medical and psychological assistance) is given, irrespective of their cooperation with law enforcement bodies.
- ☐ The privacy and safety of trafficked persons is actively protected.
- ☐ Trafficked persons who wish to participate in legal

proceedings are given help to make sure such involvement is meaningful, non-traumatic and safe.

- ☐ The safety of the trafficked person and his/her family (incl. safety from re-trafficking) is taken into account in decisions about repatriation. Trafficked persons are not returned if this constitutes a risk to their safety or might expose them to torture or other serious human rights abuses (non-refoulement).
- ☐ Trafficked persons are not detained by law enforcement authorities for any reason other than their immediate physical protection. They are never detained for reasons of collecting evidence.
- ☐ Trafficked persons are not held in immigration centres or other forms of custody, including detainment by welfare authorities (e.g. closed shelters or forced rehabilitation institutions).
- ☐ Trafficked persons are not prosecuted for immigration offences or trafficking-related offences, e.g. illegal entry or stay, the use of false papers or engaging in illegal work or prostitution. There are specific directives in place to this effect.
- ☐ Trafficked persons are provided with information about court proceedings and available remedies. Remedies include restoration of liberty, return of property, compensation for harm, lost earnings and medical costs, medical and psychological care and guarantees of non-repetition.
- ☐ There is a legislative and practical possibility for obtaining compensation, including a provision for payment of compensation by the State when compensation cannot be obtained from the trafficker.
- ☐ Trafficked persons are not automatically deported and have a right to remain in the country pending the completion of legal proceedings, including for compensation.

Obligation to prevent trafficking and to ensure that such efforts do not violate established rights

- ☐ Policies and practices aimed at those vulnerable to trafficking, such as migrant workers, ethnic minorities and sex workers, operate to promote their rights, rather than exacerbate their vulnerability.
- ☐ Concrete steps are taken to address the involvement or complicity of police or other public officials in trafficking.
- ☐ Concrete steps are taken to address the demand for the products of trafficking.

General

- ☐ No aspect of the State's response to trafficking violates established rights (e.g. no compulsory testing, no arbitrary detention or closed shelters; persons accused of trafficking have the right to a fair trial). Laws, policies and measures do not negatively impact, undermine or violate the human rights of the people affected by the policy. If this is the case: go to question 2.
- ☐ No aspect of the State's response to trafficking

discriminates on the basis of race or gender or other grounds (e.g. there are no gender-based restrictions on freedom of movement, including emigration). Laws, policies and measures do not discriminate against particular groups, are not applied in a discriminatory way or have discriminatory effects. If this is the case: go to question 3.

- ☐ There is an independent mechanism to monitor the implementation of the policy. This can, for example, be a National Rapporteur on Trafficking, a National Ombudsman or a national Human Rights Institution or Commission.

Conclusion question 1: Do the effects of the policy in practice correspond with what the policy officially sets out to achieve? If not, where does it fail?

Summarise your main findings. What are the actual (positive and/or negative) effects of the policy in practice? Do these correspond with its official aims? If not, where do they differ? What groups does the policy officially target, and what are the groups affected in practice? Do these groups correspond? If not, where do they differ? Did you find any particular obligations that the State does not meet? Did you find any particular rights that are negatively affected or violated (e.g. the right to life, liberty & security, privacy, health, non-discrimination)? If so: go to question 2 & 3.

2. Impact on human rights ('do no harm')

What is the impact of the policy on the human rights of trafficked people and other groups affected by the policy?

When taking measures against trafficking, States must respect the human rights established in the treaties they ratified. They must ensure that anti-trafficking measures do not undermine or negatively affect the human rights of particular groups, including trafficked persons, migrant workers, sex workers and refugees ('do no harm'). Rather, they should take positive action to ensure that all persons on their territory can enjoy their human rights.

In step 2, you identified the groups affected by the policy and the human rights that might be at stake. In this step, you will research the human rights impact of the policy in practice on the groups you identified. Remember that, depending on your findings, you can always change your selection of rights and add new rights. Remember also that a policy can have different effects on different (sub) groups.

A separate factsheet is provided for each of the major rights. These explain what the particular right means and list the international human rights treaties that



protect this right. They also mention relevant General Recommendations or other documents of the [treaty bodies](#) concerned and relevant [consensus documents](#). At the end of each factsheet, you will find a set of questions that will help you to determine whether the policy, its implementation and/or its outcomes respect, protect and fulfil the right in question, or undermine or violate it. The questions are divided into 5 categories:

1. Your reasons to believe that the policy affects this particular human right.
2. The affected groups and the protection of the human right in question.
3. The government and the protection of the human right in question.
4. Trafficked persons and the protection of the human right in question.
5. Expected effects in the case of a planned policy

The first question asks you for your reasons to believe that the policy affects this particular right and which groups are affected.

The second set of questions asks for the experiences and views of the groups affected by the policy. These questions are primarily meant to be answered by members of these groups themselves. Other sources may also be important, for example, reports from NGOs, service providers, lawyers, academics, human rights institutions, or the government.

The third set of questions asks for laws and policies protecting the right in question, (the accessibility of) complaint mechanisms, whether other actors have reported or documented cases of violations of this right in relation to the policy, and the views of the government. You will have to put some of these questions to the government. Other sources of information are government reports, reports to or from the different human rights treaty bodies, reports from NGOs, other civil society organisations, academics or journalists. You may already have researched some of these questions in step 4.

The fourth set of questions specifically looks at the impact of the policy on the protection of the human rights of trafficked persons. Answers can be based on the experience of NGOs working with trafficked persons, interviews with trafficked people (if this is an option), reports from NGOs, academics, human rights institutions, the government, etc.

The fifth set of questions is applicable in the case of a policy that is proposed or planned but not yet implemented.

A method for recording your findings is to make a separate table for each right affected. In this table, you represent the information from different sources in different columns: government, affected groups, reports and documents from other actors. You can also use big

sheets that you stick to the wall, so you can step back, have a look, and easily share and discuss your findings with your team.

Conclusion question 2: Does the policy, and the way it is implemented, respect and protect the human rights of all affected groups, or does it undermine, negatively affect or violate the human rights of trafficked persons or other particular groups? ('do no harm')

Summarise your main findings. What is the impact of the policy on the human rights of the groups affected by the policy? Does the policy undermine, negatively affect or violate the human rights of specific groups of people? Which rights are violated and how? Are there also positive effects?

3. Compliance with human rights principles

In the development, implementation and evaluation of anti-trafficking policies, States must observe a number of key human rights principles, in particular participation, non-discrimination, gender equality and access to justice. These principles apply to every right, but are also rights in themselves. **Factsheet 6** discusses each of these principles. Below, you will find a short explanation and a set of questions for each principle.

BOX 5: PARTICIPATION

Participation refers to the involvement of people in decisions that affect their rights. This means, for example, involving the people working in sectors where trafficking & forced labour are known to be common in identifying measures likely to prevent or stop these abuses. Failure to do so can lead to ineffective measures or even have negative effects.

a. Do or did the groups affected by the policy participate in its development, implementation and/or evaluation?

In step 4 (question 4), you explored the ways individuals, NGOs and other civil society organisations can influence policy-making and legislation. In this question you look at what happens in practice. Do or did the affected groups participate in the decision-making process? Take into account the various methods of participation explained in step 4. The following questions are indicators that reveal whether the government fulfils the principle of participation:

- Has the government taken steps to actively involve the groups affected by the policy and other relevant

stakeholders (e.g. service providers, relevant NGOs or unions) in the development, implementation, monitoring and/or evaluation of the policy?

- If so, how is/was participation organised? Who participates or participated, and whom do/did they represent?
- If the affected groups did not participate in the policy process, what problems or barriers do or did they encounter? What were the government's arguments for not involving them? Can you give examples?
- Do or did the affected groups have access to the information they need to participate in decisions about the policy? If not, what are the barriers? Can you give examples?
- Can the affected groups freely express their views and concerns without fear of sanctions, either from their employers or from State agencies? If not, can you give examples?

Conclusion question 3a: Does the policy fulfil the principle of participation?

b. Does the policy discriminate against particular groups, is it applied in a discriminatory way, or does it have discriminatory effects?

Anti-trafficking measures may not be used to discriminate against (particular groups of) trafficked persons, women, migrants, sex workers or other vulnerable or marginalised groups. They may also not incite discrimination. A policy may discriminate directly, for example by restricting the freedom of movement of people on the basis of their gender or age, but it can also indirectly discriminate. This means that a neutral policy can still have discriminatory effects, because it affects some groups more than others. For example, a prohibition on migration for domestic work indirectly discriminates against women, since the majority of migrant domestic workers are women. Sometimes, a law or policy is in itself not discriminatory, but has discriminatory effects in combination with other laws or policies.

BOX 6: NON-DISCRIMINATION

Discrimination implies any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms (ICCPR, General Comment no. 18).

The principle of non-discrimination is laid down in the Universal Declaration on Human Rights and runs as a major theme through all human rights treaties and declarations.

Questions:

- Does the policy, or the way it is implemented, discriminate against particular groups? If so, against which groups and in what way?
- Does the policy lead to discriminatory outcomes, meaning that it disproportionately affects particular groups?
- Does the policy add to the discrimination, stigmatisation, marginalisation and/or social exclusion of particular groups? If so, in what way?
- Does the government consider that the policy might discriminate against particular groups, or might lead to discriminatory outcomes? If so, what measures did it take?
- Are there mechanisms to lodge complaints about discrimination? If so, are these accessible to the groups affected by the policy, and do they offer an effective remedy? If not, what are the barriers?
- Does the policy lead to the exclusion of specific groups from protection against trafficking, forced labour, slavery-like practices or servitude, e.g. because of their immigration status or their involvement in sex work?
- Are complaints about trafficking and/or exploitation taken seriously and duly investigated, independent of the status of the individual as undocumented worker, sex worker or on any other discriminatory ground?

Conclusions question 3b: Does the policy fulfil the principle of non-discrimination?

c. Does the policy affect women differently from men?

A human rights framework pays specific attention to equality between men and women by looking carefully at how policies might affect women differently from men. Part of achieving gender equality is combating gender stereotypes. A policy can reaffirm stereotypical roles, for example, when all trafficked women are

depicted as naïve and helpless victims. It can also challenge gender stereotypes, for example when migrant domestic workers or sex workers are depicted as knowledgeable professionals who can play an important role in combating trafficking and other abuses in domestic labour or the sex industry.

Questions:

- Does the policy affect women differently from men? If so, how?
- What is the impact of the policy on stereotypical gender roles? Does it reinforce stereotypes or challenge them?
- Are there mechanisms to lodge complaints about discrimination against women? If so, are these accessible to women affected by the policy? If not, what are the barriers?
- Does the government consider that the policy might involve discrimination against women or lead to direct or indirect discrimination against women? If so, what measures did it take?

Conclusion question 3c: Does the policy fulfil the principle of gender equality?

BOX 7: GENDER EQUALITY

Gender equality refers to the equal valuing of the roles of women and men. It works to overcome the barriers of stereotype and prejudice, so that both sexes are able to equally contribute to and benefit from economic, social, cultural and political developments within society. Discrimination against women and girls - such as gender-based violence, economic discrimination, reproductive health inequities, and harmful traditional practices - remains the most pervasive and persistent form of inequality.

d. Does the policy affect the possibilities for affected groups to seek justice in case of trafficking or other human rights violations? If so, how? What are barriers or obstacles?

In step 4 (question 5), you looked at the mechanisms through which people can lodge complaints if their rights are violated as a result of the policy, and at whether these mechanisms provide an adequate remedy. Another question is whether the policy itself affects the possibilities for people to seek justice in the event of trafficking or other human rights violations. Does the policy facilitate access to justice, or does it create additional barriers, for example by encouraging corruption or strengthening stigmas and social exclusion?

Conclusions question 3d: Does the policy fulfil the principle of access to justice and effective remedy?

BOX 8: ACCESS TO JUSTICE

In order to truly enjoy their human rights, people must have access to an effective judicial remedy in the event that their rights are not respected, no matter if the violation has been committed by the State or by a private organisation or individual.

Conclusion question 3: Does the policy and/or its outcomes fulfil the principles of participation, non-discrimination, gender equality and access to justice?

Summarise your main findings. Does the policy, and the way it is implemented, respect human rights principles? If not, what principles does it violate and why? What specific problems do the affected groups experience in relation to respect for these principles? Can you give examples?

4. Conclusion step 5: Does the policy negatively affect or violate human rights? Did you also discover positive effects?

What are your most important conclusions? What positive and negative impacts did you discover? Did you identify violations of specific human rights?

Describe which rights are affected, the violations or negative effects you encountered, and formulate the arguments that lead you to your conclusions. Indicate the sources on which you base your conclusions. Describe possible positive effects of the policy as well, if applicable, as this can help you to formulate your recommendations.

At this point in the process, it is useful to take time to assess whether the information you have is sufficient to draw conclusions. Do you have sufficient arguments that a specific right, or aspect of a right, has been (negatively or positively) affected or violated? If not, you might need to go back and try to collect more information on this specific issue. You should consider the following questions:

- Is relevant information missing?
- Did new issues arise on which you need to gather additional information?
- Is there conflicting information, or conflicting interpretations that need to be sorted out?

If you feel that important information is still missing, draw up a plan as to how you are going to fill these gaps. Are there documents you still need to collect? Do you have to go back to some of your respondents, or are there new people you need to talk to? Do you need to consult an outside expert on certain topics?

Step 6. Accountability of the State

1. Key questions step 6

1. Is the State responsible?

- Are the negative effects or violations you identified attributable to the State?
- Who are the main actors involved in the negative effects or violations you discovered? What is the relationship between the actor(s) involved and the State?
- Do governments of other countries or international actors play a role in the violation(s)?
- Who is responsible for possible positive effects you identified?



2. Does the State breach its human rights obligations?

- Do the negative effects or violations you identified constitute a breach of the human rights obligations of your State?
- To which rights and type of obligations do the negative effects or violations relate?
- What is the relationship between the negative effects or violations you found and the human rights commitments of your State?



3. Can you hold the government accountable?

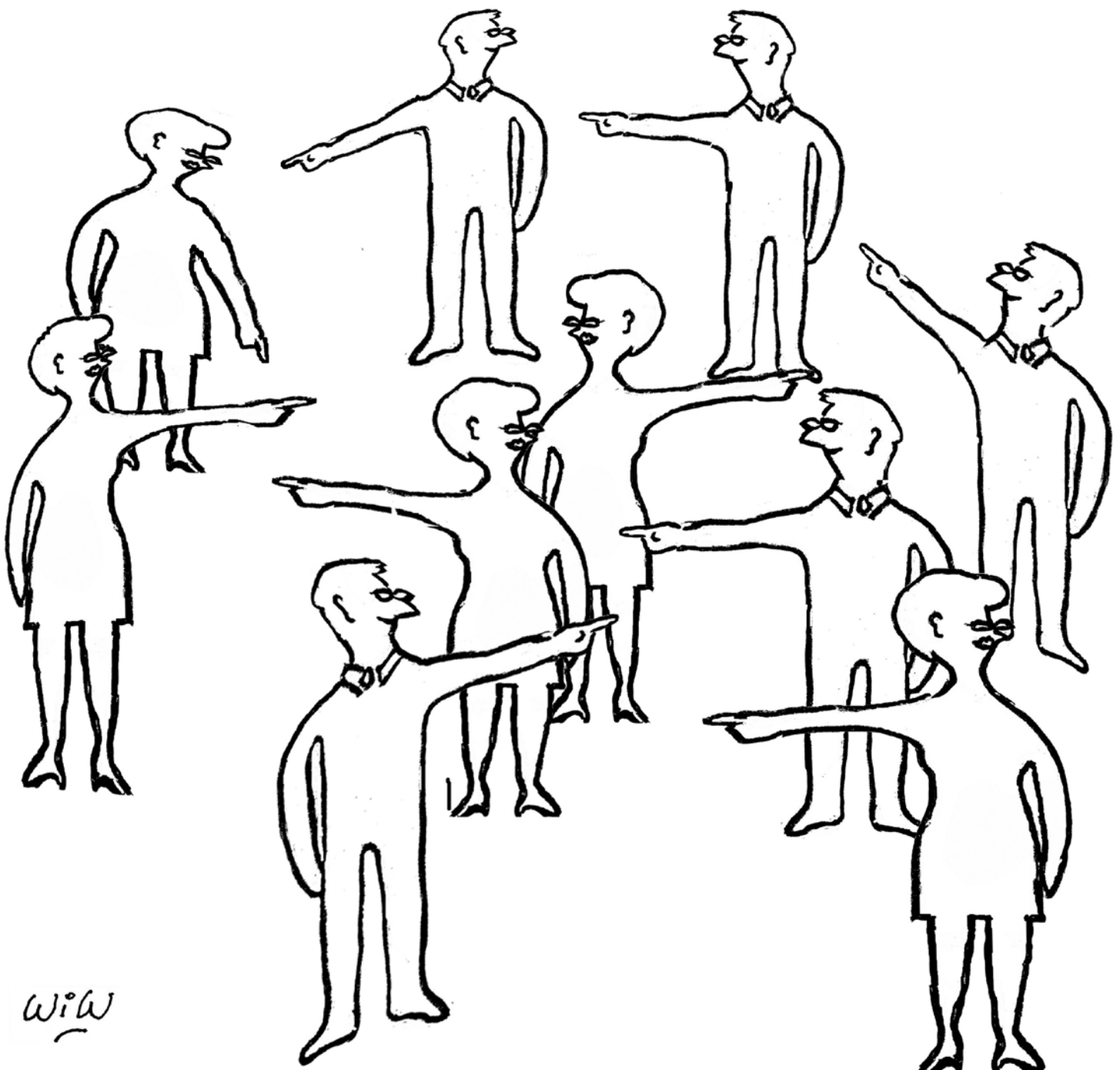
- Can you hold your government accountable for the negative effects or human rights violations you found?

2. Explanation

In step 4, you established the human rights commitments of your State. In step 5, you examined the human rights impact of the policy in practice. In this step, you determine whether, and to what extent, you can hold your government accountable for the negative impacts or violations you found. This is your actual analysis and should provide you with arguments to lobby for effective policies that respect and promote the rights of all persons affected by them.

Human rights aspects of State accountability

Accountability means that the State can be held responsible for a failure to meet its obligations under international human rights law. A State can breach its obligations by its **acts**, but also by its **omissions**, for instance by failing to protect people against human rights violations. If private actors (including national or international organisations or NGOs) commit a violation, it is the responsibility of the State to protect its people and ensure their human rights are respected. Used here, accountability means the same as responsibility. If, for example, the court fails to correct a human rights abuse,



it is the State that is responsible, even though the judge is independent.

To keep your State – and the government as its representative – accountable for the negative impacts or violations of human rights you discovered, a number of requirements must be met:

- **The act or omission must be attributable to the State.**

The State is responsible for the conduct of its organs and its representatives, such as ministries, local administrations, police or other State authorities, whether they operate at local, regional or national level. It is the responsibility of the State to ensure that they respect human rights and to undertake action when they fail to do so. States are obliged to adopt effective measures to prevent public authorities and other persons acting in an official capacity from committing, instigating, inciting, encouraging, acquiescing in, or otherwise participating, or being complicit in, human rights violations. In the event of, for example, the involvement of public officials in trafficking, abuse of sex workers or migrants by the police, or corruption of judicial authorities, the State is responsible when it knew, or should have known, about this, and failed to take actions to prevent or redress it. This also applies when the State organ or representative in question exceeds its authority or contravenes instructions.

- **The act or omission must constitute a breach of an international obligation on the State's part.** This includes the obligation to respect, protect and fulfil the human rights laid down in the treaties it ratified.

- The obligation to **respect** means that governments are not allowed to take any actions that limit or interfere (directly or indirectly) with the ability of people to enjoy the human rights laid down in the treaties to which the State is bound.
- The obligation to **protect** means that governments should not allow State actors or non-State actors (including NGOs, service providers, donor agencies or individuals) to violate the human rights involved, and that they should take measures to prevent human rights violations, including by third parties. It also implies that complaint mechanisms and remedies should be available to individuals whose rights have been violated. The obligation to protect includes the obligation to prevent, investigate and prosecute human rights abuses.
- The obligation to **fulfil** means that governments have to take positive measures to enable and assist people to enjoy their human rights (including efforts to eliminate stereotypes).

As explained in Part I, in some cases, States may take measures that restrict a certain right, but only if the measure is proportional to its aim (proportionality), if there are no other means to achieve that aim that do not or less violate the right (necessity), and if the exception is laid down in the law (legality).

Non-State actors

Under certain circumstances, States are also responsible for the conduct of private persons or entities, such as NGOs or service providers. A State is in violation of its obligations:

- when it fails to act with 'due diligence' or to take 'reasonable and appropriate measures' to prevent, to respond to, or to remedy abuses committed by private persons or entities;
- when it approves or endorses, or exerts some form of control over the conduct in question.

When the State has 'privatised' functions normally exercised by State organs (e.g. immigration controls carried out by the personnel of commercial air carriers) the State still remains responsible. In general, for State responsibility, there must be a link between the private entity and the State, such as control, approval, awareness, support, or tolerance.

An example of State accountability is the routine detention of trafficked persons or suspected trafficked persons in public or private shelters. This violates the right to freedom of movement, the prohibition on arbitrary detention, and the prohibition on sex-based discrimination (as it disproportionately affects women and girls), and can therefore be considered to be unlawful. Failure of the State to prevent unlawful victim detention by public or private agencies invokes the international legal responsibility of that State. Victims may be eligible for remedies, including compensation, for this unlawful detention.⁷

How to organise your findings

To facilitate your analysis, you can use the table at the end of this step to fill in your answers. In the first column ('impact'), you can list the negative impacts or violations you found in step 5 and the groups affected. In the second column, you note the specific right(s) affected and the type of obligation ('right/type of obligation') concerned; in the third column you write the (international and national) human rights commitments of your State that cover the right in question. This may be an international treaty or a national law. In the fourth column, you note which actor(s) are responsible for the negative impact or violation and the link between these actor(s) and the State. In the fifth, you write down your conclusions about the impacts of the policy for which your government can be held responsible.

⁷ Detention of trafficked persons in shelters: A Legal and policy analysis, Ann Gallagher & Elaine Pearson, 2008.

1. Are the negative effects or violations you discovered attributable to the State?

Who are the main actors involved in the negative effects or violations you discovered in step 5? What is the relationship between the actor(s) involved and the State?

Actors can be State agencies or representatives, as well as private persons or entities. State actors can be local, regional or national State organs or representatives, such as national ministries, local governments or other local authorities, police, etc. Local governments or even individual government officials may be the actual violators, for example in cases of corruption. Try to be as precise as possible about which State actors are involved (e.g. which level of government, which sector, ministry, department or unit etc.) and take into account that different levels of government may have different roles and responsibilities. Questions to be considered are:

- What State agencies or State representatives are involved?
- What is the role of the government?
- Is the government aware of the situation? Did it know, or should it have known, about the violations?
- Has the government taken 'reasonable and appropriate measures' to prevent or avoid negative effects and/or to protect the group(s) affected from violations?
- Does the government benefit from the violations?

If actors other than government agencies are involved in the violation, you will have to look carefully at the relationship between these actors and the State. Remember that the State has the responsibility to prevent other actors from committing human rights abuses, and to protect people from such abuses. This means that the government should take measures to prevent human rights violations by non-State actors and, in case of violations, to redress the situation. In no circumstances should the government be complicit in violations carried out by other actors. However, to be able to hold the government accountable for actions carried out by other actors, you have to establish a link between the non-State actor and the State. The following questions can help you to determine whether you can hold your government accountable for the actions of the non-State actor in questions:

- What role have the various actors played in the violation?
- Is the government aware of the violation?
- Does the government approve, or endorse, the actions of the actor concerned?
- Does the government exert some form of control over the actions of the actor?
- Has the government taken any measures to prevent, to respond to, or to remedy the abuses? If so, are

these measures adequate and sufficient?

- Does the government benefit from the violations?

Do governments of other countries or international actors play a role in relation to the violation?

In some cases, governments of other countries or international actors may be involved in the violation(s), for example, by exerting pressure regarding policies involving trafficking, sex work, migration or HIV/AIDS. Examples of international actors are UN organisations such as the World Health Organisation (WHO) or the UN Office for Drugs and Crime (UNODC), intergovernmental organisations such as the International Organisation for Migration (IOM), or international NGOs and faith-based organisations.

Who is responsible for the positive impacts you may have discovered?

You may also want to identify who is responsible for positive impacts of the policy you found. This might be useful information in drawing your conclusions and formulating recommendations for improving the policy. It also helps you to draw a full and nuanced picture of the situation.

2. Do the negative effects or violations you identified constitute a breach of the human rights obligations of your State?

To determine whether the negative effects or violations you identified result in a breach of the human right obligations of your State, you have to compare the effects of the policy in practice (step 5) with the human rights commitments your State made on paper (step 4). If you think that a right is negatively affected, or even violated, you need to be able to point to the particular international treaty or national law that the policy is failing to comply with.

To which rights and type of obligations do the negative effects or violations relate?

As discussed before, States have a set of obligations in relation to the development, implementation and evaluation of anti-trafficking policies under international human rights law:

- the obligation to meet certain minimum standards for the prevention, investigation and prosecution of trafficking and its related abuses, and the protection, assistance and compensation of trafficked persons;
- the obligation to respect, protect and fulfil the human rights laid down in the treaties they have signed and ratified;
- the obligation to comply with the key human rights principles of participation, non-discrimination, gender equality and access to justice and effective remedy.

It will not always be possible to distinguish between the failure to respect, protect or fulfil. For example, the law may put restrictions on the freedom of women

to leave their country to work abroad (obligation to respect), but as a result migrant women may be more vulnerable to trafficking practices (obligation to protect).

What is the relationship between the negative effects or violations you found and the human rights commitments of your State?

The human rights commitments of your State (which you listed in step 4) form the basis for answering this question. By comparing the practical effects of the policy with the obligations following from the human rights commitments of your State, you can determine to what extent the government has failed to meet its human rights obligations. Try to be as precise as possible, referring to an article rather than to an entire treaty. In some cases, you may not be able to find a

commitment that covers the violation because your State has not ratified the treaty that protects the right concerned. If that is the case, it will be difficult to hold your government accountable. Sometimes your State will have signed a treaty but not (yet) ratified it. However, once a State has signed a treaty, it is obliged to “refrain from acts which would defeat the object and purpose of the treaty”.

3. Can you hold your government accountable for the negative effects or violations you found?

For which negative effects or violations resulting from the policy can you hold your government accountable? Write your conclusion in the last column of the table. This marks the end of your analysis.



Table 4: Impact and accountability of your government

Main human rights effects of the policy & groups affected (step 5) (Mark with +, -, or o, if you consider this positive, negative or neutral)	Right and type of State obligation	Relevant human rights commitments of your State (step 4)	Responsible actor(s) & link between the actor and the State	For which effects can you hold your government accountable?
a.				
b.				
c., etc.				

Step 7: Recommendations & action plan

1. Key questions step 7

1. Discuss & share your findings

- How will you involve and inform the affected groups and other relevant stakeholders?
- Can you involve other relevant stakeholders in formulating and prioritising your recommendations?



2. Formulate your conclusions & recommendations

- What are your main conclusions and recommendations?
- To whom do you address your recommendations?
- How do you formulate your recommendations?



3. Write your report

- Write your draft report
- Discuss whether you want to circulate it among some or all of the stakeholders, in particular the groups affected, or have it critiqued by people you trust
- Double check your statements and references!
- Finalise your report
- Discuss how to present your report



4. Develop your action plan

- Who is your target audience?
- Who are the decision makers?
- What advocacy actions will you undertake?
- What advocacy opportunities do you have?
- What other actors do you want to approach?
- When and how will you know that the government has taken action based on your recommendations?
- How will you evaluate your actions?
- What do you need to implement your action plan?

2. Explanation

This step helps you to put the outcomes of your analysis into action. It serves to organise your information, formulate precise recommendations, draft your report and decide what kind of action you want to undertake to promote your recommendations. This step aims to formulate the rights based arguments you need to change or adapt the policy in line with your findings.

Participation

At this final stage, participation by the most affected groups is also crucial. They have an important role in shaping your conclusions and recommendations. Sharing your findings with them offers you an opportunity to check your findings and ensure that your recommendations respond to their concerns and views.

Advocacy & lobbying

In essence, advocacy is promoting and sharing the message that will help you to bring about change. The different tactics you use for your lobbying and advocacy make up your strategy. This can be anything from publishing a report or leaflet with your main findings to organising a panel discussion with relevant policy-makers, speaking to the Minister, or presenting your recommendations to the media. These activities, and all the work involved, will need to be part of your action plan.

Before developing your action plan, seek out the best opportunity to air your message. Keep in mind that lobbying for policy changes takes time. More often than not, you will not see immediate results. However, informing relevant stakeholders, institutions, media, politicians, etc. is important, and can open up a dialogue that, in the long run, may lead to change. So use the outcomes strategically.

Integrate them into your long-term advocacy activities, and share lessons learned about the process. In this way, the assessment process will not be a one-off activity, but will strengthen your overall capacity to work from a rights-perspective.

1. Discuss and share your findings

How will you involve and inform the affected groups and other relevant stakeholders?

The primary stakeholders are the directly affected groups. Share your findings with them and discuss which of your conclusions need to be addressed most urgently, and what change would be achievable and most effective in improving the situation. Build your recommendations from these discussions and prioritise them together. By doing so, you empower the groups affected and create support for your lobbying efforts. You may also want to think about involving

other sympathetic stakeholders in the development of your recommendations and action plan. Identify organisations that may be interested in working with you to promote your recommendations, as well as other experts, institutions or persons who may help you to formulate and prioritise your recommendations. Involving stakeholders also helps to raise awareness about the situation and the need for change.

2. Formulate your conclusions and recommendations

What are your main conclusions and recommendations?

For each of the negative effects or violations you found in the previous step, try to formulate a recommendation to change the policy in such way that it improves the human rights situation of the affected groups and avoids negative impacts. Determine which recommendations are the most important and prioritise them. It may help if you identify the most positive possible impact of the policy (the ideal situation) and then compare this with your main findings. What needs to be changed, according to your findings, in order to achieve this ideal situation? If a change in the policy does not offer a solution, what action should the government take? Consider, also, the extent to which your organisation is willing and able to assist the government or other actors in the further development and implementation of the recommendations.

Be sure you take into account all affected groups. Keep in mind that, within one group, different subgroups may be affected in different ways. The impact of a restrictive immigration policy may have a different impact on female migrant workers from male migrant workers. Measures to restrict migration for domestic work will affect mainly women, while measures aimed at criminalising the clients of sex workers will have different effects on those who work on the streets compared with those who work from home, or on male and transgender sex workers. These differences should be taken into account in your recommendations. Below, you find some questions which may be helpful in formulating your recommendations.

To whom do you address your recommendations?

Many of your recommendations will be directed at the government and/or other governmental actors. However, you might also have recommendations for other stakeholders, including non-governmental actors. Target your recommendations to the specific actors you identified in step 6. Below are questions to consider for each set of actors:

- What kind of arguments are they sensitive to?
- What kind of language are they sensitive to?
- What do they know about human rights?
- What specific findings do you want to highlight?

How do you formulate your recommendations?

Formulating good recommendations is a challenging job. The checklist below may help.

Checklist for formulating good recommendations

- Be SMART: formulate recommendations that are, as far as possible Specific, Measurable, Achievable, Realistic and Time-bound.
- Rights based: some governments or policy makers may not be aware of their human rights obligations. This may mean that you have to explain to them very specifically what the obligations of the State are in relation to anti-trafficking policies, based on your findings.
- Be successful: try to be as realistic as possible. In many cases, an easy solution will not be available and change will not come easily. Try to formulate recommendations that are achievable.
- Be prepared for counterarguments: what counterarguments do you expect the government or other State authorities to use? What will be your arguments to refute these? Keep in mind that it is the responsibility of the government (as the representative of the State) to ensure that human rights are protected.
- Include benchmarks: benchmarks make it easier to monitor improvements. For each of your recommendations, you could try to formulate benchmarks that can be used as a basis for measuring improvements.
- Type of arguments: depending on who needs to be convinced, it may be strategic to use more legal, practical, financial, political etc. arguments.
- Affected groups: ensure that the recommendations and solutions suit the groups most affected by the policy.
- Policy stage: take into account the stage the policy is at, as this may determine the type of solution or recommendation you propose, and whom you want to approach.
- Ownership: you could try and involve the policy makers responsible in the search for alternatives. This may increase their feeling of ownership of the suggestions, and the chances for their acceptance.

In general: Keep your recommendations as short and concrete as possible!

of this section, you will find an example that closely follows the structure of your analysis.

You have probably collected more information than you will be able to present to the government or other actors. For successful lobbying, you need to decide what information to present and how. Below are some factors that should be considered:

- Format: information can be presented in written, oral and/or visual form. Different formats will be useful in addressing different target groups. Depending on who you present the information to, you may want to highlight some findings more than others.
- Length: keep it as short as possible. Include only information required to support your arguments and – where needed – examples and data to clarify and illustrate.

With whom do you want to share your draft report?

When you have finished your draft report, discuss with your team whether you want to circulate it among some or all of the stakeholders, in particular the affected groups. There might, however, be circumstances under which you do not want to share the report in advance. This is your decision.

You might also want to request comments from other people within your organisation, outside experts, or people you trust. It is always helpful to ask people who were not involved to critique your draft. They will more easily see where the report is not clear, where there are gaps, where information is missing or can be left out, or where you have to reformulate your text. This will improve the quality of your final report. If you share the draft report and ask for comments, be prepared that this can take some time. Always set a deadline and leave time for your team to include the comments. When you circulate the report within your organisation and/or amongst others, it is possible that you will receive conflicting comments and that you will not be able to integrate all comments in the report. Always make it clear that you are responsible for the report, and that the final decisions about its content lies with your team. Make sure that all members of your team agree with the content.

Double check your statements and references

Ensure that all statements you make are backed up with good references. A report with undocumented assertions is not credible and will not help you to achieve your aims. It might expose you to accusations of damaging the reputation of the agencies or people involved or, in the worst case, a law suit. Be careful to double check whether you adequately protected the privacy or anonymity of participants or respondents who requested you to do so.

3. Write your report

Your report forms the basis for your lobbying and for other materials you might want to develop, e.g. leaflets with the main findings for specific target groups. You can organise your report in different ways. At the end

Table 5: Impact and accountability of your government

1. INTRODUCTION

Here, you describe why you did the assessment, its objectives, your team, the methods you used to collect information, and what each section of the report covers.

2. THE POLICY

In this section, you describe the problem and the law, policy or measure you analysed, its official and unofficial aims, the way it is implemented and by whom, the groups the policy aims to target, and the groups that are affected in practice, how the affected groups perceive the problem and the policy, and which human rights are at stake.

3. THE NATIONAL LEGAL, POLITICAL AND SOCIAL CONTEXT

In this chapter, you describe the national legal, political and social environment: the way trafficking is defined in your law, how it is implemented and what possible problems are attached to it. You might also discuss here the National Action Plan on Trafficking (if there is one), and other laws, policies and practices that are relevant to the problem or policy. You may also say something about the public and political climate, and the role other States or international organisations play. In all cases, focus on the information that is relevant to the problem and the policy you analysed.

4. HUMAN RIGHTS IN THEORY: THE HUMAN RIGHTS COMMITMENTS OF THE STATE

In this section, you discuss the commitments made by your State at the national and international level with regard to human rights. What does the Constitution or other laws and policies, including any National Action Plan on Trafficking, say about human rights? To which human rights treaties is your State a party, and what

obligations do these entail? Where applicable, you can also refer to the General Comments of the treaty bodies or other relevant human rights documents. You could also devote a section to human rights principles.

5. HUMAN RIGHTS IN PRACTICE: THE IMPACT OF THE POLICY ON THE HUMAN RIGHTS OF THE GROUP(S) AFFECTED

In this chapter, you present your main findings with regard to the impact of the policy on the human rights of the groups affected. You can use the three sets of key obligations you researched in step 5 as the organising principle, or you can immediately focus on the main rights involved. In any case, make sure that you clearly describe the relationship between the anti-trafficking policy and its impact on the human rights of the groups affected.

6. DOES THE GOVERNMENT MEET ITS HUMAN RIGHTS COMMITMENTS?

The core of this chapter is a comparison between your findings about the impact of the policy in practice (human rights in practice) and the human rights commitments of the State on paper (human rights in theory). You conclude with the violations and negative effects for which the government can be held responsible.

7. CONCLUSIONS & RECOMMENDATIONS

Under conclusions, you summarise your main findings and conclusions. In most cases you will have various recommendations to the government or other governmental authorities involved. However, you may also have recommendations to non-governmental actors. Try to be as concrete and realistic as possible, and be clear about which actors the various recommendations are addressed to.

Discuss how to present your report

Since your report will be read by many people, pay attention to an attractive lay out. Also think about different formats for presentation. If, for example, you want to lobby politicians, a 2-page factsheet is much more effective than a 40-page report. If you want to present it to a wider audience, you might think of visual material to illustrate your report, such as a photo exhibition or short video in which, for example, you interview the members of your team about the process of making the assessment.

Plan how you will attract attention to your report. Do you want to organise a public event around it, do you want to present it to a special person or at a special occasion, to whom do you want to send it, do you want

to post it on the internet? What is the most strategic method, time and place to present your report?

4. Develop your action plan

When you draft your action plan, make use of the stakeholders analysis you conducted in step 2, and your analysis of opportunities and threats in step 3. Who are possible allies or supporters and what obstacles can you anticipate? Can you link up with other groups, organisations or individuals? You may also want to make an analysis of the strengths and weaknesses of your organisation or network of organisations. If you are not very experienced with lobbying, it is a good idea to ask for advice from

more experienced organisations. You may also link up with other organisations to make sure that your recommendations are supported by a coalition or platform.

Below are some questions you may consider when building your action plan. At the end, you will find a format that may be useful (table 6).

Who is your target audience? Who are the decision makers?

To enhance your chances of success, it is important to think about who the decision makers are (see your analysis in the quick scan). Can you directly influence those who have the power to change the policy? If they do not listen to you, to whom do they listen? Can you influence those who can influence the decision makers? What kind of arguments are they sensitive to?

Think about whom you are going to present your findings and recommendations to, what persons, at what governmental level, with what roles and competences. Are they in a position to implement your recommendations, or do they need authorisation from a higher level? Have certain government responsibilities been delegated to the municipal or regional level? Should you aim your lobbying at those developing the policy, or at those implementing or evaluating it?

What kind of advocacy actions will you undertake?

The key question here is how you can most successfully present your recommendations to your target group(s). Be strategic and make use of your experience, networks and contacts. Brainstorm on what activities are realistic, useful and within your capacity. For each activity, identify the resources required and develop a time frame. Think, for example, of approaching the press, mobilising the affected community, or alerting the international community. Below are some examples of follow-up actions:

- A press conference to launch the report;
- Workshops and seminars involving the affected groups, experts, government representatives, etc.;
- Dialogue with the government and/or other responsible actors.
- National and international campaigns;
- Use the media. Think also of internet fora or mailing lists, Facebook, YouTube, etc.;
- Legal actions seeking redress or prosecution of violations;
- Use of international human rights mechanisms, e.g. using your findings to write a shadow report to the treaty body of the Women's Convention (CEDAW) or the ICCPR;
- Human rights training activities aimed at affected groups or communities.

What advocacy opportunities do you have?

Time your lobbying activities for when the government will be most likely to listen to your arguments. This requires some insight into the government's agenda or that of other actors you want to approach. A conference, a debate in parliament, a visit by a senior official etc. can be a strategic moment to present your findings.

What other actors do you want to approach?

What other national or international government officials, NGOs, donor agencies or others might be capable of putting external pressure on your government or relevant private actors? When aiming your lobbying at these actors, keep in mind what their role or mandate is, and what kind of arguments they are sensitive to.

When and how will you know that the government has taken action on the basis of your recommendations?

This requires information about the government's agenda and procedures. Will the recommendations be officially discussed? Can you be present at those sessions? What other ways exist for determining if the government or other State authorities have acted upon your recommendations?

How will you evaluate your actions?

Make a plan for evaluating your activities. Set criteria/indicators for the changes you aim to achieve, and establish a time frame to determine whether you have been able to achieve them. This will help you to keep focused.

What do you need to implement your action plan?

Developing a time frame and budget will help you to make a realistic action plan and may be useful if you request external assistance. The table below will help you create an overview of your action plan. This will help you structure the information you need and get you ready for action.

Last but not least: when you make your action plan, be **REALISTIC** about what you can achieve! Think about goals that are feasible to attain, so you will be effective and be able to enjoy your successes!

You have now completed the analysis, as well as your recommendations and action plan. If all has gone well, you have built up solid argumentation about the impact of the policy and what you can expect from the government to improve the situation. You have also looked at the involvement of other actors at the national and international level. Your action plan should help you start with effective lobbying activities to convince the government and other actors of the need for better anti-trafficking policies that respect and protect human rights!

Use your findings to write a shadow report.



Table 6: Format Advocacy action plan

Recommendations:					
Advocacy messages:					
On the basis of your recommendations you may formulate one or more advocacy messages. These also depend on the target audience you choose. Each audience requires its own appropriate language.					
Target audience:					
Identify the audiences you want to target. You can divide them into primary and secondary audiences. For example: the Minister is your primary audience, but your secondary audience includes civil servants and policy makers, who can propose changes and ideas to the Minister.					
Description activities:					
Describe each advocacy activity you plan to carry out. Describe what tasks belong to what activity, and who is responsible.					
Communication channels:					
What communication channels will you use to present your recommendations and advocacy message? Select the appropriate channel for each activity.					
Support & funding:					
What kind of resources do you need to implement the activities? Do you need to raise extra funds? Can you use low-cost strategies?					
Monitoring & evaluation:					
An advocacy campaign can be a long-term commitment. Monitor the implementation of the activities and what kind of effects it has. When will you achieve success? Evaluate your actions. Do you need to adjust them?					
Timeline:					
Date	Month 1	Month 2	Month 3	Month 4	Month 5, etc.
Activity planned					

Glossary

This glossary is meant to be a helping hand which can guide you through difficult terms you might find in The Right Guide. We have chosen the definitions which we thought explained the term most clearly in the context of human rights and trafficking. The list is not exhaustive.

Accountability: A State can be held responsible when it fails to respect, protect and fulfil the human rights laid down in the treaties it has signed and ratified.

Adequate remedies: See Remedies.

Advocacy: A process aimed at influencing decisions regarding policies and laws at national and international levels; actions designed to draw a community's attention to an issue and to direct policymakers to a solution.¹ Advocacy requires the existence of explicit mechanisms for the participation of organisations of civil society.

Affected groups: Groups or communities directly impacted by the policy. In case of trafficking for example trafficked persons, (specific groups of) migrant workers or sex workers.

Anti-prostitution pledge: The US federal government requires NGOs that receive federal anti-HIV/AIDS or anti-trafficking funds to adopt an organisation-wide policy opposing prostitution and trafficking for the sex industry. The pledge is based on the US Global Aids Act² which identifies prostitution and sex trafficking as contributing to the spread of HIV and explicitly advances the eradication of prostitution.

Arbitrary arrest/detention: The detention or arrest of persons that is not authorised by law or without any legal ground authorising the arrest. Moreover the law must itself not be arbitrary and its application must not take place arbitrarily. The word 'arbitrary' refers to elements of injustice, unpredictability, unreasonableness, capriciousness and lack of proportionality, as well as the common law principle of due process of law.³

Bonded labour: See Debt bondage.

CAT: See Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

CEDAW: See Convention on the Elimination of All Forms of Discrimination against Women.

Council of Europe: The Council of Europe, based in Strasbourg (France), covers virtually the entire European continent, with 47 member countries. Founded on 5 May 1949 by 10 countries, the Council of Europe seeks to develop throughout Europe common and democratic principles based on the European Convention on Human Rights and other reference texts on the protection of individuals.

CoE CAT: See Council of Europe Convention on Action against Trafficking in Human Beings.

Concluding Observations: Set of comments issued by a treaty monitoring body containing its collective assessment of the State's compliance with its treaty obligations and recommendations for enhanced implementation of the rights in question.

Consensus documents: Documents which have been adopted by the UN General Assembly by declaration. Though they are not legally binding, governments have a moral obligation to abide by them as they are based on political agreement. An example is the Beijing Platform for Action and the UN Declaration on the Elimination of Violence Against Women.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT): Prohibits any form of torture or inhuman or degrading treatment or punishment. See also non-refoulement.⁴

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW): Aims at preventing and combating all forms of discrimination against women in both private and public life. The Convention indicates ways to combat discrimination and what the government must do in order to improve the position of women in their country. The Convention has currently been ratified by 186 countries.⁵

Convention on the Rights of the Child (CRC): The Convention sets out the basic human rights that children everywhere have. The four core principles of the Convention are non-discrimination; devotion to the best interests of the child; the right to life, survival and development; and respect for the views of the child.⁶

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

¹ Women, Law and Development International, 1997, page 163.

² United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act (Global AIDS Act) of 2003 HR 1298 at [frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_public_laws&docid=f:publo25_108.pdf](http://www2.ohchr.org/english/law/cat.htm)

³ *Using Law against Enforced Disappearances*, Aim for Human Rights, glossary; Detention of trafficked persons in shelters: A legal and policy analysis, Ann Gallagher and Elaine Pearson, 2008.

⁴ www2.ohchr.org/english/law/cat.htm

⁵ www2.ohchr.org/english/law/cedaw.htm

⁶ www2.ohchr.org/english/law/crc.htm

⁷ www.coe.int/t/dghl/monitoring/trafficking/Docs/Convntn/CETS197_en.asp#TopOfPage

adopted in 2005. It is a comprehensive treaty mainly focused on the protection of victims of trafficking and the safeguard of their rights and reinforcing the principles of non discrimination and gender equality. It also aims at preventing trafficking as well as prosecuting traffickers. The Convention applies to all forms of trafficking; whether national or transnational, whether or not related to organised crime. It applies whoever the victim: women, men or children and whatever the form of exploitation: sexual exploitation, forced labour or services, etc. The Convention provides for the setting up of an independent monitoring mechanism guaranteeing parties' compliance with its provisions.⁷

CRC: See Convention on the Rights of the Child.

Criminalisation: The process by which certain acts or behaviours become crimes to be fought by a judicial system. Acts and behaviours may be transformed into crimes by legislation or by judicial decision. All state parties to the UN Trafficking Protocol must criminalise trafficking and provide for appropriate penalties.

De facto: 'In reality' or 'in fact'. Way of expressing a situation existing in fact, whether with lawful authority or not.⁸ See also: de jure.

De jure: 'By law' or 'by right'. Way of expressing how a situation/ something is, or should be, according to the law. In practice, the actual situation does not always conform with the law.⁹ See also: de facto.

Debt bondage: Refers to the system by which workers are kept in bondage by making it impossible for them to pay off their (real, imposed or imagined) debts. It is considered to be a form of forced labour as well as a slavery-like practice.¹⁰

Declaration: A formal statement, a positive or explicit proclamation, a common name for a non-binding international agreement.

'Do not harm' principle: Anti-trafficking measures must not undermine or negatively impact on the rights of particular groups, including trafficked persons, migrant workers and sex workers.

Due diligence: States have a responsibility under international law to act with due diligence (*good faith*) to investigate and prosecute trafficking cases.

Duty bearer: In a human rights based approach governments and therefore public authorities/service providers are duty bearers; they have a duty to respect, protect and fulfil the human rights of all persons on their territory and are obligated to demonstrate how they are working towards realising people's rights. See also: rights holder.

ECHR: See European Convention on Human Rights.

Empowerment: Interventions aimed at giving people the power, capacities, capabilities and access needed to change their situation, to speak up for their own rights and, in the case of trafficked persons, to take back control of their lives.

European Convention on Human Rights (ECHR): Also called 'Convention for the Protection of Human Rights and Fundamental Freedoms'. This convention was adopted by the Council of Europe in 1950 to protect human rights and freedoms. All member States of the CoE are party to this treaty. There are now 47 states party to the treaty.¹¹

Exploitation: Includes according to the UN Trafficking Protocol, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.¹²

Focus group: A form of qualitative research in which a group of people are asked about their perceptions, opinions, beliefs and attitudes towards a product, service, concept or idea.¹³

Forced / compulsory labour: 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.¹⁴

Free choice of employment and to just and favourable conditions of work, Right to: See factsheet 13.

Freedom from forced labour, slavery, slavery like practices and servitude, Right to: See factsheet 9.

Freedom of movement, Right to: See factsheet 10.

Gender: While 'sex' refers to the biological differences between males and females, gender describes the socially-constructed roles, rights and responsibilities that communities and societies consider appropriate for men and women. We are born as males and females, but becoming girls, boys, women or men is something that we learn from our families and societies. It is this learned behaviour that forms gender identity and determines gender roles; these are not necessarily the same all over the world, or even within a country or region.¹⁵

Gender equality: Is, first and foremost, a human right and refers to a social order in which women and men share the same opportunities and the same constraints on full participation in both the economic and the domestic realm. Part of achieving gender equality is combating gender stereotypes. See also: Gender.

⁸ www.hyperdictionary.com

⁹ Ibidem.

¹⁰ Article 1a Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956) at www2.ohchr.org/english/law/slavetrade.htm.

¹¹ <http://conventions.coe.int/treaty/en/Treaties/Html/005.htm>

¹² UN Trafficking Protocol (2000) at www.unodc.org/pdf/crime/a_res_55/res5525e.pdf, Article 3a.

¹³ http://en.wikipedia.org/wiki/Focus_group

¹⁴ Article 2 ILO Forced Labour Convention (1930) www.ilo.org/ilolex/cgi-lex/convde.pl?Co29.

¹⁵ www.unicef.org/gender/index_bigpicture.html

General Recommendations / General Comments: Documents explaining how a particular treaty should be interpreted and applied. These are written by the Committees which monitor the implementation of the human rights treaty in question (also called Treaty Bodies).

Government: The word government in the trafficking tool is used in a broad sense. It covers the law and policy-making forces, as well as the government institutions that are responsible for the implementation of policies. It also includes different levels: local, regional and national government. In international law the government is the representative of the State.

Health, Right to: See factsheet 15.

HRIA: See Human Rights Impact Assessment.

Human rights: The rights possessed by all persons, by virtue of their common humanity, to live a life of freedom and dignity. These rights and freedoms are universal and indivisible. Human rights become enforceable when they are codified as Conventions, Covenants or Treaties, or when they become recognised as customary international law.¹⁶

Human Rights Approach: See Rights based approach.

Human Rights Impact Assessment (HRIA):

A process to measure the gap between the commitments made by the State (human rights in theory) and the actual ability of specific individuals, groups and communities in the country to enjoy these rights (human rights in practice).

ICCPR: See International Covenant on Civil and Political Rights.

ICERD: See International Convention on the Elimination of All Forms of Racial Discrimination.

ICESCR: See International Covenant on Economic, Social and Cultural Rights.

ICRMW: See International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

ILO: See International Labour Organisation.

Impact: A general term used to describe the effects of a measure on society. Impact can be either positive or negative and foreseen or unforeseen. It can be caused either directly or indirectly by an initiative and be either intended or unintended. Initial effects are called outcomes/results, whilst impact is usually longer-term.¹⁷

Implementation: The way a law, policy or measure is applied in practice.

Indicator: A characteristic or attribute which can be measured to assess an activity in terms of its outputs or impacts. Indicators can be either quantitative or qualitative.¹⁸

International Bill of Human Rights: The Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966) together comprise what is called the International Bill of Human Rights.

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD): Prohibits racial discrimination, e.g. any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.¹⁹

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW): Adopted in 1990, the ICRMW protects the rights of migrant workers and their families. The convention ensures that migrant workers are entitled to enjoy their human rights, regardless of their legal status.²⁰

International Covenant on Civil and Political Rights (ICCPR): Adopted in 1966, the ICCPR declares that all people have a broad range of civil and political rights, e.g. the right to life, the right to equality before the law and the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment.²¹

International Covenant on Economic, Social and Cultural Rights (ICESCR): Adopted 1966, and entered into force 1976, the ICESCR declares that all people have a broad range of economic, social and cultural rights, e.g. the right of everyone to the enjoyment of just and favourable conditions of work and the right to an adequate standard of living.²²

International Human Rights Law: Set of international rules, established by treaty or custom, on the basis of which individuals or groups can expect and claim certain entitlements or benefits from governments.

International Labour Organisation (ILO):

The ILO is a specialised agency associated with the UN and is the global body responsible for drawing up and overseeing international labour standards. It has 183 member countries and consists of

¹⁶ Human Development Report 2000 Glossary: www.undp.org/hdr2000/english/presskit/glossary.pdf

¹⁷ Mike Dottridge, 'Draft Glossary for European Commission Expert sub-group on the policy needs of data on *Trafficking in Human Beings*' (12 September 2007).

¹⁸ Ibidem.

¹⁹ www2.ohchr.org/english/law/cerd.htm

²⁰ www2.ohchr.org/english/law/cmw.htm

²¹ www2.ohchr.org/english/law/ccpr.htm

representatives of national governments, employers organisations and trade unions.²³

International labour standards: Legal instruments drawn up by ILO that set out basic principles and rights at work. They are either conventions -which are legally binding international treaties- or recommendations, which serve as non-binding guidelines.

Laws: A rule or body of rules established by a governing authority to institute and maintain orderly coexistence.²⁴ They can be found in law books, e.g. the Penal Code or Civil Code.

Life, liberty and security, Right to: See factsheet 8.

Lobbying: Lobbying is the practice of seeking to influence the legislature or policy development. Lobbying can be conducted by an individual, a group, an organisation or an association which actively tries to influence a governing body so that its point of view becomes reflected in the legislature or policy development.²⁵

Mapping and modelling: Method of analysis consisting of persons mapping, drawing or colouring some aspects of their reality. By mapping their reality people can illustrate their perception of the situation.

Measures: Any concrete action to enforce a law or policy, mostly on the local level. They are more concrete than practices, laws and policies and often easier to change.

Migrant worker: A person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national. Migrant workers are considered as *documented* if they are authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party; they are considered as non-documented (or undocumented) if they do not comply with the above mentioned conditions.²⁶

National Action Plan on Trafficking: Overarching plan created by a government which specifies in detail how the government aims to prevent and combat trafficking in human beings. Normally it covers a specified period of time.

Negative obligations: refers to the duty of States to refrain from interfering in the exercise of a human right.

NGOs: See Non-Governmental Organisations.

Non-discrimination, Principle of: All human beings are equal and no person should be subjected to discrimination. In the context of anti-

trafficking it means that no measures should be used to directly or indirectly discriminate against women, migrants, sex workers or other groups. It also means that protections for trafficked persons should be applied without discrimination with respect to gender, ethnicity, immigration status, and/or the fact of a trafficked person's having been trafficked formerly or having participated in the sex industry.

Non-discrimination, equality for the law and equal protection by the law, Right to: See factsheet 6.

Non-governmental organisations (NGOs):

Legally constituted organisations that are not part of or created by the government and fully independent from it. They can operate on an international, national, regional or local scale on the basis of different mandates, agendas and priorities. Human rights organisations are often NGOs.

Non-refoulement: Principle prohibiting countries to return or extradite a person to his or her state of origin (or any other state) if there is reason to believe that he or she would be in danger of being subjected to torture.²⁷

Obligation to respect/protect/fulfil:

Respect: Requires the state to refrain from interfering with, curtailing or undermining the enjoyment of human rights.

Protect: Requires the state to protect individuals and groups against human rights abuses and to take measure to prevent human rights violations. This includes measures to prevent third parties from violating rights.

Fulfil: Requires the state to take positive action to facilitate the enjoyment of basic human rights.

Optional Protocol: A separate treaty associated with a parent treaty, under which State parties to the parent treaty may choose to undertake additional obligations, e.g. to give individuals or groups the right to complain to the Treaty body about violations of the rights contained in the treaty in question.²⁸

Organisation for Security and Cooperation in Europe (OSCE): Regional inter-governmental security organisation which serves as a political forum for dialogue and aims to secure stability, conflict prevention, crisis management and post-conflict rehabilitation in the region.

Palermo Protocol: See Trafficking protocol.

Parent Treaty: A treaty, which is supplemented by additional treaties or protocols. The UN Convention Against Transnational Organised Crime is, e.g., the parent convention of the Trafficking Protocol.

Participation: The involvement of people in decisions that affect their

²² www2.ohchr.org/english/law/ceschr.htm

²³ www.ilo.org

²⁴ www.lectlaw.com/def/loog.htm

²⁵ www.ohchr.org/english/issues/millennium-development/resources.htm

²⁶ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families at www2.ohchr.org/english/law/cmw.htm, Article 2.1 and 5.

²⁷ UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (19 December 1984), Article 3.

rights, including the development, implementation and evaluation of policies.

Peaceful assembly and association, Right to: See factsheet 14.

Periodic reports: State parties have to submit reports at regular intervals to treaty bodies on the implementation of the treaty in their national law and practice.

Policy: Policies are instituted to enforce laws, solve problems or achieve a positive benefit. Often policies are laid down in official documents. They can be national, regional or local. In this guide, the term policy is used in a broad sense: it refers to all kinds of actions of the national or local government or other authorities, ranging from laws, national strategies, policies or practices to specific measures, decisions to allocate resources etc.

Positive obligations: refers to the duty of States to take positive action to realise a human right. States have to provide the conditions for the exercise of a right to the best of their capacity.

Practices: A customary or habitual way of operation or behaviour. This may be based on religious or social customs.

Privacy and family life, Right to: See factsheet 12.

Proportionality, Principle of: Most human rights are not absolute. That means States may take measures that restrict a certain right, but only if the measure is proportional to the aim for which it is taken (proportionality), if there are no other means to achieve that aim that do not or less violate the right (necessity), and if the exception is laid down in the law (legality).

Ratification/ratify: Ratification is a procedure by which a State becomes a party to a treaty. Once it has ratified the State is legally bound by the terms of the treaty. Signature often proceeds ratification. See also: Signature/sign.

Recommended Principles and Guidelines on Human Rights and Human Trafficking: The principles and guidelines have been developed by the UN High Commission for Human Rights in order to provide practical, rights based policy guidance on the prevention of trafficking and the protection of victims of trafficking. Their purpose is to promote and facilitate the integration of a human rights perspective into national, regional and international anti-trafficking laws, policies and interventions.²⁹

Remedies: Means for redress, solution provided to victims affected by crimes and violations of fundamental rights. Remedies include: effective access to justice; access to relevant information; and reparation mechanisms including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

Reservation: Written statement by a State limiting the scope of application of (a) provision(s) of a human rights treaty. The reservation is only valid when it is compatible with the object and purpose of the treaty, if the treaty does not prohibit reservations and if other States Parties do not object to the reservation.

Rights based approach: A rights based approach is a conceptual framework that is based on international human rights standards and directed to promoting and protecting human rights. It integrates the norms, standards and principles of the international human rights system into policies and processes. The norms and standards are those contained in international treaties and declarations. The principles include equality and equity, non-discrimination, accountability, empowerment and participation.³⁰ A human rights based approach identifies rights holders and their entitlements and corresponding duty bearers and their obligations, and works towards strengthening the capacities of rights holders to make their claims and of duty bearers to meet their obligations.

Rights holders: In a rights based approach human beings are not passive users of public services but active holders of fundamental rights. If governments fail to implement their human rights commitments, they can be held accountable for their (lack of) actions by individuals and groups with valid claims, i.e. rights holders.

SAARC Convention: See South Asian Association for Regional Cooperation Convention on Preventing and Combating Trafficking in Women and Children in Prostitution.

Seek asylum and to non-refoulement, Right to: See factsheet 11.

Servitude: is a wider concept than slavery. It covers exploitative conditions of work or service, which you cannot change or from which you cannot escape. The European Court for Human Rights defined servitude as “an obligation to provide one’s services under coercion, which is to be linked to the concept of slavery”.³¹ See factsheet 9.

Sex work: The rendering of sexual services in exchange for money.

Sex worker: A person who works in the sex industry.

Shadow Report: Reports created by one or more NGOs which analyse the status of implementation of human rights obligations/commitments at the national level. In these reports, NGOs provide information that supplements government reports and thus assist the committees that monitor the treaties to address concerns that are omitted, neglected or misreported by the government.³² Shadow reports are also referred to as alternative reports.³³

²⁸ www.un.org/womenwatch/daw/cedaw/protocol/whatis.htm

²⁹ www.ohchr.org/Documents/Publications/Traffickingen.pdf

³⁰ Office of the United Nations High Commissioner for Human Rights.

³¹ Siliadin v. France, No. 73316/01, 26 July 2005.

³² <http://swf.uzo.org/women2000.txt>

Signature/sign: Often a State first signs a treaty before ratification. This implies a commitment to ratify and obliges a State to refrain from acts that defeat the object and purpose of the treaty or undermine it. See also: Ratification/ratify.

Slavery: The status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.³⁴

Slavery-like practices: Include debt bondage, serfdom, servile forms of marriage and the exploitation of children and adolescents.³⁵

Smuggling of migrants: the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.³⁶

South Asian Association for Regional Cooperation Convention on Preventing and Combating Trafficking in Women and Children in Prostitution (SAARC Convention): Adopted in 2002. The Convention calls for cooperation amongst Member States in dealing with various aspects of prevention, interdiction and suppression of trafficking in women and children for prostitution, and repatriation and rehabilitation of victims of trafficking. A Regional Task Force has been formed in all the Member States to monitor and assess the implementation of the Convention.³⁷

Special Rapporteur: Individuals working on behalf of the UN to investigate, monitor and recommend solutions to human rights. They are appointed by the UN Secretary General and act independently of governments. In 2004, the first UN Special Rapporteur on trafficking in persons was appointed.

Stakeholders: All persons, groups or organisations, including government agencies, whose interests are affected or will be affected by a policy.

State: Includes all actors in the course of exercising a public function, such as (national, regional or local) administrations, public services, national courts, the police and the army.

Supervisory committee: See Treaty Body.

Trafficked persons: A person who is trafficked is entitled to assistance and protection on the very basis of that fact.

Trafficker: A person who is guilty of trafficking in human beings.

Trafficking in persons: Also called trafficking in human beings/human trafficking. Art. 3 of the UN Trafficking Protocol defines

trafficking as: the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.³⁸

Trafficking Protocol: UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime (2000). This Protocol is also referred to as the 'Palermo Protocol' because it was signed in Palermo.³⁹

Treaty Monitoring Body: See Treaty Body.

Treaty Body: Each of the core human rights treaties has a treaty monitoring body or supervisory committee which monitors the implementation of the treaty by State parties, and provides States with additional guidelines for the interpretation and implementation of the treaty (called General Recommendations).

UDHR: See Universal Declaration of Human Rights.

Universal Declaration of Human Rights (UDHR): Adopted by the General Assembly on 10 December 1948. Primary UN document establishing human rights standards and norms. All member States have agreed to uphold the UDHR. Although the declaration was intended to be non-binding, over time its various provisions have become so respected by States that it can now be said to be customary international law.⁴⁰

Universal Periodic Review (UPR): Every four years, the human rights record of each UN Member State is reviewed by the Human Rights Council. Civil society organisations are encouraged to submit information and participate in the preparatory, review and follow-up process of the UPR.

UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children: See Trafficking Protocol.

US anti-prostitution pledge: See Anti-prostitution pledge.

Violation of human rights: Occurs when States transgress or fail to protect the rights enshrined in national, regional or international human rights law.

³³ *Health Rights of Women* Assessment Instrument, Aim for Human Rights, glossary.

³⁴ Slavery Convention (25 September 1926) at www2.ohchr.org/english/law/slavery.htm, Article 1.

³⁵ Supplementary Convention on the Abolition of Slavery, Article 1.

³⁶ The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the Convention against Transnational Organised Crime (2000), Article 3.

³⁷ www.saarc-sec.org/userfiles/conv-trafficking.pdf

³⁸ UN Trafficking Protocol, Article 3.

³⁹ Ibidem.

⁴⁰ www.un.org/Overview/rights.html

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List of Abbreviations

CAT:	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW:	Convention on the Elimination of All Forms of Discrimination Against Women
CERD:	Convention on the Elimination of All Forms of Racial Discrimination
CoE:	Council of Europe
CoE CAT:	Council of Europe Convention on Action against Trafficking in Human Beings
CRC:	Convention on the Rights of the Child
CRPD:	Convention on the Rights of Persons with Disabilities
EC:	European Commission
ECHR:	European Convention on Human Rights
ECtHR:	European Court of Human Rights
EU:	European Union
GAATW:	Global Alliance Against Traffic in Women
GRETA:	Group of Experts on Action against Trafficking in Human Beings
HRIA:	Human Rights Impact Assessment
ICAED:	International Convention for the Protection of All Persons from Enforced Disappearance
ICCPR:	International Covenant on Civil and Political Rights
ICERD:	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR:	International Covenant on Economic, Social and Cultural Rights
ICRMW:	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
ILO:	International Labour Organisation
IOM:	International Organisation for Migration
NGO:	Non-Governmental Organisation
OHCHR:	Office of the High Commissioner for Human Rights
OSCE:	Organisation for Security and Cooperation in Europe
UDHR:	Universal Declaration of Human Rights
UN:	United Nations
UNODC:	UN Office for Drugs and Crime
UPR:	Universal Periodic Review
WHO:	World Health Organisation

Factsheets

These factsheets provide additional information about human rights law, the UN Trafficking Protocol, standards that States have to meet in order to combat trafficking and protect the rights of trafficked persons, and the various specific human rights you will deal with when undertaking a HRIA. Also included is a factsheet with guidelines for interviews and meetings.

Index

1. What are human rights?
2. The major human rights
3. UN Trafficking Protocol
4. Guidelines for interviews and meetings
5. Cross-cutting principles
6. Right to Non-Discrimination, Equality before the Law and Equal Protection by the Law
7. Human rights standards for preventing and combating trafficking and the protection of the rights of trafficked persons
8. Right to Life, Liberty and Security
9. Right to Freedom from Forced Labour, Slavery, Slavery-like Practices and Servitude
10. Right to Freedom of Movement and to choose a Residence
11. Right to seek Asylum and to Non-Refoulement
12. Right to Privacy and Family Life
13. Right to Free Choice of Employment and to Just and Favourable Conditions of Work
14. Right to Peaceful Assembly and Freedom of Association
15. Right to Health

