

Human Rights & Trafficking Toolkit: A step-by-step guide to assess the impact of anti-trafficking laws and policies

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Who made the toolkit and why?

The Human Rights & Trafficking toolkit has been developed by Aim for Human Rights together with anti trafficking, sex workers rights and migrants' rights organisations from Europe and other parts of the world. All of them shared a growing concern about negative impacts of anti trafficking interventions on the human rights of trafficked persons and other people who are affected by anti trafficking laws, policies and practices, in particular sex workers and migrants. An example of these concerns is the 2007 report of the Global Alliance Against Trafficking in Women '*Collateral Damage: the impact of anti trafficking measures on human rights around the world*', which documents a wide range of examples of how anti trafficking policies negatively affect the people they are supposed to benefit (the report can be downloaded at www.gaatw.org). These concerns and the need for better policies that respect the human rights of all people affected by trafficking and anti-trafficking policies resulted in the development of this tool.

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

The toolkit has been developed as a joint project of Aim for human rights, 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 Trafficking in Women), Sabine Craenen and Jan Knockaert from OR.C.A. (Organisation for Clandestine Workers) in Belgium, Kaoru Aoyama, Ponponmaru and Yukiko Kaname from SWASH (Sex Work and Sexual Health) in Japan and Tom Eddy, who contributed his extensive experience as a union worker in the Dutch confederation of trade unions FNV and the ILO. Next to these organisations many others helped to make it, coming from diverse backgrounds: human rights, sex workers rights, migrants rights and labour rights. 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* (HERWal), but also of other organisations. We especially owe Rights & Democracy, International Centre for Human Rights and Democratic Development in Canada, who developed *Getting it Right*, a tool to assess the human rights impact of foreign assessments. We gratefully made use of a number of the materials they developed.

In 2010 the draft tool was tested by a mix of anti trafficking, sex workers rights and migrants rights organisations 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 did the full assessment process. In addition *Pro Tukipiste* in Finland and *Trajeto* in Brasil 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.

Marjan Wijers
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Utrecht, September 2010

1. About the human rights & trafficking toolkit

Why was the tool developed?

Since the adoption of a new **UN Protocol on trafficking in human being**¹ in 2000, efforts to stop trafficking have mushroomed around the world. While the intentions might be good, 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. For example, when trafficked persons are sent home to the same situation they tried to leave behind without protection against their traffickers and without proper compensation for the damage they suffered. Or when, in the name of protection, trafficked persons are confined in a shelter under conditions which are no different from detention.

In many cases anti trafficking efforts even undermine or negatively impact on the human rights of the people who they are supposed to benefit or on the human rights of other groups that are affected by these efforts, like migrant domestic workers or sex workers. In some cases they lead to direct violations of the human rights of these groups. This happens, 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.

Already in 2002, the United Nations High Commissioner for Human Rights, Mary Robinson, issued a set of **Principles and Guidelines on Human Rights and Human Trafficking**, in which she states 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'. Moreover, the guidelines stress that 'anti trafficking measures should not adversely affect the human rights and

Examples of anti trafficking efforts with negative impacts

* To prevent trafficking some states prohibit all young women to travel abroad for certain types of work. Instead of stopping women to migrate, such bans are likely to put them at greater risk to trafficking and exploitation - the very concerns that drive such bans. It pushes women into perilous migration strategies, reduces them to children and strips them of their international right to enter and leave their country.

* 'Rescue' operations in the form of police raids on brothels disrupt the lives and work of sex workers, often lead to the arbitrary arrest and detention of sex workers and massive deportations of migrant sex workers, expose sex workers to abuse by the police, and fail to include sex workers in finding effective solutions to coercive and exploitative practices in the sex industry.

* Measures to tie work permits to a specific employer put migrant domestic workers in a situation of total dependency, thus making them more vulnerable for abuse and exploitation.

* Some countries oblige NGOs supporting trafficked persons to report their clients to the authorities. The lack of confidentiality prevents victims, who often fear the police, from seeking help.

* Closed shelters or forced rehabilitation of trafficked persons, which sometimes lasts for years, deny victims an adequate remedy and violate their right to liberty.

* Forced repatriations without protection against reprisals or harassment from traffickers and/or authorities endanger people's life and security.

* Sometimes anti-trafficking policies exist on paper, but are not implemented. For example when victims are never identified as trafficked persons and therefore do not receive protection and support.

¹ Words that are highlighted are explained in the Glossary.

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 still commonly ignored.

For an effective lobby to improve anti trafficking policies, organisations need to clearly demonstrate where and how rights are being violated. However, instruments to assess the impact of anti-trafficking interventions on human rights are lacking. This toolkit aims to address that gap. It provides NGOs with an instrument to assess the intended and unintended impacts of anti trafficking laws and policies and to voice their concerns more effectively.

How does the tool work?

The human rights & trafficking toolkit is a strategic tool and resource guide to help you advocate for anti trafficking policies that respect and protect human rights. During the assessment you gather information about the impacts of the policy you select, which you analyse in the light of human rights standards. The assessment process is divided in 8 steps. Each step 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. The result is a set of recommendations to improve the policy based on the findings of the analysis, as well as an action plan to lobby for adoption of the recommendations.

The questions are based on the major human rights treaties and the **UN Trafficking Protocol**. Most governments have binding human rights commitments, created by ratifying human rights treaties. You can hold your government accountable for living up to the human rights commitments they made. However, 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** (HRIA) addresses that gap by linking what actually happens in daily life with what should happen according to the human rights obligations of a country.

The toolkit is based on a number of key principles:

- Evidence based: the tool aims to go beyond ideological debates. It is based on collecting data and use those to analyse the actual impact of anti trafficking efforts on the human rights of those who are affected by these laws and policies
- Participation: participation is an important element of a human rights approach. The tool is based upon the participation of the groups affected by the anti trafficking policy in the assessment process. This is an essential element in collecting evidence about the impact of the policy.
- Bridging movements: in many countries there is a gap between anti trafficking organisations, groups working to defend the rights of sex workers and (undocumented) migrants, labour rights and human rights organisations. The tool encourages you to seek to bridge these gaps by working together to enhance the quality of the assessment.

The toolkit focuses on adults, that is to say people of 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 than adults and consequently specific rights in international law. If you focus specifically on children this tool is not suitable for you. However, we encourage you to take from the tool what is useful for you and to adapt the guide where possible to your needs.

Who can use the human rights & trafficking tool and for what purpose?

The toolkit is designed for NGOs and community based organisations working in the field of 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. The main purpose of carrying out the assessment is to produce arguments which can be used to lobby for policies that protect and respect human rights. Using the toolkit 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 by the policy
- 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 on how to use the outcomes of the assessment to advocate for 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

Conducting a human rights impact assessment does not necessarily 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 that the findings are used you can distribute your report widely, engage in a dialogue with those responsible for the policy, and submit the report to various local, national and international authorities.

You can do the **full assessment**, but you can also take the bits that fit your organisation or situation. You can use the **quick scan** as a standalone if you want to do a quick mapping of the problem, its causes and its consequences. The quick scan will also help you to find out whether carrying out a HRIA is a good means for you to achieve the change you want. You can also use the tool as a **resource guide** to learn more about human rights, to help you implementing a rights based approach in your work or to ask the right questions for setting out or evaluating your lobby strategy. Attached to the tool is a **set of factsheets**, which give you more information about human rights and the human rights standards states must meet in addressing trafficking and the exploitation of human beings under forced labour or slavery-like conditions. An alternative to the full analysis is a **short version workshop**, in which you go through the assessment process in three days with a number of organisations. This will provide you with a preliminary analysis of the relation between the impact of the policy and the protection of the human rights of trafficked persons and other groups affected by the policy. Experience learns that before setting off to carry out the assessment it is useful to do an **introductory workshop** on human rights and the assessment process. For more information on the introductory or the short version workshop as well as on other assistance to use the tool, please contact [???????](#).

How can you use the outcomes?

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

- advocate for policy reforms and to hold your state accountable for fulfilling its human rights commitments

- inform a large group of people about the situation and to communicate your concerns more effectively to the competent authorities.
- lobby international institutions and UN agencies²
- compile **shadow reports** on the various human rights conventions.

For what kind of policies can you use the tool?

You can use the toolkit to analyse an anti trafficking law, policy or measure, but also a policy that does not directly address trafficking but has an impact on the rights of people who are or might be trafficked and exploited. These can be, for example, laws and policies on migration, prostitution, (migrant) labour, public order or the combat of crime. You can use it to analyse existing policies, as well as to review the expected impact of a policy that is still in its planning phase. If a government does nothing to address the problem, you can use the tool to analyse what the consequences are of the lack of a policy.

Why does the toolkit focus on government policies?

The tool primarily focuses on governments because national governments have the primary responsibility for the implementation of human rights. For this reason governments 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 governments fail to implement their human rights commitments, they can be held accountable for their (lack of) actions.

Usually you will focus on a specific part of the government, a ministry or department, or the local authorities who are responsible for the development or implementation of the policy, including the police. Government responsibility also means that the government is responsible to direct other actors who are involved in implementing anti trafficking policies and to ensure that they respect human rights, for example intergovernmental organisations or service providers.

How much time and resources does it take?

A HRIA is most useful and successful when the issue 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. To do the quick scan will take your team about 1 or 2 days. The data collection is the most time consuming part of the process, but will be easier when integrated in the overall work of your organisation, for example using already planned meetings to do interviews or doing interviews while providing services. Also, the depth and details needed may vary from situation to situation, as well as the accessibility of information. You may limit your time investment by selecting the questions which are most relevant for your situation. Another way is to cooperate with other organisations to share the workload. However, keep in mind that sound lobbying arguments need to be based on facts.

The toolkit in a birds' eye view

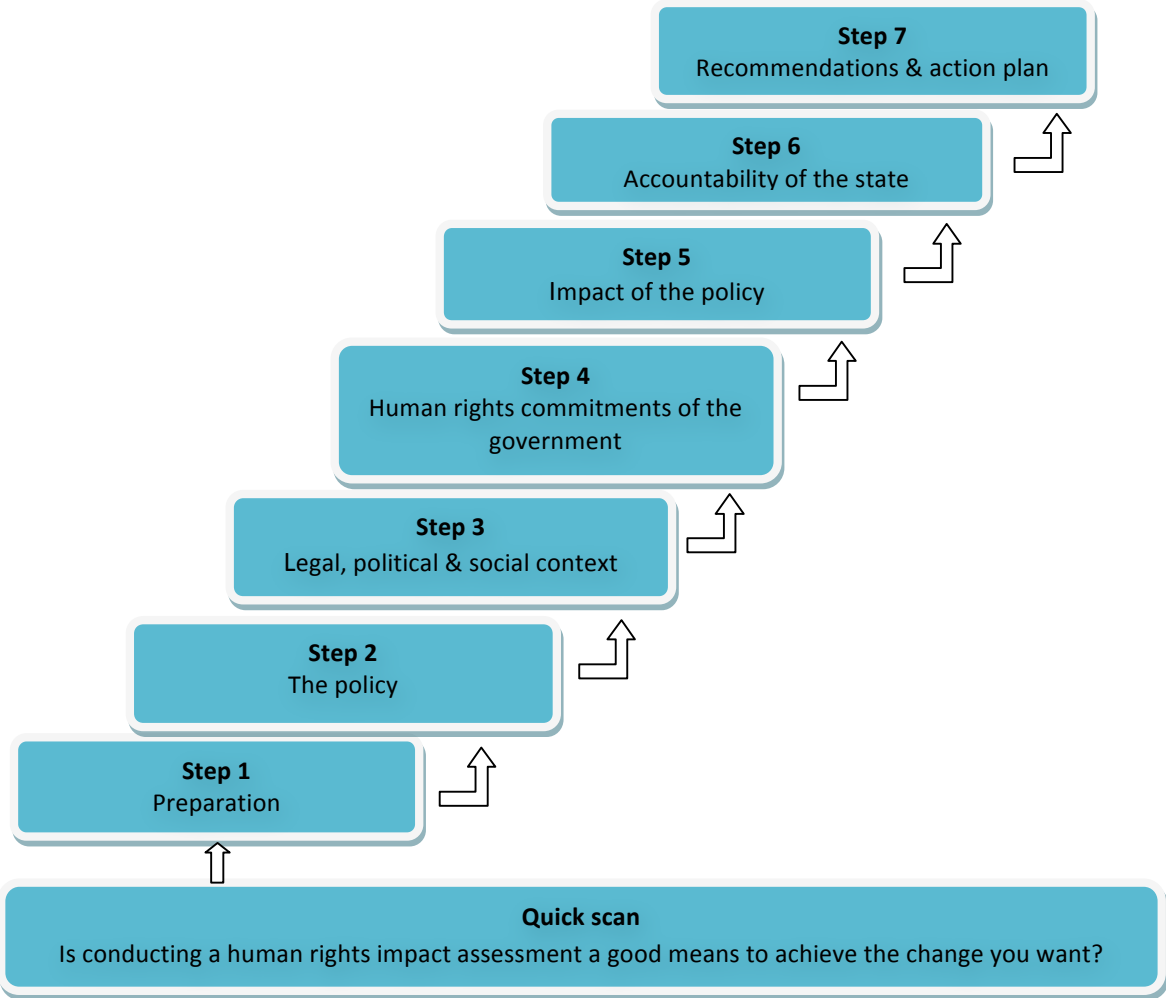
Part I introduces you to the tool, a human rights approach to trafficking, the international human rights system and the **UN Trafficking Protocol**.

² More information on the Human Rights system can be found in the next chapters and at www.humanrights.org/whr_resources.

Part II provides you with a quick scan to help you decide if conducting a **Human Rights Impact Assessment** (HRIA) is a good strategy for you to address the problem and achieve the change you want.

Part III is the actual assessment tool, starting with the preparation. Each of the seven 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.

As separate part of the toolkit you will find a set of factsheets. The factsheets give you additional information about what human rights are, the UN Trafficking Protocol, how you can find out which international treaties your government has ratified and the specific human rights you will deal with when undertaking a HRIA. At several places the text will refer to these factsheets.



2. A human rights based approach to trafficking

The toolkit is based on a human rights approach. This chapter explains what a human rights based approach to trafficking entails.

What is 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 means that under international human rights law States have the duty to **prevent, investigate and punish** trafficking and to **protect and assist** trafficked persons. This duty extends to violations by both State and non-State actors. Trafficked persons should be treated as individuals whose rights have been infringed upon and should be provided with access to adequate remedies, including assistance, protection, legal aid and compensation. Until now, however, states have mostly concentrated on law enforcement and migration control measures, whereas victim assistance and protection are largely lagging behind. For this reason, many advocates of a human rights based approach have focused on the aspect of protection of the human rights of trafficked persons.

Some of the rights that you may deal with when making a HRIA of anti-trafficking policies and practices 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
- The prohibition on discrimination

However, a human rights based approach is about more than protecting the human rights of trafficked persons, it is about the protection of the human rights of *all* people. Policies to prevent trafficking should address the factors that increase vulnerability to trafficking, like inequality, poverty, discrimination and prejudice. Lack of rights and lack of adequate legal protection clearly add to people's vulnerability to violence and abuse. Measures should aim at strengthening the ability of vulnerable groups to exercise their human rights and support their self-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, 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 (**empowerment**).

A human rights approach also implies respecting a number of principles that relate to the process of policy making: the way in 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 planning and the implementation of policies and measures

What does participation mean?

Participation means 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 even may have negative impacts.

affecting their human rights. This is considered an essential condition for the development of effective change strategies.

Of special importance to the situation of irregular migrants and other vulnerable or marginalised groups is respect for the **principle of non-discrimination**. This means 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 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.

Moreover, all anti trafficking measures should **comply with 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.

Summary

This means that anti trafficking policies should:

- aim to change the conditions that give rise to trafficking and exploitation
- stop the abuse and investigate, prosecute & punish the perpetrators
- provide adequate remedies to trafficked persons

Moreover, they should:

- ensure participation of the most affected in their development, implementation and evaluation & aim to strengthen their ability to determine 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 impact on 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 which are 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 on human rights you will find 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 for the first time laid down in the **Universal Declaration of Human Rights** (UDHR) 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:

- **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:** Governments (duty bearers) are responsible for implementation of their human rights commitments. This means that citizens (rights holders) can hold the State accountable when it fails to meet its human rights commitments. 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 make exceptions, but only if the means are proportional to the aim for which exceptions are made (proportionality), if there are no other means to achieve the aim that do not or less violate the right (subsidiarity) and if the exception is laid down in the law. For example: prohibiting *all* young women to travel abroad to protect some women from trafficking is disproportionate to the aim it serves. 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 which states and state actors are bound to respect. By becoming a party to a legally binding international treaty, a state assumes the obligation to respect, protect and fulfil the human rights laid down in the 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 the 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, contribute to its implementation, understanding and development. Although these are not legally binding on states, they are politically binding and can be invoked in lobbying activities. Next to the international human rights treaties there are also several regional human rights conventions, for example the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).³

Human rights violations occur when states transgress or fail to protect rights enshrined in national, regional or international human rights law. The term '**state**' includes all actors when they are in the course of exercising a public function, 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 the number of people affected.

How are human rights enforced?

International human rights law can be enforced on either a 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. Also when other people (including national or international organisations or NGOs) commit a violation it is the responsibility of the government to protect its people and take measures to ensure that their human rights are respected. The implementation of its human rights obligations by the state is monitored by international committees of independent experts called '**treaty monitoring bodies**'. The treaty bodies monitor how states comply with their international obligations, develop international standards and clarify the interpretation of existing human rights instruments. They also make recommendations to states, including legally binding recommendations. All the major human rights treaties and conventions have a treaty body to which states have to report

³ For more information on the regional human rights systems, please see factsheet

periodically, 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 form the so-called **International Bill of Human Rights**. Following these two treaties a number of other core human rights treaties have been adopted. The main international human rights treaties are:

- 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 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)

Human rights & trafficking in human beings

Trafficking and the exploitation of human beings under forced labour & 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 & servitude, and the right to be recognised as a person before the law.

Although trafficking and its forced labour & slavery like outcomes affect both men and women, it is not gender neutral. Women are affected in different ways than men in regard to the sectors into which they are trafficked, 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 more men are trafficked into the construction sector or agricultural work. Women are particularly vulnerable due to their economic and social position, a gendered labour market that relegates women to the informal and unprotected labour sectors which are not or only partially recognised as work, and to the ways of migration open to them.

Human rights & sex work

Different approaches have been adopted across Europe and other parts of the world responding to the sex industry and to 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.

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

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.

Trafficking Protocol makes a clear distinction between trafficking and prostitution. There is no obligation for States under the Trafficking Protocol to combat prostitution as such. 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, and including the right to privacy, to a family life, to legally leave and return to one's country and to be free from torture, inhuman and degrading treatment, arbitrary arrest and detention, and in favour of the freedom of expression, information, association and movement.⁴

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 fact that evidence shows that 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 International Convention on the Protection of the Rights of All Migrant Workers and Members of their families, which came into force 1 July 2003.

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 (UDHR), all persons, regardless of their nationality, race, colour, sex, language, legal or other status, are entitled to fundamental human rights and basic labour protections, including migrant workers and their families.⁵ Basic rights include, for example, the right to health care, to fair labour conditions, to organise, to family life and to moral and physical integrity.

Human rights and smuggling

Although also people who are smuggled can become victim of human rights abuses, unlike trafficking smuggling is not a human rights abuse in itself. The purpose of smuggling is the illegal crossing of borders, whereas the purpose of trafficking is the forced labour or slavery-like exploitation of people. In other words, smuggling is primarily about the protection of the State against irregular migration, while trafficking is primarily about protecting people against exploitation and abuse. Moreover, the crossing of borders is not required for trafficking.

Repressive versus empowering strategies

Strategies to address trafficking generally move between two poles: at the one hand repressive strategies, which aim at suppressing (organised) crime, (illegal) migration and/or prostitution. At the other hand empowering strategies, used primarily by NGOs, which aim at facilitating people to speak up for themselves and strengthening their rights. Both repressive and empowering strategies can be of value. At the same time, especially repressive strategies beg for caution, as they run a major risk of turning against the people they are supposed to benefit. Repressive strategies tend to mix up other state-agenda's, such as counter-acting migration, with the issue of trafficking in human beings as a

⁴ See also: *The Declaration of the Rights of Sex Workers in Europe*, www.sexworkeurope.org.

⁵ See also: Platform for International Cooperation on Undocumented Migrants: www.picum.org.

serious violation of human rights. 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 likely to be affected, e.g. by restricting women's freedom of movement or by using trafficked persons as witnesses against organised crime without providing them the corresponding protection.

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 also called the Palermo Protocol because it was signed in Palermo) contains the first internationally agreed upon definition of trafficking in human beings. It defines trafficking as:

“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 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 international organised 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, like ‘exploitation of the prostitution of another’ and ‘sexual exploitation’. This is because it was the result of long and complicated negotiations between governments with 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 know that the Protocol only addresses the exploitation of prostitution when one of the coercive or deceptive means listed in the Protocol 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 on the one hand, and trafficking for forced labour or services on the other. 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, 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 such situation and no matter if it involves a victim of trafficking, a smuggled person, an illegal migrant or a lawful resident. This in accordance with the international human rights treaties which prohibit 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, depriving 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 assistance.

PART II – Quick scan

1. Introduction

The purpose of the quick scan is threefold:

- to link a problem to a policy
- to select a policy
- to find out if carrying out a HRIA is the best way for your organisation to address the problem.

During the quick scan you will look more closely at:

- the problem, its causes and consequences & how it is related to 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, and
- if doing a human rights impact assessment would help you to achieve that change.

To do the quick scan will take your team about one day. Some of the questions in the quick scan will come back later in the analysis, at which point you will research them more in depth. You can use the quick scan also as a 'standalone' 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 in the following meaning:

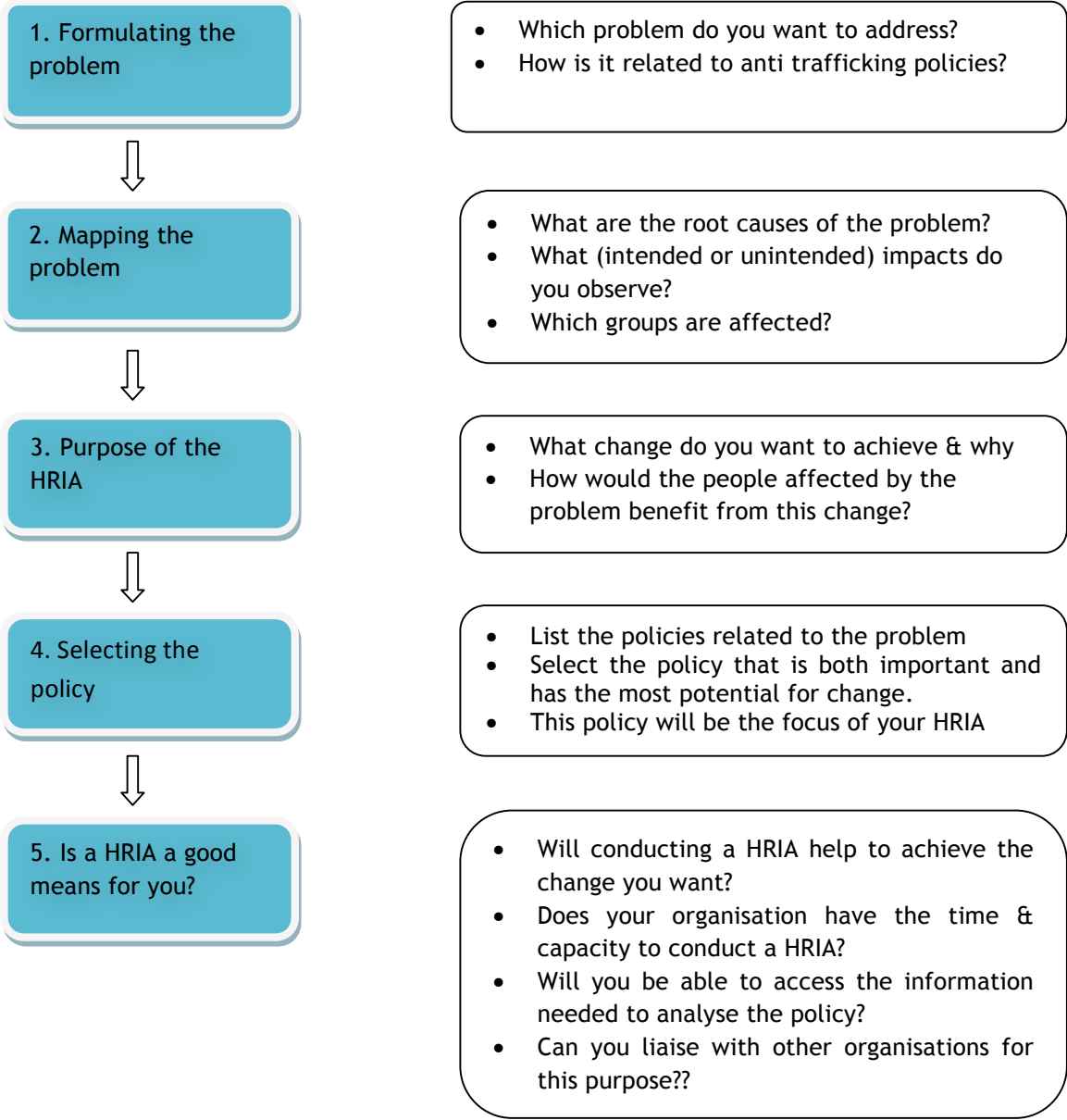
- **Laws:** are national and laid down in law books, such as the Penal Code or the Civil Code. To change them you have to go through politicians, the parliament, etc.
- **Policies:** A policy is a purposive course of action followed by an actor or a set of actors. Policies are instituted to enforce laws, solve problems or achieve a positive benefit. Often they are laid down in official documents. They 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 customs, but not necessarily.
- **Measures:** any concrete action to enforce a law or policy. Measures are mostly on the local level. They are the most concrete and often the easiest to change.

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

For reasons of simplicity most of the time we will just use the term 'policy' as a general term, referring to all kinds of actions of 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 these questions before you start, but keep in mind that they are meant to help you make the decision, not to do a full study. You will do that later if you decide to do an 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. Don't make it too complicated: just use all the knowledge you already have!

2. Key questions quick scan



3. Questions & explanation

1. Which 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. An important question is if and how the problem is related to anti-trafficking policies. If it is not related this tool is not suitable for you, because it specifically focuses on the impact of anti trafficking interventions. Examples of problems related to anti trafficking policies are the detention & deportation of trafficked persons, policies that prohibit young women to migrate for work without the consent of their husband or a male relative, raid & rescue operations on brothels to rescue (alleged) victims of trafficking or the criminalisation of clients to combat trafficking.

However, keep in mind that sometimes non-trafficking policies can still have an impact on trafficking issues. An example are policies that tie working permits of domestic workers directly to their employer, which make it impossible for them to leave an abusive situation without being exposed to deportation. The problem can also be the lack of a policy, or that existing laws or policies are not implemented or implemented in a wrong way. For example: the criminal law might lack adequate provisions for the protection or compensation of trafficked persons, but it is also possible that the law does contain provisions but that these are not applied. Or measures that may be meant to target traffickers are in practice used to target sex workers. If the problem is the non existence of a policy, you will have to adapt some of the questions, for example read 'lack of policy' where it says 'policy'. If the problem is a law or policy that is still in its planning phase, you will have to think about its potential impacts.

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

A good way to analyse a problem with your team is to use a 'Problem Tree'. In a Problem Tree analysis you define the focal problem - that is the problem that you consider to be the central point 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 or impacts of the problem. A problem tree analysis helps you to break down the problem into manageable chunks, to prioritise factors and to develop a shared analysis of the problem and its underlying causes and consequences. Once you have analysed the problem, you can decide on what level 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 members of your team write down on small cards (or post-its) what according to their opinion the focal problem is. Put the cards in the middle and discuss and agree upon what you see as 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) trafficking victims').

Identify the root causes and the consequences or impacts of the problem

Ask everybody individually or in pairs to write down the major causes and consequences of the problem on small cards. 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 impacts of the problem are placed in parallel above it. For each major cause ask for 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 is growing and will visualise the cause and effect relationships between the various causes/problems.

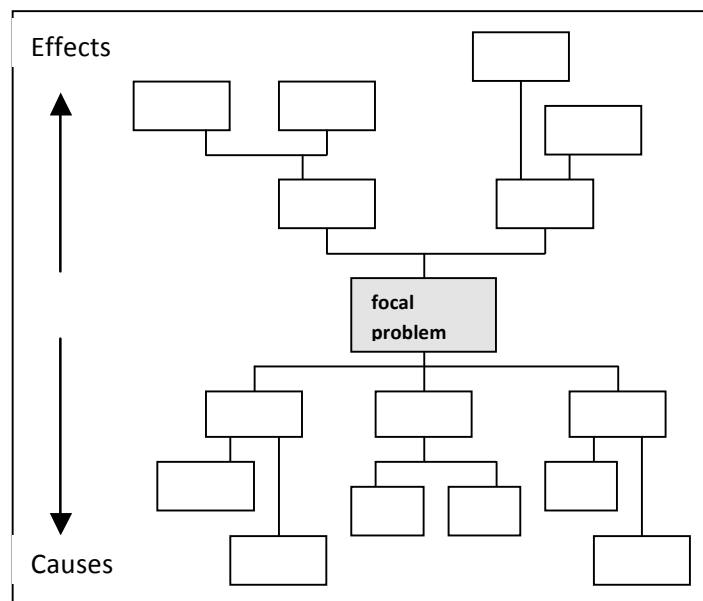
Now do the same for the consequences of the problem: what are the consequences or impacts of the problem? Which groups are impacted and how? Remember that the problem can affect more than one group and that the problem can have a different impact on different groups of people. Also remember that policies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

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 paper under titles as solutions, concerns and decisions. They might be useful at a later point of the discussion.

Select the root causes that are both important and changeable

Ask everybody to identify the most serious consequences, for example by having each participant giving 5 points to the consequence s/he thinks most important, 4 to the next important one, etc. Do the same for the root causes. 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.

Example of a problem tree



3. What change do you want to achieve & 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 in an Objectives Tree (future solutions of 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: instead of 'NGOs have to notify the police about their clients'

'NGOs are not obliged to inform the police about their clients'. Or instead of 'the media present all sex workers as trafficked' 'the media clearly distinguish between trafficked persons and sex workers'. In this way you transform the negative 'cause-effect' into positive 'means-ends' statements. These positive statements can serve as potential objectives for change.

Keep in mind that change can take many forms. Possible objectives might be:

- to improve a policy, to abolish it, to advocate for other policies or for a law change
- 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 getting arguments in the debate that were missing before
- to have the views of the groups concerned better represented in the media
- to create new alliances, et cetera.

To help you choose your objective, you can focus on the root causes you identified as both important and changeable. You may want to lay out your objectives in short-, medium- and long term objectives. If you think it is impossible to achieve the change you want, think about changes that would be more feasible to achieve.

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

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 also 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, during or at the end of 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 or relates to a problem. Various policies, for example, influence the problem of arrest & deportation of trafficked persons: the criminal law, the aliens law, the training of the police, the referral system that should ensure that trafficked persons receive the assistance and protection there are entitled to, etc. As it will not be possible to address them all at once, you will need to select a policy which will be 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 your objective?
- Which of these has the most potential for change?

You need to select a policy with the most potential for change and which is most likely to succeed in addressing the problem. This will be the focus of your analysis. Sometimes the most obvious policy is not a policy that can be changed easily. If a policy has very limited or no potential for change, it might be wise to select another policy which 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 decides about it? If you want to change a policy it is important to know who decides about it and/or 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 a policy of a non- governmental organisation, 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 that have an interest in the change you want to achieve, 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 the decision makers sensitive to human rights arguments? The general public?

When you decided on the policy you will analyse, please shortly write down the problem you selected, its effects, your objective for conducting a HRIA, the policy you decided to analyse and its relation with anti trafficking efforts. It is important to clearly formulate the policy and on which part of it the analysis will focus. If you narrow down your focus, it becomes easier to come up with concrete recommendation to 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 use them to directly lobby your government or the authority responsible for the policy, or to build up political or public pressure, for example through the media, other organisations or unions. You can also use them to put international pressure on your government, for example by using your research to write a so called **shadow report**.

A HRIA will help you to build strong arguments which you can use to lobby for improvement, directed at the government or at other actors. However, sometimes a HRIA is not the best way, 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. Making an HRIA and building up evidence takes time and won't lead to changes overnight. If you are dealing with a crisis or emergency situation, a HRIA is not a good means. Perhaps also there is a shorter route to the change you want.

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

Conducting a HRIA is an investment in time, capacity and resources of an organisation. It is important to realise in advance the amount of work that is involved to make sure you are able to perform the analysis. Performing the analysis is not the aim in itself. It should provide rights based arguments that can help the advocacy and work of your organisation.

7. Will your organisation be able to access more detailed information to analyse the policy? Can you liaise with other organisations for this purpose?

A liaison with other organisations may help to collect the necessary information, to share the burden of work and to strengthen your lobby and advocacy activities later on in the process.

8. Conclusion: is a Human Rights Impact Assessment a good strategy for you to address the problem and achieve 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 good and feasible means 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 impacts?	
People/groups affected?	
Change you want 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 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 put pressure?	
Urgency of the problem?	
Shorter route to achieve your aims?	
Time & capacity?	
Access to information?	
Possibilities to liaise with other organisations?	
Conclusion: is a HRIA a good means for you?	

PART III – The tool in seven steps

Introduction

The process of data collection and analysis is divided in 8 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 the last two steps you will formulate your recommendations, draft your report and prepare your action plan. Each step ends with a summary or your main findings and conclusions. As you work you may want to go back and forth between the different steps. You may also find that you need to go back to previous questions to review or add information. This is a natural process.

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 each and every question. Some of the steps or questions may not fit your particular situation: don't hesitate to adapt the process to your own needs. You may also find that a different order of steps is more suitable for 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.

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, this is a violation of human rights no matter the number of people who are discriminated against or whose rights are violated.

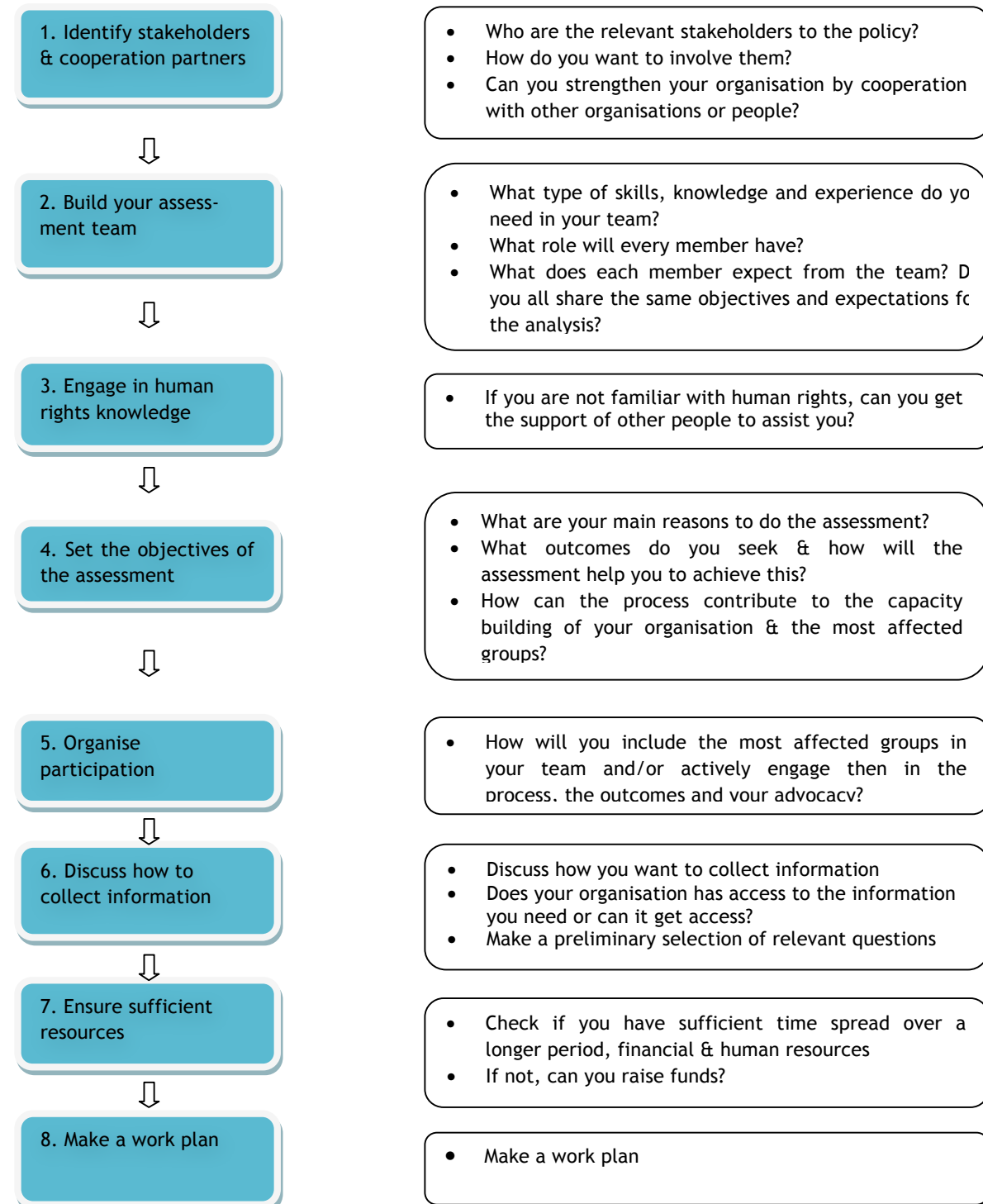
Possible sources of information are indicated at each step, the factsheets and the resource list at the end of the tool. Other ways of collecting information are, for example, interviews, meetings, and focus groups. During the process you will discover that it is sometimes very difficult to find the right information. Governments might not publish certain data or have no data collection mechanism in place. If no information is provided, this is also part of your analysis. No information is also information: it informs you how capable the government is and how much value it puts to providing correct and public information about its policies and meeting its human rights obligations. **Record all the sources of information you use carefully from the outset on.** You will have to list all the resources you used in your final report for its credibility. Also list the information you sought but could not find or could not get access too. This is also important information for your report.

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

Performing an analysis is a long term process. It is most effective when it is closely connected to the work of an organisation. It should contribute to the overall strategy and work and be carried out within a set framework and time. Conducting the analysis can be part of the strategic planning of the organisation which will ensure that time, capacity and resources are allocated. In addition the process can be experienced as a learning process for the whole organisation. Going through a rights based analysis process will strengthen your research, analytic and advocacy skills.

Step 1. Preparation

1. Key questions step 1



2. Questions & explanation

This step will help you to prepare the analysis. Undertaking an analysis becomes easier when organising in advance and bringing all the relevant stakeholders on board. The questions in step 1 will briefly explain the preparatory tasks and things that you need to consider in advance.

1. Identify relevant stakeholders: who are the stakeholders and how do you want to involve them? Can you strengthen your organisation by working together with other organisations/people?

In step 2 you will be asked to list the actors involved and those that have an interest in the problem and/or the policy. However, before you start, it is useful to identify the relevant stakeholders, including those with different or opposing views or interests, and to consider which of these stakeholders 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 a groups of different experts, organisations and affected groups that can all contribute to the process. Keep in mind that identifying stakeholders may be an ongoing process as you research the specific policy more in detail.

Stakeholders are all persons, groups or organisations, including government agencies, who feel their interests are affected or will be affected by the policy. The primary stakeholders are the people who are directly impacted by the policy, e.g. trafficked persons, migrant workers or sex workers (in the tool we will refer to them as the most or directly affected groups: we will discuss their role separately under 'participation'). Other stakeholders might be government agencies (including local authorities and the police), other NGOs, lawyers, health workers and other service providers, religious groups, unions, donors, academics or experts who play a role in shaping the debate, etc.

Involving stakeholders in the process can help with 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 that stakeholders can have conflicting interests or views, including potential allies. You can, for example, share a human rights perspective but have very different views on sex work or migration. Some stakeholders may also not be aware of what the stakes are. 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.

Can you strengthen your organisation by cooperation with other organisations or people?

Are there other organisations/people with whom you can cooperate to increase the capacity of your organisation and to strengthen your analysis and advocacy? These can 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 in collecting & analysing information, organising meetings, doing 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 on board who are embedded in or have the 'feel' for various types, styles, stances and cultures of those who are 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 to function better as a team.

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

2. What type of skills, knowledge and experience do we need in our team?
3. What role will every member have?
4. What does each member expect from the team?
5. Do we all share the same objectives and expectations for the analysis?
6. In what way do we want to 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. Other issues to think about are whether you want to form a steering group or an advisory board.

3. Engage in human rights knowledge

If you are not familiar with human rights, discuss if you can get the support of another organisation or other people who can assist you with their 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.

4. Set the objectives of the assessment

Before you start, take time to discuss the objectives of the assessment more in depth with your team to ensure that everybody shares a common goal and expectations. Questions you might want to (re)consider are:

- What are your main reasons for carrying out the assessment?
- What outcomes do you seek (objectives) and how will the assessment help you to 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 make part of your final report, so it is clear to readers and other stakeholders why and with what purpose you engaged in the assessment.

5. Organise participation of the group(s) affected in the process: 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 of human rights. This also applies to a human rights based analysis. By involving the most affected people in the analysis process it gains in validity. It also ensures that

the analysis reflects the views and concerns that are key for the improvement of the (implementation of) a policy and increases ownership over the outcomes of the process.

Participation is needed throughout the process:

- When **selecting the problem** it is important to discuss with the people who are most affected what they find the most important issue that needs to be addressed
- When you link the problem to a policy it is important to **inform the most affected groups** on which policy the analysis will focus, how long it will take and how participation is organised
- **During the analysis** they are the primary people for information on the actual situation, to find out what is happening and what violations take place. This can be done through discussions, interviews, **focus groups**, etc.
- In the final stage of the assessment they should be involved in the **formulation of the recommendations**, based on the most important conclusions. What is the message that should be taken to the government?
- Finally, in order to **develop an inclusive advocacy strategy** it is important to go back to the groups affected by the problem and the policy. They should have been listened to from the beginning when the policy was first drafted; this process provides an opportunity to have a second chance.

If your team is not composed of members of the group(s) that are impacted by the policy, discuss how you will ensure their participation in your team, the process, the outcomes and your advocacy. One way to do this is, for example, by forming an advisory group with whom you discuss all important decisions, the process and the outcomes, or by holding regular consultations with members of the affected groups.

Also when your team is made up of people from the groups that are affected by the policy, you have to think of how you want to include the wider community in the assessment process. Remember that often more than one group is affected by the policy and that they not necessarily all share the same views or concerns. Also within one group views and concerns can 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 you want to collect information: does your organisation have access to the information you need or can get it access?

Before you start, think about how you are going to collect information and if and how you can get access to it. 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 that you can skip. Questions that may help to make a selection are: can we think of a general answer in relation to the policy, do we know where to find the sources of information for it? If the answer is no, this might mean that the question is not relevant for you.

Make a preliminary inventory of the information you'll need, the sources for finding it and the ways you want to collect 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 already studied. Think also whether you can liaise with another organisation or organisations to help you collect the information you need.

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?

8. Make a work plan and budget

To keep an overview of all the work involved, making a work plan by the assessment team can be useful. It will help you to decide when, where and how you will collect information, who will be working on which step and when things should be finished. Be aware that during the process the activities you originally planned may change or that you may need to add new activities. Be prepared to adjust the work plan if needed. A format for a work plan is provided below.

Table 2: Format to make a work plan

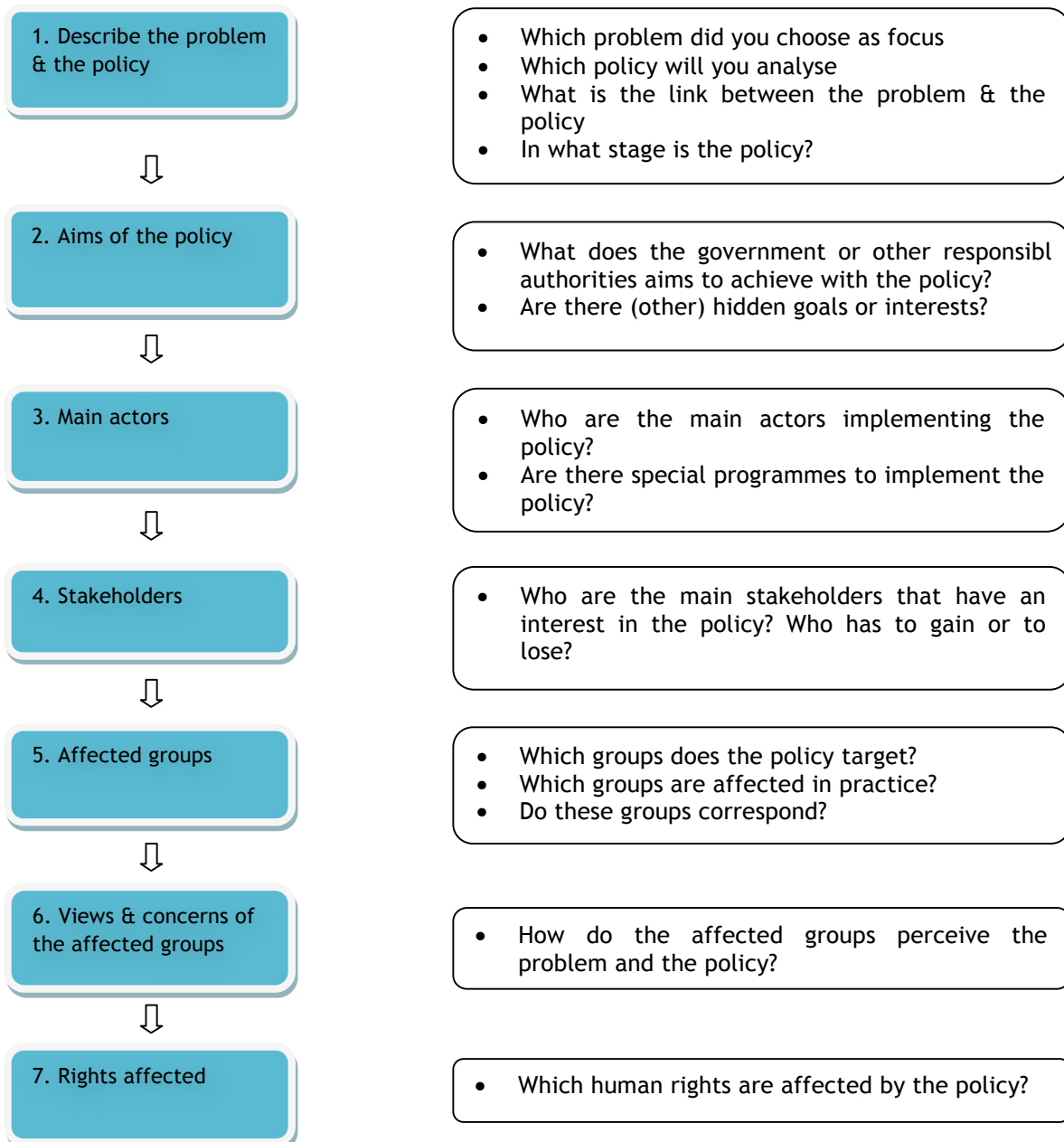
Task	Purpose	Main activities	Start date	End date	Who to involve ⁶
Quick scan	Select a policy, find out if a HRIA is a good means for you	Team discussion			
1.Preparation	Identify stakeholders & cooperation partners; build your team; set objectives, organise participation , make a work plan & ensure resources	Team discussion; establishing contacts with selected stakeholders & cooperation partners; If needed, fundraising			
2The 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			

⁶ This may include people from your assessment team, your own organisation, other organisations, the government and/or the groups affected by the policy.

7.Recommenda- tions, report & action plan	Formulate your recommendations & write report & make action plan	Team discussion; share findings; discuss recommendations with affected groups & other selected stakeholders; writing report; make action plan			
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Step 2. The policy

1. Key questions step 2



2. Questions & explanation

Purpose

In this step you will define the focus of your analysis. You can do this by describing the problem and the policy and/or specific part of the policy you decided to analyse, the official and hidden aims of the policy, the main actors implementing the policy, the affected groups and the rights involved. Some of the questions you already discussed while making the quick scan. In this step you note the answers in a way that will form the basis for your 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 first do step 3 and look at the legal and political framework. A better understanding of the context might lead you to reconsider your choice on which policy you want to focus your assessment.

Before you start, keep in mind that the collection of data is a crucial but also time consuming process. The following guidelines can help you to not get lost:

- **Focus:** try to focus on the information that is relevant for your analysis
- **Selectiveness:** answer only those questions which 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 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 from 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 & compensation. Measures must comply with their international human rights commitments and not undermine or otherwise negatively impact on 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. Also NGOs and international organisations must respect human rights, not benefit from human rights violations and not be complicit in human rights violations of the state.

1. Which problem and related policy will you analyse & why?

Describe the problem in maximum 1 page. If you have discussed the issue with the groups impacted by the problem, describe why they find this the most important issue that needs to be addressed.

Which policy have you chosen as your focus?

Describe the policy you choose. Where possible you may use the formulation the government or responsible authority itself uses. Explain why you made this choice: what is the link between the

policy and the problem? If there are other related policies that are relevant, describe why you choose this one. Describe only the chosen policy in depth, while briefly referring to the others.

Also think about the stage in which the policy is. 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 any 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 by which the government puts the policy into effect
- Policy evaluation: the process by which the results of policies are monitored both by the government and by civil society and which may lead to a new set of stages.

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

2. What does the government or other responsible authorities aim to achieve with this policy? Are there other hidden goals or interests?

The first question refers to the officially stated aim of the policy (e.g. preventing persons from being trafficked), which may differ from what the government actually wants to achieve (e.g. restricting migration). Most of the time there will be official government policy documents declaring what the aim of a law, policy or measure is. For a law this will be stated in the law itself, in the explanatory papers or in parliamentary papers; 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 cases there might be press articles or interviews with officials stating what the aim is. To clarify the aim of the policy you may want to have an interview with the officials concerned.

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

What (other) aims and interests may lie behind the policy?

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

3. Who are the main actors implementing the policy? Are there special programmes to implement the policy?

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

Actors can be local, regional, national or international. For example: 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. It can also be international actors, such as governments of other countries, 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 which state actors are supporting the NGO or are involved in it otherwise. Keep in mind that also NGOs and other private organisations must respect human rights and that it is the responsibility of the state that they do so.

Are there special programmes to implement the policy?

Often there are special programmes to flesh out a policy. They specify in detail how a policy should be implemented, who is responsible for what action and which human and financial resources are allocated to the (implementation of the) policy. For example a national action plan on trafficking.

4. Who are the main stakeholders that have an interest in the policy?

During the preparation you already have been asked to consider which **stakeholders** are relevant. By asking who has to gain or to lose, you map out political interests in the (implementation of the) policy and who are your allies or antagonists. The allies can help you later on 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 or she support you in achieving change?

The people who have power, a strong interest in the policy and are sympathetic to your cause are important stakeholders and potential allies. At the other hand, the people who have power, a strong interest, but will oppose change are also important to know, as you will have to take them into account when making your action plan in step 8. Remember that although stakeholders may be both (governmental or non-governmental) organisations and people, ultimately you can only communicate with individual people. So try as much as possible to add names of individuals within a stakeholder organisation.

5. Which groups does the policy target? Which 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 that are most affected by the policy are the ones on which you should focus in the following steps.

The affected groups may be the same or may differ from the groups which the policy officially targets. In addition, you need to examine whether certain groups are excluded from the beneficial effects a policy may have. For example, in many countries trafficked sex workers are excluded from the protection and assistance that is available to other trafficked persons.

Three questions are important here:

- What is the officially stated target group of the policy?
- Which groups does the policy actually affect (positively or negatively)?
- Do the groups actually affected correspond with the official target group(s)?

Generally a policy has a specific target group. Mostly this will be laid down in official documents, for example parliamentary papers, a national action plan or a policy document of the governmental agency concerned. If not, this is a conclusion in itself! In practice, however, there may be a difference between the group(s) that the policy officially intends to target, and the people that in reality are impacted by the policy. Groups that the policy might affect in practice are for example:

- Trafficked persons
- Sex workers
- Migrants
- (undocumented) Migrant workers in
- Refugees and asylum seekers
- People living with HIV/AIDS
- Local citizens/workers
- Other groups, such as ethnic minorities.

It is important to be precise about the (sub)groups impacted by the policy as the same policy may affect different groups or specific subgroups within a wider group in a different way. Also consider the impact on the most vulnerable or marginalised groups, who are more likely to face negative effects and be excluded from positive effects, for example sex workers working on the streets. They also have fewer opportunities to claim their rights. It is also good to be aware of intentional or unintentional exclusion, such as giving attention only to people trafficked or exploited in the sex industry, but not in other sectors. The effects itself you will describe in step 5. 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 sectors, or male, female and transgender sex workers).

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

Based on the principle of participation, it is essential to include the perceptions of the groups impacted by the policy. When your team is part of the group(s) affected by the policy, this may make it easier to establish contacts with the wider community and involving them in the process. If the group(s) that are 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 should not only be about gathering information, but also about sharing and exchanging knowledge between participants throughout the process.

There are several ways to find out the views & concerns of the group(s) affected: you can organise meetings, hold consultations, conduct interviews, make questionnaires, and search for documents

that express their views, concerns and experiences. If your team belongs to the group(s) affected, take time to also document your own experiences. If it is really impossible to contact (all) the affected group(s) directly, contact NGOs or grassroots organisations that are in direct contact with them for information.

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, questions you might discuss are:

- 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 perceive? What consequences does the policy have for them?
- Which effects do they consider to be most problematic/ most positive?
- What solutions do they see for the negative aspects?
- What should be different? What changes do they want?
- What do they expect from the government or the responsible authorities?

If you do interviews or organise meetings or focus groups, there are a number of **ethical & safety issues** that may rise and that you should be aware of and take into account. Factsheet X gives you some basic guidelines. Take time to discuss with your team issues like anonymity, privacy & confidentiality, informed consent, safety of your team and your respondents, possible conflicts of interests, who has control over the information & how it is used, etc. You might want to establish your own guidelines for your team.

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

Trafficking and anti trafficking policies may touch on a wide range of human rights, like the right to life, liberty & 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 involved in the policy. The rights that are affected will influence the type of information you need for the following steps. In step 5 you will research the impact of the policy on the rights you selected. At that point you may want to add to or change your preliminary selection of rights involved.

To help you identify the rights that may be affected **Factsheet 2** contains a list of the human rights that may be involved and a short description of these rights. The most important of these rights & principles are elaborated in separate factsheets. The first four are not only specific rights but also cross-cutting principles that apply to every right. **Table 3** gives some examples of possible anti trafficking interventions and the human rights that may be impacted by these measures, based on the experiences in many countries with anti trafficking measures that governments may take. Keep in mind that these are examples. There are many more examples and, depending on the circumstances, also other rights than the listed ones may be involved.

Checklist of possible rights involved:

- Right to Non Discrimination, Equality for the Law & Equal Protection by the Law
- Right to Justice a& 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

Table 3. Examples of anti trafficking policies and possible rights involved

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 Non 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 Non discrimination
Closed shelters/ 'safe custody'/ 'protective homes'/ forced rehabilitation	Right to life, liberty & security Freedom of movement Right to justice & access to effective remedy
Restrictions on the freedom to move within one's country/ discriminatory restrictions on travel & visa/ discriminatory border controls	Freedom of movement Non-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 Non-discrimination
Workplace raids leading to arbitrary arrest, detention and/or deportation/ violence, abuse or extortion by the	Right to life, liberty & security Right to equal protection of the law

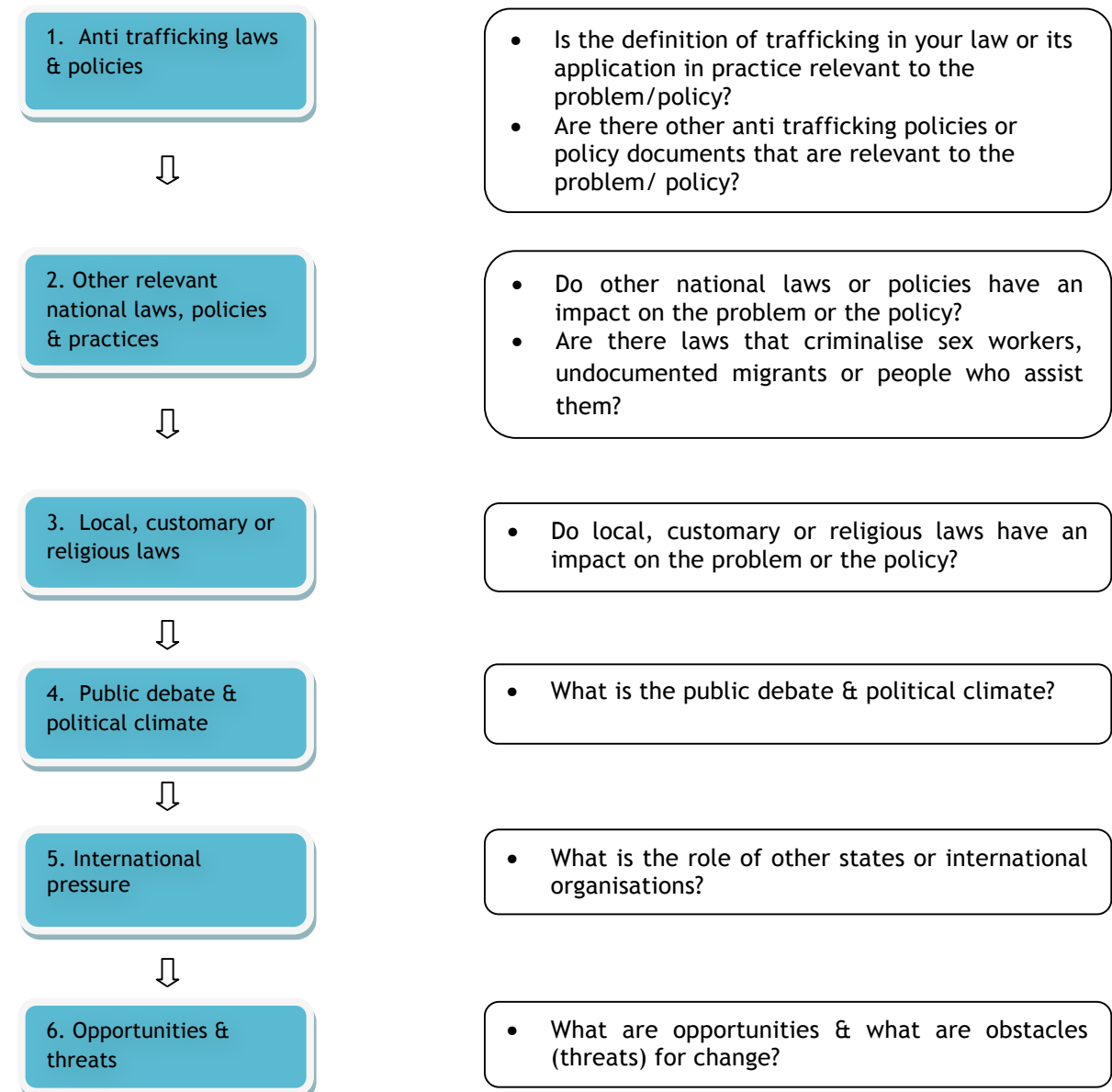
police or other authorities/ confiscation or destruction of personal belongings/ no chance to collect personal belongings	Right to justice & access to effective remedy Right to seek asylum/non-refoulement Right to property Non-discrimination
Negative messages about migrants or sex workers/ stereotyping 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 on discrimination and incitement to discrimination

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 the policy, the stakeholders and the groups affected by the policy, in theory and practice. Describe the views & 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 do the analysis.

Step 3. Legal, political and social context

1. Key questions step 3



2. Questions & explanation

Purpose

In this step you will examine the legal, political and social environment of the policy. 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 8.

1. Is the definition of trafficking or its application in practice relevant to the problem/policy? Are there other anti trafficking policies or policy documents that are relevant to the problem/policy?

Most anti trafficking policies will be based on the definition of trafficking in your law. This means 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. The definition of trafficking in the UN Protocol is very complicated and often misinterpreted or misapplied. Moreover some of its terms are not defined, like 'exploitation of the prostitution of others' and 'sexual exploitation', which easily adds to the conflation of trafficking and sex work. Another problem is that it focuses on the way people arrive in a situation of exploitation, but does not address the exploitation of people under forced labour or slavery-like conditions itself. However, forced labour, slavery-like practices and servitude are prohibited under various international human rights treaties, which most countries have ratified. See for an explanation of the definition of trafficking **factsheet 3**. **Factsheet 12** explains the concepts of forced labour, slavery-like practices and servitude.

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 another ministry responsible for combating trafficking), police, prosecutors or lawyers
- Don't forget the internet!

Some of the problems that may rise are:

- the definition only covers trafficking for the sex industry but not for other sectors, like domestic work, agricultural, factory or construction work
- the definition only covers trafficking across borders but not within the country
- the definition conflates trafficking and prostitution: all sex work is considered to be trafficking and/or all sex workers are considered to be victims
- or the opposite: sex workers are never considered to be victims of trafficking or forced labour, even if they are exploited under forced labour or slavery like conditions
- the law does not cover situations of forced labour, slavery like practices & servitude as such, independent of people are trafficked or not.

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 is in accordance with the international definition of trafficking in the UN Protocol.

Checklist compliance 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 resp. 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 distinguish between:
 - Adults and children
 - Trafficking and sex work
 - Trafficking and smuggling
- Is the (lack of) definition of 'exploitation', 'exploitation of the prostitution of others' and/or 'sexual exploitation' related to the problem/policy? If yes: 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 yes, 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: is the policy you analyse part of the National Action Plan, or does this say something about the problem or policy? Are there other anti trafficking policies or policy documents that are relevant for the problem/policy?

2. Do other national laws have an impact on the problem or the policy? Are there laws that criminalise sex workers, undocumented migrants or people who assist them?

Next to anti trafficking policies, also other policies may have an impact on the problem and the policy. Think, for example, of laws and policies on (forced) labour, sex work, (illegal) migration, public order, health and safety, et cetera. An influential factor may be laws or policies that criminalise sex workers or their clients, undocumented migrants or people assisting them.

3. Do local, customary or religious laws have an impact on the problem or the policy?

Besides official, written laws also local, customary or religious laws, policies or practices might influence your problem and 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. What is the public debate & political climate?

A policy is never created and implemented in a vacuum. The public and political debate influence 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 for change.

5. What is the role of other states or international organisations?

Sometimes other states may put pressure on your government to take particular measures or adopt certain policies. An example is the annual Trafficking in Persons Report (TIP-report) of the US State Department (www.state.gov/g/tip/), which judges the anti trafficking efforts of countries and

accordingly puts them in one of three tiers. Depending on the tier a country is placed in, it qualifies for economic support from the US. Especially in the case of poorer countries this is a powerful means to exert pressure with regard to national anti trafficking policies. Another example is the US **anti-prostitution pledge**, which requires NGOs that receive anti-HIV/AIDS or anti-trafficking funds to adopt an organisation-wide policy opposing prostitution and trafficking for the sex industry.⁷ This requirement, aiming to further the eradication of prostitution and known as the anti-prostitution pledge, has been in place since 2003 and has since been highly criticized as counterproductive and reinforcing stigma and discrimination. Also international or intergovernmental organisations like the International Organisation for Migration (IOM) can play an important role in shaping national policies.

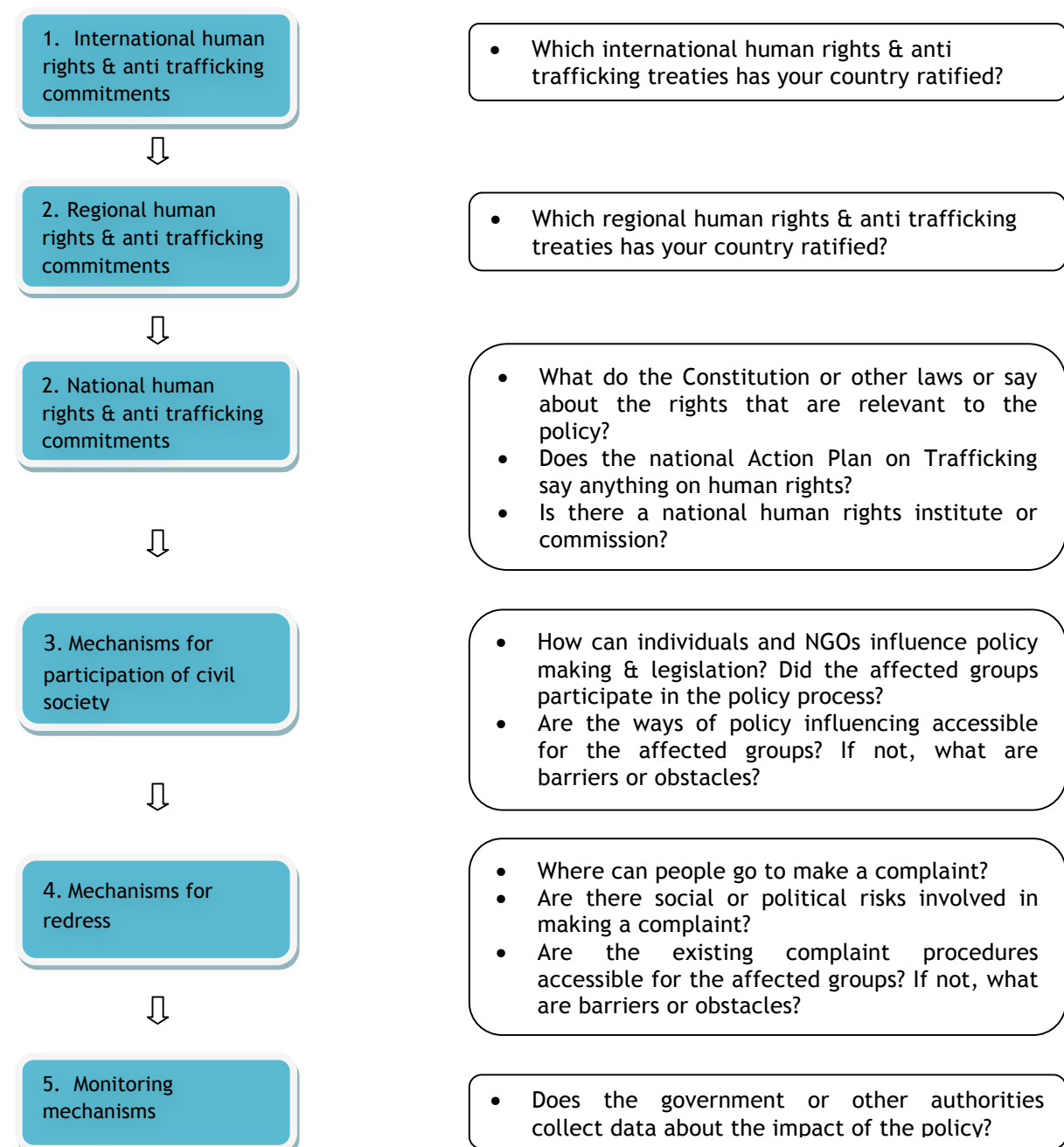
Outcomes: What are your main findings? What are opportunities & obstacles for change?

If you look at 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.

⁷ 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: the government's human rights commitments

1. Key questions step 4



2. Questions & explanation

Purpose

The key question in this step is which human rights commitments your state has made. You will explore which national, regional and international human rights obligations your government has committed itself to by ratifying the different human rights instruments.

The focus in this step is on what is on paper, the so-called **de iure** situation. You will use this information for a comparison with what actually happens, the so-called **de facto** situation, in step 5 and 6 (the gap between human rights on paper and in reality). The purpose of analysing your government's commitments is to find out which standards you can use to hold your government accountable for the possible negative - or lack of positive - impacts of the policy.

Human rights aspects of government commitment

Many of the commitments that countries make by ratifying human rights treaties require changes on the national level. States must recognise the rights in the treaties which they ratified in their political and legal system and adapt their domestic laws to bring them in conformity with the treaty. This means that when you find out that implementation is lacking in your country, you can refer to the international obligations of your government under the treaty concerned. All core human 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 contained in 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 a number of 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. Often a state will first **sign** 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. This means that also when your government has only signed the treaty but not (yet) ratified, you can still keep it to its intentions. Sometimes a state has made **reservations**, which limit the scope of application of the human rights concerned. However, reservations are only valid when they are compatible with the object and purpose of the treaty. This means, for example, that a state cannot

Box 3: Where to find information?

- The full text of all the core human rights treaties and lots of other information can be found at the website of the High Commissioner for Human Rights: <http://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: <http://www.whatlaw.org/>
- The Universal Human Rights Index gives easy access to the observations & recommendations of the treaty bodies: <http://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 you will find 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
- Interviews with relevant government officials, lawyers, the national human rights institution if there is one.

ratify the Women's Treaty (CEDAW) and make a reservation to the obligation to pursue an active policy to eliminate discrimination of women. You can check on the website 'What law' (see box 3) if your state has made reservations to one or more of the major human rights treaties.

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. Also the **Universal Declaration of Human Rights (UDHR)** is considered to be binding for all member states of the UN, even if it is a declaration and not a treaty.

Next to treaties also **consensus documents** are relevant. These are documents which are adopted 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.

Apart from the United Nations, the **International Labour Organisation (ILO)** plays an important role in developing international standards. The ILO consists of representatives of national governments, employers' organisations and trade unions and is the global body responsible for drawing up and overseeing international labour standards. These are either conventions, which are legally binding international treaties that 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. Which international human rights and anti trafficking treaties has your government 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
- 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. Which 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 a regional commission which can make legally binding decisions. The human rights protection system in Europe is comprised of various organisations: the Council of Europe (CoE: 47 member states), the European Union (EU: 27 member states) and the Organisation for Security and Cooperation in Europe (OSCE: 56 member states). All member states of the Council of Europe and of the EU are party to the European Convention on Human Rights (ECHR) and are bound by 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 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 (incl. 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)

2. What do the Constitution and other national laws or policy documents say about the rights that are relevant to the policy?

Generally the Constitution contains a number of fundamental human rights protections, 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, et cetera. 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. Some countries have a special human rights institution or an Ombudsman.

Questions to consider are:

- What does the Constitution say about the rights that are relevant to the problem/policy?
- If your country has a National Action Plan on Trafficking, does this say anything about human rights?
- Are there other laws or policies that protect specific human rights that are relevant to the problem/policy?
- Are there any other policy documents on human rights that are relevant for the problem/policy?
- Does your country have its own human rights institution or commission or Ombudsman?

3. What are the formal ways in which individuals, NGOs and other civil society organisations can influence policy making and legislation?

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, for example: 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, et cetera.

The following levels of participation can be distinguished⁸:

- **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 the 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**: the affected groups are asked for their opinion, but their input is not taken seriously. In the case of **manipulation** the government pretends to have the support of the affected group(s) but ignores their actual needs.

⁸ Based on Roger Hart's Ladder of Participation. See www.mcs.bc.ca/ya_ladd.htm.

Taken into account the above, what level of participation applies to the policy at hand? Are the regular ways of policy influencing accessible to the groups affected? If not, what are barriers or obstacles?

4. Where can people go to make a complaint if their rights are violated?

Another element is the possibility for people to submit a complaint if their rights are violated, including complaints about their treatment by state authorities. Examples of (formal) complaint mechanisms are national human rights commissions, an Ombudsman or complaint procedures at ministries, the police, administrative courts, etc. An important question is whether it is safe to make a complaint. Human rights defenders generally run a higher risk as their work often touches sensitive issues and they may have to operate in a hostile political or social environment.

Questions to consider are:

- Where can people go to make a complaint about their treatment by state authorities? Do they offer an adequate remedy in practice?
- Are there social or political risks involved when making a complaint?
- Are the existing complaint procedures accessible for the affected groups? If not, what are barriers or obstacles?

5. 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. For example through gender impact assessments, evaluation studies by the government itself or commissioned to a research institute, or through a monitoring system. Some countries, for example, have a National Rapporteur on trafficking in human beings who collects information on trafficking and the implementation of anti trafficking policies. If you do not know, try to find it out through an organisation that specialises in trafficking, through a friendly official, or through interviews with the relevant authorities, for example the ministry or department that is responsible for trafficking.

Questions to consider are:

- Is there an evaluation or monitoring system for the policy? If yes, 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: human rights commitments of your government & participation mechanisms

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

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

1. Key questions step 5

1. Impact on combating trafficking & related abuses



2. Impact on human rights: Do no harm



3. Compliance with human rights principles

- What is the impact of the policy on the prevention of trafficking, the prosecutions & punishment of traffickers and the protection & assistance of trafficked persons?
- Do the effects of the policy in practice correspond with what it officially aims to achieve? If not, where does it they fail?

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

- Does the policy and/or its effects fulfil the principles of participation, non discrimination, gender equality and access to justice?
- Do or did the groups affected participate in the development, implementation and evaluation of the policy?
- Does the policy discriminate against particular groups or has it discriminatory outcomes?
- Does the policy affect women differently from men?
- Does the policy affect access to justice & effective remedy in case of abuses?

2. Questions & explanation

Purpose

In step 4 you looked at the promises your government made **on paper (de iure situation)**. In this step you research the effects of the policy **in practice (de facto situation)** and whether these result in a violation of human rights. In step 2 you determined the groups that are affected by the policy and the rights that may be involved. These are the groups and the rights you will further investigate in this step. In the next step you will compare your findings about what actually happens to the promises your government made on paper.

In this step you will collect a lot of information. Before you start, carefully read through **factsheet X** which gives you tips about how to collect information and how to organise and analyse your findings. When researching the impact of the policy, look for both **quantitative data** (data about numbers & frequencies, such as statistics) if available, and **qualitative data** (data about meaning and experience, such as the description of particular situations or experiences through interviews or focus groups). Try to be as specific as possible about which groups and which rights are affected and how this happens. 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.

!!! Remember that you do not need to answer all the questions. We advise you to first go through all the questions and select the questions that are 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 states have to address trafficking and the minimum standards for anti trafficking policies.

Firstly, as trafficking and the exploitation of people under forced labour or slavery-like conditions are considered to be serious human rights violations, states have the obligation to prevent, investigate and punish trafficking and its forced labour & slavery like outcomes, and to provide victims with adequate remedies. This means 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 ('prevent')

Box 4: Where to find information?

- Interviews, meetings or focus groups with the groups or communities that are affected by the policy, self 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 present) 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;
<http://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/

- stop the abuse and investigate, prosecute & punish the perpetrators ('investigate and punish')
- provide victims with assistance, protection and compensation ('provide adequate remedies')

Secondly, states which have ratified the treaties mentioned in step 4 have to respect, promote and fulfil the human rights contained in those treaties of *all* persons within their jurisdiction. This means that 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 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, a relevant question is what should happen to strengthen positive impacts and avoid negative ones.

Box 5: The obligation to respect, protect and fulfil

- **Respect** means that the state should not breach or undermine, directly or indirectly, the enjoyment of any right
- **Protect** means that the state should protect people against human rights abuses and take measures to prevent human rights violations. This includes measures to prevent third parties from violating rights
- **Fulfil** means that the state should adopt appropriate measures to guarantee the full enjoyment of all human rights to all people on its territory.

Thirdly, policies have to comply with a number of overarching human rights principles, in particular participation, non discrimination, gender equality and access to justice.

The three sets of obligations as discussed above 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 or negatively affect them?
3. Do the policy and/or its effects fulfil the principles of participation, non discrimination, gender equality and access to justice?

1. What is the impact of the policy on the prevention of trafficking, the prosecution & punishment of traffickers or the protection & assistance of trafficked persons? Do the actual effects correspond with what the policy officially aims to achieve?

The first criterion for any anti trafficking policy is, logically, whether it helps against trafficking. This is what the first question is about. 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 (which you research in this step). For example, the official aim may be to punish traffickers (obligation to investigate & punish trafficking), but in practice the policy may be used to arbitrarily arrest and detain migrants or sex workers (which violates their right to liberty and security) and result in their increased vulnerability to trafficking & related exploitation by deterring people from seeking justice in case of abuses (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 (thus violating both the principle of non discrimination and the right to freedom of movement), while leading to their increased reliance on criminal

middlemen for their migration and thus adding to their vulnerability for trafficking and other forms of abuse rather than protecting them (Obligation to protect and prevent). Another example is the mandatory registration of sex workers or the criminalisation of clients of (unregistered) sex workers. Whereas the official aim may be to prevent trafficking, 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 sex workers who are 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).

States must prevent, investigate and punish trafficking and its forced labour & slavery-like outcomes, and provide victims with adequate remedies. In doing so they must meet certain minimum standards, which can be derived from international human rights law and anti trafficking instruments. **Factsheet 6** discusses these minimum standards and the anti trafficking and human rights instruments on which they are based. These standards can be used as **indicators** to determine whether the state meets its obligations.

Below you will find a checklist of the minimum standards that states must meet in relation to the prevention and prosecution of trafficking and the protection & assistance of trafficked persons. For a more detailed overview please see **factsheet 6**.

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

Obligation to criminalise trafficking & 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, 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
- 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 towards those who are vulnerable for 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
- No aspect of the state's response to trafficking violates other established rights (e.g. no compulsory testing or arbitrary detention; 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.

Is there 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 it officially aims 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 the official aims of the policy? If not, where do they differ? Which groups does the policy officially target and which groups are affected in practice? Do these groups correspond? If not, where do they differ? Did you find any particular obligation 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. What is the impact of the policy or the way it is implemented 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 impact on 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* people on their territory can enjoy their human rights. In step 2 you identified the groups affected by the policy and the human rights that may 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. Also remember that a policy can have different effects on different (sub)groups.

For each right a separate factsheet is provided. The **factsheets** explain what the particular right means and list the international human treaties that protect this right, as well as relevant General Recommendations or other documents of the **treaty bodies** concerned and/or 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 five categories:

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

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

The second set of questions is about the national & legal context of the right. You will have to ask these questions mainly to the government, but also other sources are important, such as government reports, reports to or from international bodies and reports from NGOs, other civil society organisations or journalists. Part of these questions you already researched in step 4.

The third set of questions asks for the experiences & views of the groups affected by the policy. These questions are primarily meant to be answered by members of these groups or communities themselves. However, also here other sources can be important, such as your own experiences with the impact of the policy, reports from NGOs, service providers, lawyers, academics, human rights institutions or the government.

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 your own experiences with the impact of the policy, 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 case of a planned policy.

A way to record your findings is to make a separate table for each right affected, in which you represent the information from different sources (government, affected groups, reports & other documents) in different columns. 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 human rights, or does it undermine, negatively affect or violate the human rights of trafficked persons or other 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?

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

In the development, implementation and evaluation of anti trafficking policies, states must meet 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 a right in itself. **Factsheet 7** discusses each of these principles. Below you will find a short explanation and a set of questions for each principle.

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

In step 4 (question 3) you explored the ways in which 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? When answering this question, take into account the various ways of participation as explained in step 4. The following questions are indicators whether the government fulfils the principle of participation.

Questions:

- Has the government taken steps to actively involve the groups affected by the policy and other relevant stakeholders (e.g. unions & employers organisations) in the development, implementation, monitoring and/or evaluation of the policy?
 - If yes, how is/was participation organised? Who participates or participated and who do/did they represent?
 - If the affected groups did not participate in the policy process: what problems or barriers do/did they encounter? What were the arguments of the government to not involve them? Can you give examples?
- Do 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?

Box 6: Participation

Participation refers to the involvement of people in decisions that affect their rights, including the development, implementation and evaluation of policies. This means, for example, involving the people working in those sectors in which 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.

- Can the affected groups freely express their views and concerns without fear for sanctions, either from their employers or from state agencies? If not, can you give examples?

Conclusion: Does the policy fulfil the principle of participation?

b. Does the policy discriminate against particular groups or has it 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 to discrimination. A policy may discriminate directly, for example by restricting the freedom of movement of specific groups of people on the basis of their gender or age, but a policy can also discriminate indirectly. This means that a neutral policy can still have discriminatory effects, because it negatively affects some groups more than others. For example, a prohibition on migration for domestic work indirectly discriminates against women as 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.

Questions:

- Does the policy or the way it is implemented discriminate against particular groups? If yes, against which groups and in which 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 yes, in what way?
- Does the government consider that the policy may discriminate particular groups or may lead to discriminatory outcomes?
- Are there mechanisms to make a complaint about discrimination? If yes, are these accessible for 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 involvement in sex work of their immigration status?
- 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 any other discriminatory ground?

Box 7: 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 (CCPR, General Comment no. 18).

The principle of non discrimination is laid down in the Universal Declaration on Human Rights (UDHR) and runs like a red thread throughout all human rights treaties and declarations.

Conclusion: 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 women might be affected differently than 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 yes, in what way?
- What is the impact of the policy on stereotypical gender roles?
- Are there mechanisms to make a complaint about discrimination against women? If yes, are these accessible for the groups affected by the policy? If not, what are the barriers?
- Does the government consider that the policy may discriminate women or may lead to the direct or indirect discrimination of women?

Conclusion: Does the policy fulfil the principle of gender equality?

d. Does the policy impair or facilitate access to justice & effective remedy?

In order to truly enjoy their human rights, people must have access to legal recourse in case their rights are not being respected. In Step 4 (question 4) you looked at the mechanisms through which people can make a complaint when their rights are not respected. In this step you will look at what happens in practice: are these mechanisms available for the groups affected by the policy and do they offer an effective remedy?

Questions:

- Does the policy or the way it is implemented affect the possibilities for the affected groups to seek justice in case of violations of their rights? If yes, in which way? What are the barriers people face?

Conclusion: Does the policy fulfil the principle of access to justice and effective remedy?

4. Conclusion question 3: Does the policy and/or its effects respect human rights principles?

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

Overall conclusion Step 5: Does the policy negatively affect or violate human rights?

What are your most important conclusions? What positive and negative impacts you found? Did you find violations of specific human rights? Describe which rights are affected, the violations or negative impacts you found, and formulate the arguments that lead you to your conclusions. Also describe possible positive effects of the policy if applicable, as this can help you to formulate your recommendations.

At this point of the process it is useful to take time to examine what information you have and if it is sufficient to draw conclusions. Do you have sufficient arguments that a specific right or aspect of a right has been affected or violated? If not, you might need to go back and try to collect more information on this specific issue. Questions you should consider are:

- 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 so, draw up a plan how you are going to fill this gap. Are there still documents you 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?



2. Does the state breach its human rights obligations?



3. Accountability of the state

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

- Do the negative impacts or violations you found constitute a breach of the human rights obligations of your government?
- To which rights and type of obligations do the negative impacts or violations relate?
- What is the relation between the negative impacts or violations and the human rights commitments of your government?

- Is your government accountable for the negative impacts or human rights violations you found?

2. Questions & explanation

Purpose

In step 4 you determined the human rights commitments of your government. In step 5 you examined the human rights impact of the policy in practice. In this step you compare the gap between the two. The main purpose of this step is to determine whether, and to what extent, you can keep 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 people affected by them.

Human rights aspects of accountability

Accountability means that the government 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. Also if private actors (including national or international organisations or NGOs) commit a violation, it is the responsibility of the government to protect its people and ensure that their human rights are respected. Accountability, when used here, means the same as responsibility.

International human rights law imposes specific obligations on states. As discussed in the previous steps, states have the obligation to prevent, investigate and punish trafficking and related human rights abuses and to provide victims with adequate and appropriate remedies, including assistance, protection and compensation (see for the minimum standards they must meet step 4). Moreover, they have the obligation to respect, protect and fulfill the human rights laid down in the treaties they have signed and ratified, of *all* persons within their jurisdiction. They also have to comply with the key human rights principles of participation, non discrimination, gender equality and access to justice & effective remedy.

To keep your government accountable for the negative impacts or violations of human rights you found, 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 (e.g. ministries, local administrations, police or other state authorities), whether they operate on local, regional or national level. Also when state organs or officials do not act on behalf of the state, the state is responsible when the conduct in question is systematic or recurrent to the point that the state knew of should have known of it and should have taken actions to prevent it. Examples are systematic abuse of sex workers by the police, direct involvement of public officials in trafficking or corruption of judicial authorities.
- **Under certain circumstances states are also responsible for the conduct of private persons or entities**, such as NGOs or service providers. This is the case:
 - when the state 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 the state approves or endorses, or exerts some form of control over the conduct in question.

Also when the state has 'privatised' functions normally exercised by state organs (e.g. immigration control by commercial air carriers) the state is still 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).

- **The act or omission must constitute a breach of an international obligation of the state.** 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 they are bound.
 - The obligation to **protect** means that governments should not allow state actors or non-state actors (including NGOs, service providers and donor agencies, as well as individuals) to violate the human rights concerned and that they should take measures to prevent human rights violations, including by third parties. It also means 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)

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 & national) human rights commitments of your government 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.

1. Are the negative impacts or violations you found attributable to the state?

Who are the main actors involved in the negative impacts or violations you found 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, for example 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 are:

- Which state agencies or state representatives are involved?
- What is the role of the government?
- Is the government aware of the situation?
- Has the government taken measure to ensure the policy respects and protects human rights?

- Has the government done anything to prevent negative impacts or to protect the group(s) affected from violations? If yes, is this sufficient?
- Does the government benefit from the violations?

If other actors than government agencies are involved in the violation you will have to look carefully at the relation between these actors and the state in relation to the policy and its implementation. Examples of **non state actors** are NGOs or other civil society organisations, service providers, private companies or donor agencies. Remember that the government 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, take measures to redress the situation. By no means the government may be complicit to violations by other actors. However, in order to be able to hold the government accountable for their actions you have to establish the link between the non state actor and the state. Questions are:

- 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 yes, are these measures 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 with regard to policies on, for example, trafficking, sex work, migration or HIV/AIDS. Examples of international actors are international UN organisations, like the World Health Organisation (WHO) or the UN Office for Drugs and Crime (UNODC), intergovernmental organisations, like the International Organisation for Migration (IOM), or international NGOs and faith based organisations.

Who is responsible for the possible positive impacts you may have found?

You may also want to identify who is responsible for possible 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 impacts or violations you found constitute a breach of the human rights obligations of your government?

In order to determine whether the negative effects or violations you found result in a breach of the human right obligations of your government, you have to compare the impact of the policy in practice (step 5) with the human rights commitments your government made on paper (step 4). If you think that a right is negatively affected or even being 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 right(s) and type of obligation do the negative impacts or violations relate?

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

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

It will not always possible to distinguish between the failure to respect, protect or fulfil. For example, the law may put restrictions on the freedom of young women to leave their country to work abroad (obligation to respect), but as a result migrant women may be more vulnerable for trafficking practices (obligation to protect).

What is the relation between the negative impacts or violations you found and the human rights commitments of your government?

The human rights commitments of your government you listed in step 4 form the basis for answering this question. By comparing the impacts of the policy in practice with the obligations following from the human rights commitments your government made, 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 government has not ratified the treaty that protects the right concerned. In that case it will be difficult to keep your government accountable. However, keep in mind that some international agreements are considered to be binding for every state, such as the prohibition on torture, and the Universal Declaration of Human Rights (UDHR), even if the latter is a Declaration and not a treaty. Sometimes your government will have signed a treaty but not (yet) ratified it. However, once a government has signed a treaty, it is obliged to 'refrain from acts which would defeat the object and purpose of the treaty'.

3. Is your government accountable for the negative impacts or violations you found?

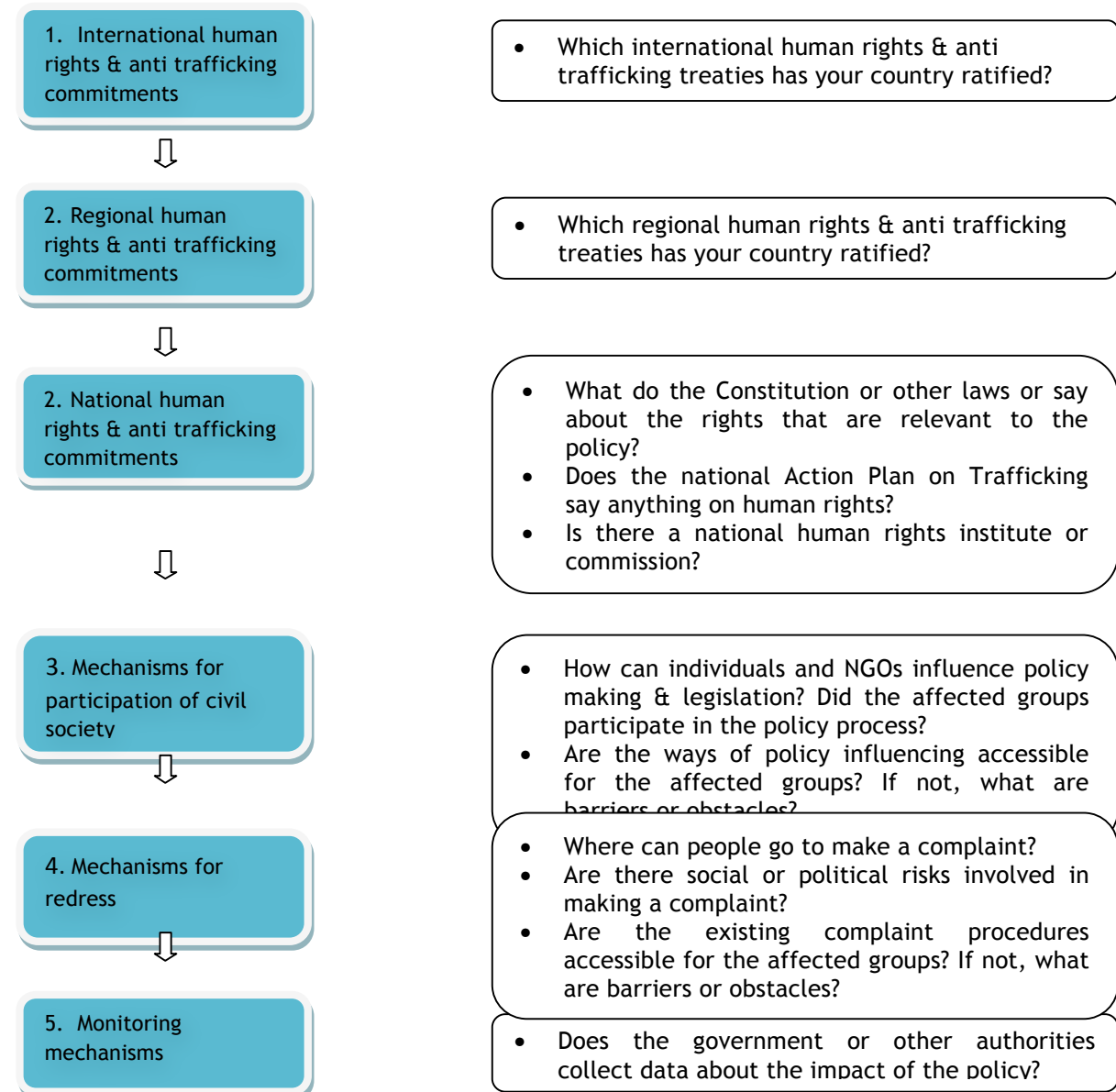
For which negative impacts or violations resulting from the policy can you hold your government accountable? Write your conclusion in the last column of the table. This marks the end of your analysis. In the next step you will formulate your recommendations and make an action plan on how to use the outcomes of your analysis.

Table X: Impact and accountability of your government

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

Step 7: Recommendations & action plan

1. Key questions step 7



2. Questions and explanation

Purpose

This step helps you to put the results of your analysis into action. It serves to organise information, to formulate precise recommendations, draft your report and decide what kind of action you want to undertake to promote your recommendations. From here on the real work begins, as this step aims to formulate the rights-based arguments you need to change or adapt the policy in line with your findings.

Participation & planning

To make your recommendations and action plan the most effective and relevant to all stakeholders, in particular the affected groups, their involvement is key in the final stage of this process. Share your findings with them and discuss which conclusions need to be addressed most urgently and which change would be achievable and would be the most effective in improving the situation. Build your recommendations from these discussions and prioritise together. By doing so you empower the groups affected and create support for your lobby.

Secondly, before developing your action plan, seek out the best opportunity to bring your message about. This may sound logical, but lobbying for policy changes takes a long breath. More often than not you won't see immediate results of your advocacy efforts. However, informing relevant stakeholders, institutions, media, politicians, etc. is just as important and can open up a dialogue that in the long run may lead to change. Hence, use the outcomes strategically, integrate them in your long term advocacy 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.

Advocacy & lobby

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

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

The most important and key stakeholders are the affected groups. 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 to ensure that your recommendations respond to their concerns and views. However, you might also want to think about involving other stakeholders in the development of your recommendations and action plan. Think about which organisations may have an interest in working together with you, and which other relevant experts, institutions or persons may help you to formulate and prioritise your recommendations. Involving relevant stakeholders also helps to raise awareness about the situation and the need for change.

2. What are your main conclusions and recommendations to the government and other actors?

Make an overall summary if the information collected in the previous steps

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 which information to present and how. Below are some considerations to take into account:

- **Format:** information can be presented in written, oral and/or visual form. A different format may be useful depending on the target group. Also, depending on who you present the information to, you may want to highlight specific findings more than others
- **Length:** keep it as short as possible. Include only the information that is needed to support your arguments and - where needed - examples and data to clarify and illustrate.

What are your main conclusions and recommendations?

For each of the violations and unwanted effects 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. Prioritise which recommendations are the most important. It may help you to write down the most positive impact of the policy possible (the ideal situation) and then compare this with your main findings. What need 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? Also think about to what extent 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 groups affected. Be aware that also within one group different members may be affected differently. For example, the impact of a restrictive immigration policy may impact differently on female migrant workers than on male migrant workers; measures to restrict migration for domestic work will mostly impact women; and measures to criminalise clients will impact differently on sex workers who work on the streets than on those who work home based, or differently on male and transgender sex workers than on female sex workers, etc. These differences should be taken into account in your recommendations.

Which actors do you want to address?

The analysis seeks to improve policies and to increase accountability of the government for meeting its human rights obligations. 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. Address your recommendations to the specific actors you identified in step 6. Keep your recommendations as short and concrete as possible:

- 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?

Checklist on how to formulate a good recommendation

- Be **SMART**: formulate recommendations that are as much as possible Specific, Measurable, Achievable, Realistic and Time-bound

- Rights based: some governments or policy makers are not aware of their human rights obligations. This may mean that you have to explain to them very specific what their obligations are in relation to anti trafficking policies based on what your findings
- Be successful: Try to be as realistic as possible. In many cases an easy solution won't be available and change won't come easily. Try to formulate recommendations that are achievable
- Be prepared for counterarguments: which counterarguments do you expect the government to use? What will be your arguments to counter them? Keep in mind that it is the responsibility of the government to ensure human rights
- Include benchmarks: **benchmarks** make it easier to monitor improvements. For each of your recommendations you could try to formulate benchmarks to measure 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 in which stage the policy is, as this may determine the type of solution or recommendation and who you want to approach
- Ownership: you could try and involve the responsible policy makers in the search for alternatives. This may increase their feeling of ownership of the suggestions and the chances for acceptance.

3. Write your report

Your report forms the basis for your lobby and 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 of this section you will find an example which closely follows the structure of your analysis.

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

You might also want to ask people within your organisation, outside experts or people you trust for comments. It is always helpful to ask people who are not involved in the assessment to proof read your draft. Because they are not involved, they will much more easily see where the report is not clear, where gaps are, 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 report and ask for comments, be prepared that this can take some time. Always set a deadline and plan time for your team to include the comments. When you circulate the report within your organisation and/or among others, it is possible that you receive conflicting comments and that you will not be able to integrate all comments in the report. Be always 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 won't 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 if you protected the privacy or anonymity of participants who requested you to do so.

Box X. Example how you can organise your report

1. Introduction

Here you describe why you did the assessment, its purpose, 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 that the policy aims to target and the groups that in practice are affected by it, how the affected groups perceive the problem and the policy and which human rights are at stake.

3. The national legal, political and social framework

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 relevant 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 your government

In this section you discuss the commitments made by your government at the national and international level with regard to human rights. What does the Constitution or other laws and policies, including a possible national action plan on trafficking, say about human rights? To which human rights treaties is your government a party and which obligations does this 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 focus on the main rights involved right away. In any case make sure that you clearly describe the relation 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 the chapter is to compare your findings about the impact of the policy in practice (human rights in practice) with the human rights commitments of your government 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 to which actors the various recommendations are addressed.

Since your report will be read by many people, pay attention to the lay out. If the report looks nice and has pictures in it, it is more attractive to read. Also think about different formats to present it. If, for example you want to lobby politicians, a two page factsheet is much more effective than a forty 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 a short video in which, for example, you interview the members of your team about the process of making the assessment.

Think on forehand how you want to publish 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 put it on the internet? What is the most strategic way, 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 made in step 2 and your analysis of opportunities and threats in step 3. Who are possible allies or supporters, what obstacles can you anticipate? Can you link up with other groups, organizations 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 asked advice of more experienced organisations. You can also link up with other organisations to make sure that your recommendations are supported by a coalition of a platform. Below are some questions that may help you building your action plan.

Who is your target group? 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 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? To what kind of arguments are they sensitive? Use your networks, contacts and befriended organisations.

Think about who you are going to present your findings and recommendations, which persons, at which governmental level and what is their exact role and competences? Are they able to follow-up 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 evaluation the policy?

What kind of advocacy actions can you undertake?

The key question here is how you can bring forward your recommendations to your target group(s) in the most successful way. Be strategic and make use of your experience, networks and contacts. Brainstorm what activities are realistic, useful and within your capacity. Formulate for each activity what kind of resources they require and develop a time frame. Think, for example, of approaching the press, mobilising the affected community or alerting the international community. Some examples of follow up actions are:

- Organising a press conference to launch the report
- Workshops, seminars for the groups affected, experts, government representatives, etc.
- Engaging in a dialogue with the government and/or other responsible actors
- National and international campaigns
- Use the media. Think also of internet fora or mailing lists, Face Book, You Tube, etc.
- Legal actions seeking redress or prosecution of violations

- Making use of international human rights mechanisms, e.g. use your findings to write a shadow report to the treaty body of the Women's Convention (CEDAW) or the ICCPR
- Human rights trainings with affected groups or communities

Which advocacy opportunities do you have?

Assess your lobby activities to know when the government will be most likely to listen to your arguments. This question requires some insight to the governments' agenda or that of other actors you want to approach. A conference, a debate in parliament, a visit of a high level official, etc. can be a strategic moment to present your findings.

Which other governments, funding agencies or other actors do you want to approach?

What other national or international governmental actors, NGOs, funding agencies or others may be able to put external pressure on your government or relevant private actors? When aiming your lobby at these other actors, keep in mind what their role or mandate is and what they are sensitive to.

When and how will you know that the government has taken action following your recommendations?

This requires information about the government agenda and procedures. Will the recommendations be officially discussed? Can you be present at those sessions? What other ways exist to know if the government has acted upon your recommendations?

How will you evaluate your action?

Make a plan how you want to evaluate your action: set criteria/indicators for the changes you aim to achieve and evaluate after a set time if 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 ask outside assistance. To create an overview of your action plan, you can use the table below. This will help you to structure the information you need and will 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 reach, so you will be effective and be able to enjoy your successes!

You have now completed the analysis as well as your action plan and recommendations. If all has gone well, you have build up a 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!

Box x: Format Advocacy action plan

Recommendations:
.....

Advocacy messages:
.....
Depending on the recommendations you may formulate one or more advocacy messages. This also depends on the target audience you choose. Each audience requires its own appropriate language.

Target audience:
.....
Select the appropriate audiences you want to target. You can select primary and secondary audiences. For example: the Minister is your primary audience, but your secondary audience are his civil servants and policy makers, who can propose changes and ideas to the Minister.

Description activities:
.....
Describe each advocacy activity you plan to do. Describe which tasks belong to which activity and who is responsible.

Communication channels:
.....
Which communication channels will you use to put forward 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 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 have 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

Sources of useful information