



**UNODC**  
United Nations Office on Drugs and Crime



# GloACT

ASIA AND THE MIDDLE EAST

## **UNODC TOOLKIT**

For mainstreaming Human Rights and Gender Equality into criminal justice interventions to address trafficking in persons and smuggling of migrants



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# Introducing the Toolkit

## What is the Toolkit and who is it for?

**The Toolkit is a collection of tools to help practitioners understand and incorporate human rights-based and gender equal responses into criminal justice responses to smuggling of migrants and trafficking in persons.**

effectively combat trafficking in persons and smuggling of migrants, and understands that its efforts to address the transnational organized crime dimensions are only one part of a wider, comprehensive response that must be brought to bear in addressing the economic, social, cultural, civil and political dimensions of these crimes.

The **target audience** of the Toolkit is primarily UNODC staff, experts and stakeholders working in GLO.ACT partner countries<sup>1</sup> to prevent and address trafficking in persons and migrant smuggling. Given this context, some of the issues raised in this Toolkit may not be as relevant in other regions. However, in the spirit of collaboration and engaging with partners across disciplines, the decision has been taken to make this Toolkit publically available for a secondary audience of actors outside of UNODC and beyond GLO.ACT partner countries, in case others may derive some benefit from these Tools in their own efforts to apply human rights based and gender equal approaches to human trafficking and migrant smuggling response. Stakeholders are welcome to use, amend or adapt Toolkit content to their purposes in line with their objectives to the extent that it is useful, or disregard if it is not.

The focus of the toolkit is on criminal justice responses because UNODC - being the United Nations Office on Drugs and Crime - is mandated to address the criminal dimensions of human trafficking and migrant smuggling, in the context the United Nations Transnational Organized Crime Convention (UNTOC) and the Protocols on Trafficking in Persons and Smuggling of Migrants supplementing it. This is not to suggest that criminal justice measures are the only responses required to confront these two crimes. UNODC fully recognizes that criminal justice responses alone cannot

<sup>1</sup> The Global Action against Trafficking in Persons and the Smuggling of Migrants is a joint initiative by the European Union (EU) and the United Nations Office on Drugs and Crime (UNODC) being implemented in partnership with the International Organization for Migration (IOM). More information available here: <https://www.unodc.org/unodc/en/human-trafficking/glo-act/index.html>



## Why does the Toolkit address human trafficking and migrant smuggling together?

In many countries efforts to confront smuggling of migrants often lag behind understanding of and response to trafficking in persons. In practical terms, UNODC's experience shows that response to smuggling of migrants and capacity to confront it, is often built on the back of counter-trafficking efforts, with the state actors and institutions that are engaged in counter-trafficking eventually becoming capacitated to also address migrant smuggling, and with legislative and policy responses evolving from counter-trafficking efforts and experiences. Additionally, in these and other countries, the two crime types often intersect in complex ways in practice, making understanding of one imperative to understanding of the other. Particularly in the context of mixed movements from and through these countries, victims of trafficking may exist among smuggled migrants, and smuggled migrants are acutely vulnerable to being trafficked or otherwise exploited. For these reasons, and in line with UNODC's mandate, trafficking in persons and smuggling of migrants are addressed in the one Toolkit to seize the opportunity to strengthen understanding of and capacity to confront these crimes in ways that acknowledge the distinctions and interrelationship between them, and the need to ensure that approaches to both are human rights based and gender equal<sup>2</sup>.

Having a human rights and gender equality Toolkit that addresses both these crimes also aligns with UNODC's mandate to support States to implement their obligations the UN Trafficking in Persons Protocol and the Smuggling of Protocol, being sibling instruments that both supplement the United Nations Convention against Transnational Organized Crime (UNTOC). Not only must both

instruments be interpreted in line with the same parent Convention, and both also point to international human rights law in parallel ways. Indeed, protection of rights is one of the core purposes set out in article 2 of both Protocols and human rights are mentioned throughout both instruments (see [Annex 1](#) and [2](#)).



Human rights language is particularly used in human trafficking discourse. Human trafficking has even been described as constituting a violation of human rights in its own right, including in general recommendations of the Committee on the Elimination of Discrimination against Women<sup>3</sup>, and the preamble of the Council of Europe Convention on Action against Trafficking in Human Beings. Indeed, in his foreword to the UNTOC and its Protocols, the then Secretary-General of the United Nations, Kofi A. Annan, stated that "I believe that the trafficking of persons, particularly women and children, for forced and exploitative labour, including for sexual exploitation, is one of the

<sup>2</sup> See: ICAT Issue Brief 01, 10/2016, What is the difference between trafficking in persons and smuggling of migrants? Available at: <https://icat.network/sites/default/files/publications/documents/UNODC-IB-01-draft4.pdf>

<sup>3</sup> Including, most recently, Committee on the Elimination of Discrimination against Women, General Recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration, UN Doc. CEDAW/C/GC/38 (6 November 2020) [14-15]

most egregious violations of human rights that the United Nations now confronts.” However, in technical, legal terms, human trafficking only involves human rights violations if the State is directly involved in human trafficking owing to the actions of corrupt State officials, or because of its failure to uphold its obligations to prevent trafficking and protect and assist trafficked persons<sup>4</sup>.

The obligations of States to protect people within its power or effective control in accordance with international human rights law serve as a baseline for the treatment of both trafficked and smuggled people. In the case of human trafficking specifically, trafficked persons are entitled to specific protections owing to their status as victims of crime. In the case of smuggled migrants, who are not ‘victims’ of smuggling per se, the Smuggling of Migrants Protocol does not create additional rights for smuggled migrants nor accord them with any particular ‘status’ that gives rise to protection obligations. Rather, it upholds existing rights in international law, and emphasizes that States must ensure that migrants are protected in any efforts to confront smuggling of migrants.

While the Trafficking in Persons and Smuggling of Migrants Protocols are not human rights instruments per se, they both confirm the importance of a human rights-based approach to these crimes<sup>5</sup>. Both instruments contain an identical ‘savings’ clause (article 19(1) in the Smuggling Protocol and article 14(1) in the Trafficking Protocol), stating that the instruments are to be interpreted and

<sup>4</sup> See *Rantsev v Cyprus and Russia*, Application No. 25965/04, 7 January 2010, and principle 2 of the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking, E/2002/68/Add.1: “States have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons.” Also consider comments made by Professor Ryszard Piotrowicz, at an online webinar lecture hosted by the Graduate Institute of International and Development Studies, Geneva on 26 October 2020, on the topic “Human Trafficking and the Fallacy of Human Rights Violations”.

<sup>5</sup> In the case of human trafficking, the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking, which were transmitted to the United Nations Economic and Social Council in 2002, and the 2010 commentary thereto, offer policy guidance on human rights-based approaches to counter-trafficking.

applied in accordance with other international instruments.

Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.

The range of human rights brought into play are found in international customary law as well as in the treaties that are binding on the States that have ratified them, and the norms and standards that are available to support their interpretation and implementation. States, as the primary subjects of international law that become party to human rights treaties, must:

- **Respect** rights, by not violating or interfering with enjoyment of rights
- **Protect** rights, by taking action to prevent others from violating rights
- **Fulfil** rights, by taking positive measures to ensure rights are realized

Principles of due diligence and do no harm come into play in the interpretation and application of this savings clause, to oblige counter-trafficking and counter-smuggling actors to not only promote human rights, but also to ensure that their work does not undermine human rights, nor detract from the obligations of States to respect, protect and fulfill them.



## Sources of human rights

### *International customary law, including:*

- Prohibition on torture
- Prohibition on genocide
- Prohibition on slavery
- Principle of non-discrimination

### *Treaty law, including the nine core human rights treaties:*

- International Covenant on Civil and Political Rights, 1966 (ICCPR)
- International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR)
- International Covenant on the Elimination of All Forms of Racial Discrimination, 1965 (ICERD)
- Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, 1984 (CAT)
- Convention on the Rights of the Child, 1989 (CRC)
- International Convention on the Protection of the Rights of all Migrant Workers, 1990 (ICRMW)
- Convention on the Rights of Persons with Disabilities, 2006 (CRPD)
- International Convention for the Protection of All Persons from Enforced Disappearance, 2006 (ICPED)

### *Standards and norms, including those related to:*

- Persons in custody, non-custodial sanctions, juvenile justice, restorative justice
- Legal, institutional and practical arrangements for international cooperation
- Crime prevention and victims' issues
- Good governance, the independence of the judiciary and the integrity of the criminal justice system.
- Non-punishment of victims of trafficking for unlawful acts they have committed as a direct result of being trafficked

### *Regional human rights instruments*

- African Charter on Human and Peoples' Rights, 1981
- African Charter on the Rights and Welfare of the Child, 1990
- American Declaration on the Rights and Duties of Man
- American Convention on Human Rights, 1969 and Protocols of 1988 and 1990
- Arab Charter on Human Rights, 2004
- Council of Europe Convention against Violence against Women and Domestic Violence (Istanbul Convention), 2011
- European Convention on Human Rights, 1950
- European Social Charter (revised), 1996
- European Convention for the Protection of Human Rights and Fundamental Freedoms
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 1987
- The Framework Convention for the Protection of Minorities, 1995
- Inter-American Convention on the Forced Disappearances of Persons, 1994
- Inter-American Convention to Prevent and Punish Torture, 1985
- Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, 1994

## How does the Toolkit understand a human rights-based approach?

A human rights-based approach is a conceptual framework that is *normatively* based on international human rights standards and operationally directed to promote and protect human rights<sup>6</sup>. A human rights-based approach requires human rights obligations and principles to be integrated into all aspects of work, including by ensuring participation and inclusion of disadvantaged groups; strengthening human rights accountability of States; and promoting non-discrimination and equality, including gender equality. Accordingly, and as discussed below, gender inequality is a human rights concern. See: [Why does the Toolkit address human rights and gender equality together](#)

A human rights-based approach can also be understood as a strategy for implementing human rights in programming that calls on UNODC to integrate human rights into all areas of its work against trafficking in persons and smuggling of migrants. UNODC's work to support States to address trafficking in persons and smuggling of migrants must not negatively interfere with human rights, and beyond this, a human rights-based approach seeks to positively build capacity of rights-holders to make their claims and duty-bearers to meet their obligations.<sup>7</sup> Accordingly, UNODC is responsible for:

- **Promoting** human rights (Article 1 and article 55 of the UN Charter). That obligation should be *mainstreamed* in all of UNODC's actions, meaning that every opportunity should be taken to promote human rights and to integrate human rights

<sup>6</sup> Human Rights and Human Trafficking: Fact Sheet No. 36 (OHCHR, 2014) <sup>8</sup>. IOM and ILO take a 'rights-based approach' rather than a 'human rights-based approach', broadening the scope of its framing to also encompass rights captured in sources of law besides human rights law, including for instance, labour law (IOM, 2015:14).

<sup>7</sup> Frequently asked questions on a human rights-based approach to development cooperation (OHCHR, 2016) 15

considerations into all aspects of its work, including in programming and providing technical assistance<sup>8</sup>

- **Respecting** human rights by ensuring that its activities do no harm to the human rights of individuals or human rights obligations of States
- **Protecting** human rights, by taking appropriate action in the context of its mandate, where denials of human rights are encountered through State failure to meet its human rights obligations.

Human rights are interrelated, interdependent and indivisible, meaning that all human rights of trafficked persons, smuggled migrants and the persons accused or convicted of these crimes, are relevant for a comprehensive human rights and gender-equality approach to UNODC's criminal justice work.

### Human rights of non-citizens

Human rights apply to all people, regardless of whether they are citizens or not, with few exceptions, being:

- Article 13 of the ICCPR concerning the right to challenge expulsion pursuant to law, applies only to 'non-nationals lawfully in the territory'
- Article 25 of the ICCPR concerning the right to take part in public affairs, to vote and be elected and have access to public services only refers to 'citizens', and
- Article 2(3) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) gives States the freedom to determine the extent to which they guarantee economic rights to non-nationals.

In short, other than the right to enter a country, to vote and to stand for election, all human

<sup>8</sup> UNODC and the promotion and protection of human rights position paper (UNODC, 2012) 5

rights apply to all people, with no exceptions on the basis of migration or other status. Trafficked persons who do not have immigration status in the country in which they are found and smuggled migrants may face discrimination where their rights are not legally guaranteed.

Also, of relevance to its human rights-based approach, is the 'do no harm' principle. This principle is an analytic framework derived from medical ethics and human subjects research and applied to a range of contexts from humanitarian interventions to development programmes. When applied to the context of human rights-based approaches to addressing human trafficking and migrant smuggling, the principle cautions UNODC and its partners to ensure that risks of harm to the enjoyment of human rights are identified and mitigated in any and all programmes and activities to respond to human trafficking and migrant smuggling. The understanding of the 'do no harm' principle offered by the United Office of the High Commissioner for Human Rights (OHCHR) is instructive, being the avoidance of causing harm, by being aware of the potential risks of harms and by exercising good judgement, caution and sensitivity in any and

all interactions to reduce that risk of harm. The minimum outcome described in this context is that action or inaction should not jeopardize safety of persons<sup>9</sup>. Accordingly, it is hoped that the Tools that are offered in this Toolkit may help to identify and analyze human rights risks in interventions addressing trafficking and smuggling to inform decisions and shape efforts to avoid or mitigate them.

Activities that are not rights-based and gender-responsive risk that impact will be negligible or even harmful by perpetuating rights abuse and inequality, and amount to missed opportunities to achieve effective and sustainable change and substantive equality. By promoting, respecting and protecting human rights, and advocating for gender equality, human rights and gender equality become means of achieving positive outcomes of UNODC's programmes to prevent and address human trafficking and migrant smuggling, as well as means of pursuing the 2030 Agenda for Sustainable Development and the Sustainable Development Goals (SDGs).

<sup>9</sup> Manual on Human Rights Monitoring (OHCHR, 2011) Module 2, Basic principles of human rights monitoring, p.4

## Sustainable Development Goal (SDG) targets relevant to UNODC's work on counter-trafficking and counter smuggling

- **Target 5.2:** Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation.
- **Target 8.7:** Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms.
- **Target 10.7:** Facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies
- **Target 16.2:** End abuse, exploitation, trafficking and all forms of violence against and torture of children
- **Target 16.4:** By 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime.
- **Target 17.9:** Enhance international support for implementing effective and targeted capacity-building in developing countries to support national plans to implement all the sustainable development goals, including through North-South, South-South and triangular cooperation<sup>10</sup>.

<sup>10</sup> For more on the role of the SDGs in combating trafficking in persons, see ICAT Issue Brief No. 5, 04/2018, The Role of the Sustainable Development Goals (SDGs) in Combating Trafficking in Persons

## How does the Toolkit understand gender equality?

Gender equality is considered in the context of internationally recognized principles of equality and non-discrimination, participation and inclusion, accountability and the rule of law<sup>11</sup>. Both the Trafficking in Persons Protocol and the Smuggling of Migrants Protocol uphold the principle of non-discrimination, stating (at articles 14(2) and 19(2) respectively), that the Protocols shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they have been objects of these crimes. Through article 2 of the International Covenant on Civil and Political Rights (ICCPR), States parties undertake to respect and ensure the rights of all individuals within its territory and subject to its jurisdiction, without distinction of any kind. The principle of non-discrimination is enshrined in article 26 of the ICCPR:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

*Gender equality refers to:*

the equal rights, responsibilities and opportunities of women and men and girls and boys. Equality does not mean that women and men will become the same but that women's and men's rights, responsibilities and opportunities will not depend on whether they are born male or female. Gender equality implies that the interests, needs and priorities of both women and men are taken into consideration, recognizing the diversity

of different groups of women and men. Gender equality is not a women's issue but should concern and fully engage men as well as women. Equality between women and men is seen both as a human rights issue and as a precondition for, and indicator of, sustainable people-centered development.<sup>12</sup>

Gender equality is mainstreamed throughout all the Sustainable Development Goals (SDGs), and SDG No. 5 specifically sets out to "Achieve gender equality and empower all women and girls"<sup>13</sup>. There are several entry points for UNODC to pursue this goal in its criminal justice work to address trafficking in persons and smuggling of migrants, as set out in the table below.

<sup>12</sup> UN Women Training Centre Gender Equality Glossary online

<sup>13</sup> For more information on gender and the SDGs, see Turning Promises into Action (UN Women, 2018)

<sup>11</sup> Human Rights Indicators: A Guide to Measurement and Implementation (OHCHR, 2012) 13

**Table: Sustainable Development Goal 5 and its relevance for UNODC**

SDG Target	Relevance for criminal justice response
5.1. End all forms of discrimination against all women and girls everywhere	Eliminating discrimination against all women and girls requires addressing discrimination in justice systems (including the way in which those systems deal with women as victims, witnesses and perpetrators), in eliminating gender-discriminatory laws and in reducing discrimination in access to justice and remedies
5.2. Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation	Recognizing victims of sexual violence among smuggled migrants and victims of trafficking (at the hands of organized criminals or others), is a key criminal justice response to this form of violence
5.3. Eliminate all harmful practices, such as child, early, forced and temporary marriage and female genital mutilation	Ensuring accountability for harmful practices perpetrated such as sexual enslavement, child, early, forced or temporary marriage as crimes, including in the context of trafficking, is a key criminal justice measure to eliminate these practices.
5.4. Recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and family as nationally appropriate	Reducing the conditions that allow for exploitation to take place in the informal economy, and in private spaces, including cultural practices that drive exploitation of women and girls (and intersectional links of gender and ethnicity / nationality) is key to identifying potential victims of trafficking.
5.5. Ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life	Full participation and representation of women in the criminal justice system, including in specialized investigation and prosecution units and in the judiciary is a key aspect of realizing equal access to justice.
5C Adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels	Gender-sensitive criminal justice responses require legal frameworks and processes that are responsive to the experiences, realities and needs of women who interact with them as victims, witnesses and/or perpetrators of trafficking in persons and migrant smuggling.

**Gender mainstreaming** is an essential feature of a human rights-based approach that is explained by the Beijing Declaration and Platform for Action (1995) as a “strategy to enhance the impact of policies to promote gender equality”, the goal of which is to “incorporate a gender perspective in all legislation, policies, programmes and projects.” The Economic and Social Council defines it in Resolution 1997/2 as:

...the process of assessing the implications for women and men of any planned action, including legislation, policies and programmes, in all areas and at all levels. It is a strategy for making women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.

Gender mainstreaming requires that perspectives of people of all genders are given attention in all areas of programming and that men and women are both engaged in efforts to achieve gender equality. Particularly in relation to women, the Convention on the Elimination of Discrimination against Women (CEDAW) requires States Parties to introduce laws that protect women from discrimination (article 2(b)) or to change existing laws that are discriminatory (article 2(f) and (g)). CEDAW also underlines the need for women to be equal to men before the law and before public institutions (articles 2(c), (d) and 15). The CEDAW Committee on the Elimination of Discrimination against Women has repeatedly emphasized in its General Recommendations that trafficking of women and girls is a phenomenon rooted in gender-based discrimination and inequality and amounts to gender-based violence, and legitimate grounds for international protection

in law and practice<sup>14</sup>. Beyond the gender binary approach to understanding gender, the Toolkit understands gender quality as applying to all individuals, including persons who are lesbian, gay, bisexual, transgender, intersex, queer or have other sexual orientations or gender identities (LGBTQI+) who are all equally entitled to enjoy the same rights as others, without discrimination. Gender equality implies that all human beings are free to develop their personal abilities and make choices without the limitations set by stereotypes, rigid gender roles or prejudice. And it means that the rights, responsibilities and opportunities of individuals do not depend on their gender or gender identity, or whether they conform to traditional gender norms<sup>15</sup>.

#### Key gender mainstreaming resources for UNODC staff<sup>16</sup>:

Gender brief for UNODC staff: Mainstreaming gender in Organized Crime & Illicit Trafficking projects.

Gender brief for UNODC staff: Mainstreaming gender in Justice projects.

Gender plays a role in the factors that contribute to vulnerability including to transnational organized crime. Gender-based violence and discrimination against women mean that they are often in situations of poverty, and therefore at heightened vulnerability to human trafficking and other forms of exploitation. Inequitable access to resources and opportunities is a contributing factor to people undertaking risky migration journeys in the hands of smugglers or traffickers, in order to access labour markets. It also shapes how problems are approached; gender-based stereotypes may influence how people are treated, from how they are screened and identified (or not), through to the services that are offered (or not), and the sentences that are imposed on convicted smugglers and

<sup>14</sup> See: General Recommendations: No. 19 (1992), para. 14; No. 28 (2010), para. 21; No. 30 (2013), para. 39; No. 32 (2014), paras. 14, 15, 55; No. 35 (2017), para. 12; No. 37 (2018), para. 75.

<sup>15</sup> UNODC Evaluation Handbook (UNODC, 2017) 32

<sup>16</sup> Additional information and materials available at: <https://www.unodc.org/unodc/gender/index.html>

traffickers. These realities must be factored into how interventions and programmes are designed and delivered, including by creating a work environment and organizational culture that promotes the achievement of gender equality<sup>17</sup>.

The United Nations System-wide Action Plan on Gender Equality and the Empowerment of Women (UN-SWAP) was adopted in 2012 to operationalize gender mainstreaming. Since 2013, all entities including UNODC must report on their process in meeting gender-equality specific indicators on a yearly basis<sup>18</sup>. A second-generation of UN-SWAP 2.0 was launched in 2018 to align with the 2030 Agenda for Sustainable Development and includes monitoring activities and outcomes for gender-related Sustainable Development Goal results<sup>19</sup>.

In all aspects of work responding to trafficking in persons and smuggling of migrants, it is imperative that a distinction be drawn between practices that result in prohibited discrimination, and differential treatment that may be necessary to provide services to people who are disadvantaged or marginalized, as conceived of in the pledge made by States in pursuit of the 2030 Agenda for Sustainable Development, to 'leave no one behind' and to endeavour to 'reach the furthest behind first'<sup>20</sup>. The line between discrimination and necessary differential treatment may be difficult to discern in practice, and requires an understanding of discrimination that can manifest in the treatment of smuggled migrants, victims of trafficking, witnesses and accused persons (whether on grounds of race, colour sex, language, religion, political or other opinion,

national or social origin, property, birth or other status). UNODC works to address discrimination by promoting laws that recognize the agency of those in need of protection, and confronting barriers that people may face in accessing services that meet their needs.

In short, the principle of non-discrimination must be upheld in all measures to strengthen the implementation of the Trafficking in Persons Protocol and the Smuggling of Migrants Protocol, in legislating [Tool 1.1](#) against these crimes, preventing [Tool 1.2](#) them from happening, identifying and referring [Tool 1.3](#) victims of trafficking and smuggled migrants, protecting and assisting [Tool 1.4](#), returning and reintegrating [Tool 1.5](#) trafficked and smuggled people, as well as in investigating [Tool 1.6](#) traffickers and smugglers, collecting and using criminal justice and other data [Tool 1.7](#), prosecuting and defending [Tool 1.8](#) alleged perpetrators and imposing sentences [Tool 1.9](#) on convicted persons.

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<sup>17</sup> Gender mainstreaming made easy: Handbook for Programme Staff (UNDP, 2013) 5; Strategy for Gender Equality and the Empowerment of Women (2018-2021), (UNOV-UNODC, 2018) 24

<sup>18</sup> UNODC Evaluation Handbook (UNODC, 2017) 31

<sup>19</sup> UN-SWAP 2.0. Accountability Framework for Mainstreaming Gender Equality and the Empowerment of Women in United Nations Entities. Framework and Technical Guidance (UN Women, 2019)

<sup>20</sup> See: Leaving No One Behind: A UNSG Operational Guide for UN Country Teams (United Nations, 2019)

## Why does the Toolkit address human rights and gender equality together?

Gender inequality is understood as a product of inadequate human rights respect, protection and fulfilment. Where human rights are not fully upheld, structural and systemic conditions deprive some people of particular genders - notably women and girls and people who are non gender-binary - of their fundamental rights. Human rights violations contribute to gender inequality and gender inequality contributes to human rights violations. Accordingly, human rights-based approaches can serve to redress this imbalance and achieve gender equality, by ensuring that the human rights of all people are respected, protected and fulfilled, irrespective of the gender of rights holders.

An intersectional approach to gender equality is one that acknowledges that people have different experiences based on different aspects of their identity, including race, disability, ethnicity, sexual orientation, religion, age, social class and other forms of identity. Taking this intersectional perspective into account to recognize interrelated identity factors can help stakeholders to dismantle the layers of inequality and discrimination that may hamper response to trafficking in persons and smuggling of migrants<sup>21</sup>. The Committee on the Elimination of Discrimination against Women for instance, promotes a “gender transformative and intersectional approach” to anti-trafficking interventions, focusing on the realization of the human rights of women and girls to this end. It speaks also to the indivisibility of the right to be free from gender-based violence, as part of discrimination against women and girls, and the enjoyment of all human rights including

<sup>21</sup> Such factors may include: gender identity, sexual orientation, ethnicity / race, indigenous or minority status, colour, socioeconomic status and/or caste, language, religion or belief, political opinion, national origin, marital and/or parental status, age, urban/rural location, health status, disability, property ownership, illiteracy, armed conflict, seeking asylum, being a refugee, internal displacement, statelessness, migration status, heading households, widowhood, living with HIV/AIDS, deprivation of liberty, being in the sex industry, geographical remoteness and stigmatization of women and men fighting for their rights, including human rights defenders.

those contained in the Convention on the Elimination of Discrimination against Women as part of counter-trafficking response<sup>22</sup>.



In this same spirit, violations of all human rights including those that result from and result in gender inequality are indivisible from other human rights. Respecting, protecting and fulfilling the human rights of all people on a non-discriminatory basis, is therefore key to achieving gender equality.

<sup>22</sup> Committee on the Elimination of Discrimination against Women, General Recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration, UN Doc. CEDAW/C/GC/38 (6 November 2020) [6]



## How to use the Toolkit?

The Toolkit is not intended to be used in its entirety. Rather, tools are offered for users to extract and adapt as appropriate to specific activities and interventions, in four parts:

- [Part 1](#): Tools to understand human rights and gender equality considerations
- [Part 2](#): Tools to analyse the human rights and gender equality situation
- [Part 3](#): Tools to mainstream human rights and gender equality
- [Part 4](#): Tools for monitoring, evaluation and learning in human rights and gender equality

### How to use Part 1: Tools to understand human rights and gender equality considerations when preventing and addressing trafficking in persons and smuggling of migrants

**User instructions for application:** People working on criminal justice response to trafficking in persons and smuggling of migrants have different levels of human rights and gender equality expertise and experience. Part 1 explains some of the human rights and gender equality implications of measures to prevent and address trafficking in persons and smuggling of migrants, towards strengthening the understanding and knowledge base of users tasked to design and implement those criminal justice responses to these two crimes.

[Part 1](#) of the Toolkit aims to strengthen understanding of human rights and gender equality issues in criminal justice responses to trafficking in persons and smuggling of migrants, including in relation to:

- **Legislation** [Tool 1.1](#)
- **Prevention** [Tool 1.2](#)
- **Identification and referral** [Tool 1.3](#)
- **Protection and assistance** [Tool 1.4](#)
- **Return and reintegration** [Tool 1.5](#)

- **Investigation** [Tool 1.6](#)
- **Criminal justice and other data** [Tool 1.7](#)
- **Prosecution and defence** [Tool 1.8](#)
- **Sentencing** [Tool 1.9](#)

### How to use Part 2: Tools to analyse the human rights and gender landscape in the programme / activity location

**User instructions for application:** Human rights and gender equal approaches to preventing and addressing trafficking in persons and smuggling of migrants must be calibrated to the specific context of the proposed intervention. Part 2 offers tools to help users analyse the human rights and gender equality situation in a given location, to inform their design and delivery of tailored human rights-based and gender equal programmes and activities.

[Part 2](#) is comprised of six situational analysis tools for users to fill out to help them to better understand the human rights and gender equality situation in the country they are working in, to inform programme and activity design and development.

- **General country profile** [Tool 2.1](#) considering political, economic, development and migration-related dimensions.
- **International legal context** [Tool 2.2](#) to help users identify the international human rights and other relevant treaty obligations the State has committed itself to
- **National legal context** [Tool 2.3](#) to help users do a rapid assessment of national legislation addressing human trafficking and migrant smuggling
- **Institutional context and capacity** [Tool 2.4](#) to help users identify the level of the State's human rights commitment and capacity, and determine how active civil society organizations are on human rights issues

Resources have been recommended to help users complete each template, in addition to which treaty- and charter-based bodies may offer insights [Annex 3](#) and [Annex 4](#). Additionally there are two other tools contained in this section, on:

- **Determining whether UNODC can support non-UN security forces** [Tool 2.5](#) guide due diligence decisions about whether UNODC can support non-UN security forces in the country
- **Practical barriers faced by specific rights-holders** [Tool 2.6](#) to help users identify practical barriers and design interventions to overcome those barriers

### How to use Part 3: Tools to mainstream human rights and gender equality in programming

**User instructions for application:** Human rights and gender equality considerations must be mainstreamed throughout all programming aimed at preventing and addressing trafficking in persons and smuggling of migrants. Part 3 offers tools to support users to assess and mitigate human rights and gender equality risks in their criminal justice programming; to advocate for human rights and gender equal approaches; and to design rights-based and gender equal awareness raising messages.

[Part 3](#) is comprised of checklists, risk assessment and mitigation tables, and templates for documenting lessons learnt. These tools are offered to help users to determine human rights and gender equality risks that may arise from counter-trafficking and counter-smuggling work, and put plans in place to mitigate them, in relation to specific programming areas:

- **Planning and design** [Tool 3.1](#)
- **Strategy and policy development** [Tool 3.2](#)
- **Legislative assistance** [Tool 3.3](#)
- **Criminal justice capacity building** [Tool 3.4](#)

- **Regional and trans-regional cooperation** [Tool 3.5](#)
- **Protection and assistance** [Tool 3.6](#)
- **Advocacy** [Tool 3.7](#)
- **Awareness raising** [Tool 3.8](#)

### Why does risk need to be assessed?

The actions of UNODC to support States in responding to trafficking in persons and smuggling of migrants can have a negative impact on human rights and gender equality. Extreme examples would be the involvement of individual UNODC staff or consultants in migrant smuggling, human trafficking or other crimes such as sexual abuse. A less extreme example would be UNODC supporting the drafting of legislation that may be incompatible with human rights and international standards on gender equality. By virtue of the 'do no harm' principle, UNODC has an obligation not only to actively *promote* human rights, but also has a due diligence duty to make sure that its work does not undermine human rights of individuals and the obligations of States to respect, protect and fulfill them, and to ensure that its actions do not perpetuate gender-based discrimination and inequality. How this duty is achieved will depend on the situation but involves analysis of the link between the intervention and potential human rights violations<sup>23</sup>. The higher the duration, frequency, or intensity of that connection to a government institution responsible for human rights violations, the higher the risk that UNODC is failing its human rights duties.

### How should human rights risk be mitigated?

A range of considerations must be balanced in determining the objective likelihood that a planned intervention will contribute to human rights violations<sup>24</sup>. A risk mitigation or

<sup>23</sup> In the context of the HRDDP for instance (see above at 2.5) this includes consideration of the human rights record of intended recipients of UNODC support, and the adequacy of measures in place to prevent human rights violations.

<sup>24</sup> The Victims' Rights Advocate (VRA) for victims of sexual exploitation and abuse by United Nations personnel advocates for victims rights to be at the forefront of the UN's efforts to achieve an integrated, strategic response to victim assistance in coordination with relevant UN system actors.

management strategy should serve to be rooted in international human rights law, as well as norms and standards on crime prevention and criminal justice. UNODC's approach should not be risk adverse, but risk aware and responsive.

Human rights concerns *do not mean* that complete disengagement is an option, except in particular cases where the United Nations system as a whole has taken such a stance for specific reasons. Indeed, UNODC engagement where country commitment to human rights is in doubt may still be highly productive and in line with its responsibility to promote human rights. UNODC attempts to engage with difficult issues rather than to stick to safe programmes without political risk. Strong UNODC efforts can help change a demanding human rights situation. Such decisions, however, need to be taken with reference to the level of risk balanced against the potential for UNODC to improve the human rights situation and in line with the wider UN position on specific country situations. Nevertheless, where a state persists in deliberate violation of human rights and is unwilling to engage openly on the issue, continued UNODC involvement in such a situation may begin to cross the threshold over which UNODC fails in its responsibility to respect human rights. Such situations will require immediate mitigatory action<sup>25</sup>.

### **What mitigating actions should be taken where human rights concerns persist?**

Human rights issues are generally addressed in coordination with OHCHR and the UN Resident Coordinator system, but there is also scope for UNODC to act within the sphere of its technical assistance on counter-trafficking and counter-smuggling.<sup>26</sup> Where State counterparts are not receptive to human rights concerns raised, UNODC must consider the

<sup>25</sup> UNODC and the promotion and protection of human rights position paper (UNODC, 2012) 7

<sup>26</sup> For example, it can use its contacts with relevant counterparts in the country to draw attention to relevant international standards and provisions in the UNTOC and Protocols thereto. It can also engage in constructive and open dialogue with government counterparts about human rights protection alongside technical assistance.

implications of continued engagement and possible responses at Senior Management levels. If, despite efforts, there are substantial grounds for believing that authorities have failed to take necessary corrective or mitigating measures and are continuing to commit "grave violations" of international humanitarian, human rights or refugee law, UNODC must suspend or withdraw its support, whether to national military, paramilitary, police, intelligence services, border control and similar security forces as well as authorities responsible for them, though does not have to cease efforts in: (a) Training or sensitization regarding international humanitarian, human rights and refugee law; (b) Standard-setting (e.g. advice on and review of legislation, codes and policies); and, (c) capacity support directly related to the implementation and promotion of compliance with human rights laws and standards and to foster democratic governance of security institutions<sup>27</sup>.

The next table summarizes the range of possible actions that can be taken where a risk of UNODC aiding or assisting human rights violation is identified. These must be taken in consultation with the wider UN system and the relevant UN country team.

<sup>27</sup> Human Rights Due Diligence Policy on UN Support to Non-UN Security Forces (HRDDP), adopted July 2011, UN Doc A /67/775-S /2013/110 (5 March 2013) [1]. According to paragraph [12], "Grave violations" means "Grave violations" in his context means (a) In the case of a unit: (i) Commission of "war crimes" or of "crimes against humanity", or "gross violations" of human rights including summary executions and extrajudicial killings, acts of torture, enforced disappearances, enslavement, rape and sexual violence of a comparable serious nature, or acts of refoulement under refugee law that are committed on a significant scale or with a significant degree of frequency (that is, more than isolated or merely sporadic phenomena); or (ii) A pattern of repeated violations of international humanitarian, human rights or refugee law committed by a significant number of members of the unit; or (iii) The presence in a senior command position of one or more officers about whom there are substantial grounds to suspect direct responsibility, command responsibility or failure to take effective measures. (b) In the case of civilian or military authorities directly responsible for management, administration or command of non-United Nations security forces: (i) Commission of grave violations by one or more units under their command; (ii) Combined with failure to take effective measures to investigate and prosecute the violators.

**Table: Possible responses to human rights risks of UNODC engagement**

Possible response	TIP / SOM example	Considerations
<p><b>Complementary activities</b> to directly address the potential human rights risk by supporting relevant protective mechanisms</p>	<p>E.g. Where UNODC supports specialized prosecutors, it may at the same time support the public defenders office to ensure accused persons receive a defence in line with international standards and right to fair trial</p>	<p>Must be planned for and built in at the initial programme design stage in line with a human rights based approach to the programme cycle</p>
<p><b>Activity safeguards</b> to monitor for a certain events and take a course of action as a result</p>	<p>E.g. If there is a risk that shelters for victims of trafficking will accommodate victims in conditions that amount to arbitrary detention, a safeguard may be monitoring admission procedures and ongoing consent procedures</p>	<p>The technical support agreement would specify that the centre notify UNODC wherever incoming referrals are made on a compulsory basis. UNODC would then be able to address the issue directly with government authorities</p>
<p><b>State undertakings</b> on human rights issues may be sought in relation to the provision of technical support</p>	<p>E.g. Where there is a risk that UNODC-supported identification of potential victims of trafficking will result in identification of persons who may be living or working in violation of national law, a specific undertaking could be taken or commitments made towards the non-prosecution of certain categories of persons (such as victims of trafficking who have commit crimes in the course of being trafficked, migrants working irregularly, or doing work that is not legal)</p> <p>Where there is a risk that UNODC-supported return, repatriation and reintegration programs for smuggled migrants or foreign victims of trafficking result in refoulement, an undertaking could be made concerning non-refoulement of certain categories (e.g. asylum seekers)</p>	<p>Could be included at the programme document stage or during implementation. Where such undertakings are considered politically sensitive, they should only be included in consultation with UNODC senior management. Breach of such undertakings by counterparts should constitute a breach of the programme document rights and obligations</p>

Possible response	TIP / SOM example	Considerations
<p><b>Political intervention</b> with government counterparts through UNODC headquarters and / or the United Nations country Resident Coordinator system</p>	<p>E.g. Where a special court system issues disproportionate penal sentences such as corporal punishment or the death penalty for persons convicted of trafficking or smuggling offences contrary to international law, a response may be a letter from UNODC to the Minister of Justice to promote discussion around the penalty regime provided for in law.</p>	<p>If UNODC receives reliable information concerning grave violations of international human rights, humanitarian and refugee law, this should be brought to the attention of the authorities with a view to bringing such violations to an end (HRDDP).</p>
<p><b>Temporary freeze</b> of at risk activities. If a UNODC programme is aiding or assisting serious human rights violations, a temporary freeze pending resolution may be appropriate, following discussions with OHCHR and others as appropriate</p>	<p>E.g. Police supported to carry out disruption activities of trafficking and smuggling are abusing power for personal gain with complicity of the State or engaging in summary executions; disruption activities compromise life or safety of victims of trafficking, smuggled migrants or others involved</p>	<p>Temporary freezes may be determined following discussions with actors such as OHCHR, other members of the UN country team, and the UN resident coordinator. Such steps would require the authorization of UNODC senior management and may only be taken where other measures have failed. Such a course of action would be consistent with the HRDDP, which specifies that if there are substantial grounds for believing that the assisted entity continues to commit grave violations of international human rights, humanitarian and refugee law, assistance must be suspended or withdrawn</p>
<p><b>Withdrawal of support</b>, as a last resort, where a UNODC programme is undeniably aiding or assisting a serious, ongoing human rights violation, the responsibility of UNODC to respect human rights may require withdrawal of the particular support offered by that particular programme</p>	<p>E.g. Imposition of the death penalty on convicted traffickers and smugglers continues notwithstanding <b>request for guarantees</b> and high-level <b>political intervention</b>, leaving UNODC little choice but to apply a temporary freeze or withdrawal of support.</p>	<p>Last resort possibility and can only be a high-level decision, following full discussion and consultation with the wider UN system. This course of action would only be taken where there was no indication that the government counterpart was prepared to address the violation following the raising of concerns by UNODC through HQ intervention and through the UN Resident Coordinator and possible temporary freezes on support. Withdrawal of support need only be in respect of those activities that aid or assist the human rights violation. Other UNODC programmes in the country may, if possible, continue.</p>

## How to use Part 4: Tools for monitoring, evaluation and learning in human rights and gender equality

**User instructions for application:** Programmes to prevent and address trafficking in persons and smuggling of migrants must be continually monitored and evaluated. [Part 4](#) provides checklists for monitoring and evaluating human rights and gender equality in programme implementation, and offers a series of human rights and gender equality indicators to adapt and integrate into programme monitoring and evaluation, as appropriate.

[Part 4](#) of the Toolkit is offered to support the monitoring and evaluation of human rights and gender equality streaming in criminal justice responses to trafficking in persons and smuggling of migrants, including in relation to:

- **Monitoring** [Tool 4.1](#) through continual internal assessment through systematic analysis of data on the basis of indicators of progress
- **Evaluation** [Tool 4.2](#) of achievements by using criteria such as relevance, effectiveness, efficiency, impact, sustainability human rights and gender equality<sup>28</sup>.
- **Monitoring** and Evaluation Indicators [Tool 4.3](#) offers sample indicators as well as sources of information and means of verifying them for users to adapt to their context, for assessing and monitoring human rights and gender implications of activities in relation to: strategy and policy [Tool 4.3.1](#); Legislative assistance [Tool 4.3.2](#); Criminal justice capacity building [Tool 4.3.3](#); Bilateral, regional and international cooperation [Tool 4.3.4](#); Protection and assistance [Tool 4.3.5](#)

## How to adapt and develop human rights and gender equality indicators?

There is no single method to develop indicators. Good practice is to achieve a balance between indicators that are of universal relevance to the implementation of relevant human rights and gender equality standards, while also being context-specific and look in detail at a given intervention / programme. Human rights and gender equality indicators that are specific to the counter-trafficking or counter-smuggling intervention / programme and context should be developed in consultation with key partners, including OHCHR and National Human Rights Institutions. OHCHR promotes RIGHTS criteria for selecting human rights indicators, being that they are:

- **Relevant and Reliable**
- **Independent** in their data-collection methods from the subjects monitored
- **Global and universally meaningful** but also amendable to contextualization and disaggregation by prohibited grounds of discrimination
- **Human rights standards-centred**, anchored in the normative rights framework
- **Transparent** in their method, **Timely** and **Time-bound**
- **Simple and Specific**.<sup>29</sup>

## How to disaggregate indicators?

Human rights indicators should be disaggregated on the basis of the prohibited grounds of discrimination, including sex, age, economic and social situation, race, colour, language, religion, political or other opinion, national or social origin, property, birth, disability, health status, nationality, marital and family status, sexual orientation and gender identity, place of residence and other status. Caution must be exercised here: indicators that speak to the prevalence of particular racial or ethnic groups for instance, as subjects or objects of human trafficking or migrant smuggling,

<sup>28</sup> UNODC Evaluation Handbook (UNODC, 2017) 7, 17. In other framing, human rights and gender equality do not stand as separate criteria, but are integrated into each of the other criteria.

<sup>29</sup> Human Rights Indicators: A Guide to Measurement and Implementation (OHCHR, 2012) 50

may be useful for developing targeted responses towards protection, prosecution and prevention, but it should not be assumed that data on reported cases is indicative of data on the overall problem. There is a risk that such disaggregation could be misused by others for political or other purposes beyond criminal justice response, and may have a deleterious effect on rights-holders.

**What are the limitations of indicators?**

In selecting and interpreting indicators, it is important to understand that all indicators have limitations as tools for monitoring progress and evaluating outcomes. The data on which indicators are based may be flawed from a human rights and gender-equality perspective, whether because its collection has violated privacy and confidentiality, or because it is interpreted in a way that stigmatizes a given group of rights-holders.

# Part 1

## TOOLS TO UNDERSTAND HUMAN RIGHTS AND GENDER EQUALITY CONSIDERATIONS WHEN PREVENTING AND ADDRESSING TRAFFICKING IN PERSONS AND SMUGGLING OF MIGRANTS



### 1.1 Legislation

Legislation can play an integral role in upholding human rights and gender equality, by explicitly enshrining both in accordance with international law. In working to strengthen trafficking in persons and smuggling of migrants legislation, UNODC staff and consultants need to understand the human rights protections in domestic law and what, if any, exclusions apply to nationals and non-nationals including victims of trafficking, smuggled migrants and accused and / or convicted persons<sup>30</sup>. This may require consideration of not only human trafficking and migrant smuggling law, but also other legislation including on human rights, labour laws, social welfare, migration legislation, and other instruments.

<sup>30</sup> UNODC is one of many partners supporting a strategy to repeal discriminatory laws. See *Equality in Law for Women and Girls by 2030: A multistakeholder strategy for accelerated action* (UN Women, 2019)

For instance, article 6(4) of the Trafficking in Persons Protocol, requires that States parties take into account the age, gender and special needs of victims of trafficking, in particular the special needs of children, in providing appropriate housing, counselling and information, medical, psychological and material assistance, employment, education and training. This provision does not require legislative measures, but to give appropriate effect to these protection and assistance obligations, States parties may have to amend their social welfare and child protection legislative and policy instruments to ensure that age, gender and special needs of trafficked persons are sufficiently protected and assisted and that any barriers to access to services are removed.



In relation to smuggled migrants, article 16(1) of the Smuggling of Migrants Protocol requires States parties to take appropriate measures, *including legislation if necessary*, to preserve and protect the rights of persons who have been smuggled, in particular the right to life and the right not to be subject to torture or to other cruel, inhuman or degrading treatment or punishment. To ensure that smuggled migrants are sufficiently protected then, explicit protections in smuggling-related legislation may be necessary, as may amendments to other legislation whether immigration or human rights legislation, for instance to remove language that protects these basic rights only of ‘citizens’.

In accordance with the ‘do no harm’ principle, the various human rights risks that can emerge from the introduction of legislation on human trafficking and/or migrant smuggling must also be considered in supporting States to draft or amend legislation.

### **Criminalization and non-discrimination**

Criminalization of the crimes of trafficking in persons and smuggling of migrants in accordance with the Trafficking in Persons and Smuggling of Migrants Protocols, is integral to effective criminal justice responses to both crimes. From a gender equality perspective, this means ensuring that people of all genders can be recognized as victims of trafficking for all prescribed forms of exploitation, and be recognized and fairly criminalized as perpetrators of smuggling and trafficking related offences.

A gender-equal approach also requires ensuring that the legislative (and policy) protections put in place to protect both trafficked persons and smuggled migrants are available irrespective of gender. This includes ensuring that people who are particularly affected in informal sectors are also afforded full legal protection. Some forms of work in informal sectors may have particular gender dimensions that impact people of a

particular sex, including domestic work that significantly impact females and are often not recognized as work, meaning that labour law protections may not be accessible. There is also significant evidence to suggest that people who are gender non-binary are at heightened risk of trafficking in persons, and lack access to justice owing to the acute discrimination they face in the criminal justice system.

**Table: Gender stereotypes in the criminal justice system and criminal law**

<b>Aspect of Criminal Justice system</b>	<b>Gender dimension / stereotype</b>
<b>Nature of victims and offenders</b>	<p>Tendency to see men’s role as perpetrators and women as passive victims. Indeed, the majority of convicted traffickers are men (in 2018, 62% of convicted traffickers were male and 38% women<sup>1</sup>). However, women are commonly involved in trafficking for the purposes of sexual exploitation. Here there are gender dynamics at play in the role of women as traffickers. The involvement of women in the trafficking of women and girls is often related to recruitment, mostly for sexual exploitation, with gender assumed to facilitate trust with potential victims because women are seen as being less threatening<sup>2</sup>. Secondly, there is a pattern of women or girls who have been trafficked going on to traffic other women and girls to lessen their own exploitation, meaning that women may be both victims and perpetrators<sup>3</sup>. There are differences in the nature and frequency of crimes committed against women and men, driven by different risk factors<sup>4</sup>.</p>
<b>Criminalization of offences</b>	<p>Some criminal law is overtly discriminatory or has entrenched gender-based inequalities. Some sexual crimes, for example, may be defined in a gendered way that precludes their applicability to both males and females (e.g. human trafficking for sexual exploitation and rape offences may only recognize females as potential victims).</p> <p>Other laws may be seen to operate equally for men and women, but have different effects due to structural gender inequalities. This includes offences punishing adultery, certain sexual activities or prostitution, which disproportionately affect females, or people who are gender non-binary or are not heterosexual, even when they are formulated in a gender-neutral way.</p>
<b>Implementation of offences</b>	<p>In some countries, women are more likely to face prosecution for offences related to ‘morality’ and ‘culture’.</p> <p>In some countries, forms of violence against women and girls are normalized on the basis of culture, tradition and religion and are therefore not criminalized (e.g. harmful forms of marriage, including early, child, forced or temporary marriage). In some cases, the law itself (e.g. on the legal age of marriage) may put people at risk. As a result, victims of crime are not protected under law and perpetrators are not punished.</p>

1 See Global Report on Trafficking in Persons 2020 (UNODC, 2020) 32, available at: <https://www.unodc.org/unodc/en/data-and-analysis/glotip.html>

2 See Female victims of human trafficking for sexual exploitation as defendants: A case law analysis (UNODC, 2020) 26, available at: [https://www.unodc.org/documents/human-trafficking/2020/final\\_Female\\_victims\\_of\\_trafficking\\_for\\_sexual\\_exploitation\\_as\\_defendants.pdf](https://www.unodc.org/documents/human-trafficking/2020/final_Female_victims_of_trafficking_for_sexual_exploitation_as_defendants.pdf)

3 See Gender and TIP and SOM offenders, E4J University Module Series: Trafficking in Persons and Smuggling of Migrants, available at: <https://www.unodc.org/e4j/en/tip-and-som/module-13/key-issues/gender-and-tip-and-som-offenders.html>

4 Guidance Note for UNODC Staff: Gender Mainstreaming in the Work of UNODC (UNODC, 2013) 69

The table is adapted from *Handbook on Gender Dimensions of Criminal Justice Responses to Terrorism* (UNODC, 2019:15-16)

## Non-criminalization / non-punishment considerations

Where trafficking in persons and smuggling of migrants are not defined domestically and understood in accordance with international law, there is a risk that offences may be criminalized in ways that are detrimental to human rights. The target of both Protocols is the perpetrator of these crimes (both natural and legal persons); neither instrument provides any basis for criminalizing victims of trafficking for having being trafficking, or smuggled migrants for having being smuggled. However, in many countries, trafficked persons and smuggled migrants are criminalized, while traffickers and smugglers continue to commit their crimes with impunity.

UNODC, as the guardian of the international instruments on trafficking in persons and smuggling of migrants, is responsible for ensuring that these instruments are not misused as a basis for prosecuting people acting for humanitarian or other non-profit purposes, or victims and migrants themselves.

In relation to smuggling of migrants, criminalization of that offence in accordance with international law is integral to a human rights-based approach and is necessary to bring criminal smuggling networks to justice. Notwithstanding the clear intentions of the drafters of the international law to criminalize smugglers, some States have incorrectly deployed the discourse of migrant smuggling (or 'people smuggling') in taking action against others, inconsistent with the purpose of the Smuggling of Migrants Protocol.

The interpretative notes to the definition of trafficking explain that the financial or other material benefit was included as an element of smuggling of migrants offence;

...in order to emphasize that the intention was to include the activities of the organized criminal groups acting for profit, but to

exclude the activities of those who provide support to migrants for humanitarian reasons or on the basis of close family ties. It was not the intention of the protocol to criminalize the activities of family members or support groups such as religious or non-governmental organizations.<sup>31</sup>

Where 'the financial or material benefit element' of the international definition is omitted from domestic legislation, the result can be that persons who are not smugglers are criminalized. This can have a rights-detrimental effect, for instance, when persons are deterred from rendering aid to migrants in need of support due to fear of being prosecuted as migrant smugglers. Persons who facilitate irregular border crossing for non-profit purposes, such as to support a person to flee a situation of conflict or persecution, or who are transporting them to the nearest port after having carried out a rescue at sea, have found themselves falling foul of domestic law.

There has been a rise in charges for migrant smuggling laid against people who have carried out rescue or rendered assistance to migrants, including those who are acting to save lives at sea in accordance with the right to life. This risk of those who are acting for humanitarian or other non-profit purposes being criminalized, is recognized in the Global Compact on Safe, Orderly and Regular Migration in which States parties commit to:

Develop procedures and agreements on search and rescue of migrants, with the primary objective to protect migrants' right to life that uphold the prohibition of collective expulsion, guarantee due process and individual assessments, enhance reception and assistance capacities, and ensure that the provision of assistance of an exclusively humanitarian nature for migrants is not considered unlawful.

<sup>31</sup> Interpretative notes, A/55/383/Add.1, 3 November 2000, paragraph 88.

There is also a risk that legislation is drafted in such a way that smuggled migrants themselves are prosecuted for having been smuggled. The Smuggling of Migrants Protocol states at article 5 that migrants shall not become liable to criminal prosecution for the fact of having been smuggled. However, article 6 of the Smuggling Protocol states that nothing in the Protocol shall prevent a State party from taking measures against a person whose conduct constitutes an offence under its domestic law. This means that while the Protocol cannot be used as a basis for creating or justifying offences that criminalize the act of being smuggled, it does not prohibit States from taking action against migrants for other violations of domestic legislation. In practice however, this provision has mostly been relied on to justify prosecuting smuggled migrants for illegal entry, effectively rendering meaningless the provision prohibiting their criminalization for being objects of smuggling.

Not criminalizing smuggled migrants for having been smuggled serves criminal justice ends, in better allowing for smuggled migrant to serve as witnesses against smugglers. It is also in accordance with a human rights approach that upholds the rights of migrants and acknowledges that many smuggled migrants may be vulnerable to or already have experienced exploitation and abuse<sup>32</sup>. Indeed, many smuggled migrants may be victims of trafficking. The prosecution of migrants for migration-related offences therefore does not only impact smuggled migrants, but victims of trafficking too. Where authorities encounter migrants as potential offenders, they may fail to identify victims of trafficking (and other crimes) among them. Victims of trafficking may then be prosecuted for possession of false documents or illegal entry or stay or other offences, contrary to the principle of non-

punishment<sup>33</sup>

### **The principle of non-punishment of victims of trafficking in persons**

In respect to victims of trafficking, there is a principle of non-criminalization of victims, whereby States should consider not punishing or prosecuting trafficked persons “for unlawful acts committed by them as a direct consequence of their situation as trafficked persons, or where they were compelled to commit such unlawful acts<sup>34</sup>.” Principle 7 of the Recommended Principles and Guidelines on Human Rights and Human Trafficking of the Office of the United Nations High Commissioner for Human Rights (E/2002/68/Add.1), states that:

Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.

The purpose of the non-criminalization / non-punishment principle aims to protect trafficked persons from prosecution or punishment for criminal activities that they may have committed as a direct consequence of being trafficked, so as to protect their rights, avoid further victimization, and importantly, encourage them to act as witnesses in criminal proceedings against perpetrators. Crimes that trafficked people may commit as a direct result of being trafficked may include participation in illegal work or illegal activities, including where people are trafficked into criminal activities such as drug cultivation, terrorist or trafficking activities or for immigration offences committed in the course of being trafficked to

<sup>32</sup> See for instance, IOM Handbook on Protection and Assistance for Migrants Vulnerable to Violence, Exploitation and Abuse (IOM, 2020); Exploitation and abuse of international migrants, particularly those in an irregular situation: a human rights approach (Global Migration Group, 2013).

<sup>33</sup> Interagency Coordination Group against Trafficking in Persons, Non-punishment of victims of trafficking (ICAT, Issue Brief 8/2020).

<sup>34</sup> UN, Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Report on the meeting of the Working Group on Trafficking in Persons held in Vienna on 14 and 15 April 2009, UN Doc. CTOC/COP/WG.4/2009/2, para. 12.

another country. The inclusion of a specific non-punishment clause in legislation is increasingly considered a good practice norm<sup>35</sup>. Additionally, the Inter-Agency Coordination Group against Trafficking in Persons (ICAT) also notes other ways that States can implement the principle, beyond specific legislation, including through policies, by discontinuing proceedings against trafficked persons, by reflecting the degree of responsibility in sentencing, and by eliminating any criminal records of convictions.<sup>36</sup> For the principle to have meaning in practice, it does not apply only in the criminal justice context,

but in all engagements from the moment that a person is recognized as potentially being a victim of trafficking, from which moment onwards that person should be treated as a victim of trafficking for the purpose of providing initial assistance and protection<sup>37</sup>. As testament to the importance of this principle in counter-trafficking, former Special Rapporteur on Trafficking in Persons, Maria Grazia Giammarinaro, dedicated her final report in that capacity to “the importance of implementing the non-punishment provision: the obligation to protect victims<sup>38</sup>”.

35 The inclusion of such a provision in domestic law is promoted for instance by the Council of Europe’s Group of Experts on Action against Trafficking in Human Beings (GRETA). The ASEAN Convention on Trafficking in Persons provides an explicit non-punishment provision at article 14(7).

36 Interagency Coordination Group against Trafficking in Persons. Non-punishment of victims of trafficking (ICAT, Issue Brief 8/2020) 4.

37 The Bali Process Policy Guide on Identifying Victims of Trafficking (Bali Process, 2015) recommends that States “Introduce a presumption in favour of treating presumed victims of trafficking as victims.”

38 The importance of implementing the non-punishment provision: the obligation to protect victims, Maria Grazia Giammarinaro, Special Rapporteur on trafficking in persons, especially women and children (OHCHR, July 2020) available at: <https://www.ohchr.org/Documents/Issues/Trafficking/Non-Punishment-Paper.pdf>

**Table: Example of advocacy points 3.7 on legislation**

<b>Human rights / gender concern</b> User to specify issue that arose in advocating for a human rights-based / gender sensitive approach:	<b>Advocacy point to address concern</b> User to outline arguments that persuaded stakeholders of the value of human rights-based / gender sensitive approach
There is reticence to support human rights and gender based approaches to domestic legislation on trafficking in persons and smuggling of migrants	Human rights based approaches to domestic legislation on trafficking and smuggling <a href="#">Tool 2.3</a> will help States to fulfil their obligations under the UNTOC and the Protocols thereto, and also under the international human rights instruments that States may be party to <a href="#">Tool 2.2</a>  Human rights and gender equality approaches are based on commitments State parties have already made by virtue of their ratification of international human rights instruments.
Victims of trafficking are criminalized for crimes committed as a direct result of being trafficked	Victims who are criminalized as perpetrators may be unable or unwilling to cooperate with authorities in investigations and prosecutions of traffickers
Smuggled migrants are criminalized for being smuggled, or for migration-related offences	Criminalization of smuggled migrants may deter or prevent smuggled migrants to serving as witnesses against smugglers.  Criminalization of smuggled migrants diverts scarce criminal justice resources away from serious organized criminals who are profiting from migrant smuggling.

## 1.2 Prevention

### Crime prevention

According to the *Guidelines for the Prevention of Crime ECOSOC Resolution 2002/13, Annex*, crime prevention “comprises strategies and measures that seek to reduce the risk of crimes occurring, and their potential harmful effects on individuals and society, including fear of crime, by intervening to influence their multiple causes.” Effective crime prevention requires increasing the risks and punishments for those committing the crime, and reducing its rewards. Accordingly, criminal justice measures are important components of a comprehensive response to effectively prevent trafficking in persons and smuggling of migrants, alongside measures to a) reduce vulnerability of individuals and communities, and b) to reduce opportunities for offenders to commit crimes including through measures relating to demand and c) to create a climate in which the crime and the attitudes that put people at risk are seen as unacceptable.

The UNTOC and Protocols contain prevention measures including awareness raising, border controls, carrier provisions, document provisions, training and addressing demand. UNODC’s human rights-based and gender-sensitive approach, requires that these measures proactively promote, respect and protect human rights and advance gender equality. Upholding the do no harm principle means that prevention measures should not detract from enjoyment of human rights, whether by victims of trafficking, smuggled migrants, witnesses, accused persons, convicted persons, or others. Guarding against harm also means making sure that crime prevention efforts do not detract from other prevention work, such as efforts to improve access to livelihoods, to counter discrimination and vulnerability, and to provide people vital pathways and opportunities to migrate safely or seek asylum.

### Restrictions of movement

Particular human rights and gender issues arise

when movement of vulnerable populations is restricted in the name of preventing trafficking in persons and smuggling of migrants. Such interventions can have rights reductive and gender-discriminatory implications, and have been frequently shown to increase the risk and vulnerability of people to being pushed into the hands of organized crime networks. An example is policies that restrict cross-border movement to prevent trafficking of would-be migrants that instead divert them into irregular migration channels that may be facilitated by smugglers or traffickers. Another example is efforts to intercept and disrupt smuggling operations, that prevent people from fleeing conflict, violence or persecution in the absence of safe and regular options for doing so, forcing them into the hands of more organized criminal networks. These outcomes are contrary to the purposes of the Trafficking in Persons and the Smuggling of Migrants Protocols. The measures set out in article 11 of both to ‘strengthen’ borders, are aimed at preventing and detecting traffickers and smugglers. These and other provisions must be interpreted and applied in accordance with the respective savings clauses (article 14 and 19 of the Trafficking and Smuggling Protocols respectively). Any regulation of entry of non-nationals across the borders of a State as a part of prevention strategies must therefore be in accordance with due process, *non-refoulement* and the prohibition of collective expulsions.

### Non-discrimination

Importantly, prevention measures must themselves be non-discriminatory. Gender dimensions are present in the context of discriminatory migration and asylum policies. As the Committee on the Elimination of Discrimination against Women has pointed out, such policies may impact on women and girls fleeing from crisis or conflict zones, including through increased border control, refusal or entry, pushbacks, expulsions or detention, that

heightens vulnerability to exploitation, including due to their increased need to use the services of smugglers and other criminal networks to facilitate their movement and evade border controls<sup>39</sup>. Examples of discriminatory policies include those introduced under the auspices of preventing exploitation and abuse that serve instead to prevent women from migrating for work or migrants from changing employers, entrenching the discrimination against them and their vulnerability to exploitation<sup>40</sup>.

The OHCHR Recommended Principles and Guidelines on Human Rights at International Borders states (at paragraph 8) that:

The principle of non-discrimination shall be at the centre of all border governance measures. Prohibited grounds of discrimination include race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, nationality, migration status, age, disability, statelessness, marital and family status, sexual orientation or gender identity, health status, and economic and social situation. Any differential treatment of migrants at international borders shall be in lawful pursuit of a legitimate and proportionate aim. Specifically, measures taken to address irregular migration, or to counter terrorism, human trafficking or migrant smuggling, shall not be discriminatory in purpose or effect, including by subjecting migrants to profiling on the basis of prohibited grounds, and regardless of whether or not they have been smuggled or trafficked.

sustainable economic growth, full and productive employment and decent work for all. Such measures remove incentives for labour exploitation, and abusive working-conditions that can impact migrant smuggling and trafficking in persons. Targets in pursuit of that goal include the eradication of forced and child labour and trafficking, protecting labour rights including those of migrant workers, and increasing access to financial services. Goal 8 also explicitly promotes gender equality, with indicators that refer to ‘full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value’ (8.5) and protection of labour rights and promotion of safe and secure working environments ‘for all workers, including migrant workers, in particular women migrants, and those in precarious employment’ (8.8). Demand for labour or services of trafficked or otherwise exploited persons is reduced or removed where workers are organised and where labour standards for wages, working hours and conditions, health and standards are routinely and effectively monitored and enforced. Accordingly, policies and practices that promote safe migration in line with economic and demographic realities, complemented by policies and practices that protect the rights of workers, including the right to organize, reduce incentives, opportunities and demand for traffickers and smugglers.

### **Promoting worker rights and safer migration pathways**

Sustainable Development Goal 8 concerns the promotion of sustained, inclusive and

<sup>39</sup> Committee on the Elimination of Discrimination against Women, General Recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration, UN Doc. CEDAW/C/GC/38 (6 November 2020) [24]

<sup>40</sup> Rebecca Napier-Moore, Protected or put in harm’s way? Bans and restrictions on women’s labour migration in ASEAN countries (ILO and UN Women, 2017)

## International labour laws relevant to prevention of trafficking and smuggling

Criminal justice responses to trafficking in persons and smuggling are inextricably linked to social justice approaches. International Labour Organization (ILO) Conventions are relevant towards improving labour standards and thereby reduce the opportunity for exploitation including in the context of trafficking in persons. In the context of migration that may involve victims of transnational trafficking, and indeed migrants risking the use of unscrupulous smugglers to access exploitative labour markets, Objective 6 of the *Global Compact for Safe, Orderly and Regular Migration*, becomes relevant in explicitly pointing to facilitating fair and ethical recruitment and safeguarding conditions that ensure decent work, as important components of migrant worker protection. The eight fundamental ILO Conventions are:

- Freedom of Association and the Protection of the Rights to Organize Convention, 1948 (No. 87)
- Right to Organize and Collective Bargaining Convention, 1949 (No. 98)
- Forced Labour Convention, 1930 (No. 29) and its 2014 Protocol
- Abolition of Forced Labour Convention, 1957 (No. 105)
- Minimum Age Convention, 1973 (No. 138)
- Worst Forms of Child Labour Convention, 1999 (No. 182)
- Equal Remuneration Convention, 1951 (No. 100)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Significantly, the Protocol of 2014 to the Forced Labour Convention, 1930, refers explicitly to forced labour as well as trafficking in persons for the purpose of forced labour. The Worst Forms of Child Labour Convention, 1999 (No. 182) explicitly requires the elimination of trafficking of children. Additional ILO Conventions that are of significant importance, particularly to addressing trafficking in persons, include:

- Labour Inspection Convention, 1947 (No. 81)
- Migration for Employment Convention (Revised), 1949 (No. 97)
- Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)
- Private Employment Agencies Convention, 1997 (No. 181)
- Domestic Workers Convention, 2011 (No. 189)

For more information on ILO Conventions, see *Rules of the Game: An Introduction to the standards-related work of the International Labour Organization* (ILO, 2019).

Among the relevant human rights are:

- The right to work and to just and favourable conditions of work (UDHR art 23; ICESCR arts 6, 7, 10; CRPD art 27; ILO Core Labour Conventions and ILO Declaration on Fundamental Principles and Rights at Work)
- The prohibition of slavery, forced labour and trafficking of persons (UDHR, art 4; ICCPR art 8; CEDAW art 6; CRC arts 34-36)
- Equal rights of women in relation to employment (CEDAW art 11; ILO Conventions No. 100 and No. 111)
- Prohibition of child labour (CRC art 32, ILO Convention NO. 182)
- Equal labour rights of migrant workers (ICRMW art 25)



### Addressing vulnerability

States have a legal obligation to prevent human rights violations, including those that lead to vulnerability to human trafficking and migrant smuggling. The focus here is on the persons vulnerable to falling into the hands of criminals rather than vulnerability to perpetrating crime. Many of the same issues that make people vulnerable to trafficking and smuggling, however, also apply to low-level traffickers and smugglers. People may become involved in smuggling of migrants because they lack viable alternative sources of income and come from marginalized communities where migrant smuggling is less stigmatized and perceived as less harmful than other crimes (such as drug smuggling). Such actors may subsist on income they derive from their role in smuggling, without fully understanding the organized criminal dimensions of their activities. People who are investigated and prosecuted as traffickers may also hail from marginalized and vulnerable groups. Traffickers may even be prior or concurrent victims of trafficking themselves; experience as a victim of trafficking or other serious crime can increase vulnerability to becoming a trafficking offender<sup>41</sup>.

Several measures can be taken to address the factors that render people vulnerable to both crimes. In the case of children, comprehensive measures are needed to address their special needs and particular rights, including birth registration, passport and visa regulations in relation to children, improved access to educational opportunities, and protection of children from violence and abuse. In short, UNODC's criminal justice response should be integrated as part of the multi-disciplinary and nuanced response required, taking into consideration inter-connected factors such as economic disparity, conflict and displacement, environmental factors, poverty,

natural and manmade disasters; disability; and discrimination based on factors such as sex, age, ethnicity and gender.

Gender-based approaches to addressing vulnerability include addressing those factors that make men, women, boys and girls vulnerable to human trafficking and migrant smuggling, especially considering the existence of factors that make women and girls disproportionately vulnerable to human trafficking. In its recent General Comment on trafficking in women and girls in the context of migration, the Committee on the Elimination of Discrimination against Women includes as a root cause of trafficking (and sexual exploitation) “(a) systemic gender-based discrimination creating the economic and social injustice experienced disproportionately by women and girls; (b) situations of conflicts and humanitarian emergencies, including, consequent displacement; (c) discrimination in migration and asylum regimes; and, (d) the demand that fosters exploitation and leads to trafficking<sup>42</sup>.” The Committee on the Elimination of Discrimination against Women also drew attention to the plight of women and girls living in rural and remote areas, who are particularly vulnerable to being trafficked and forced into labour as well as into child and/or forced marriage and other harmful practices. Among the factors the Committee pointed to, are the economic hardships of rural life, unpaid work burdens due to stereotypical gender roles, inequality, as well as barriers to access to social services and identity documents owing to lack of infrastructure and services. The Committee stressed the need to economically empower rural women and raise their awareness of risks, as well as by ensuring that legislative and policy responses to trafficking address the challenges rural women and girls. It also pointed to the need to provide gender-sensitive training to the judiciary, police, border guards and other law enforcement officials and social workers in

<sup>41</sup> See Female victims of human trafficking for sexual exploitation as defendants: A case law analysis (UNODC, 2020) 20, available at: [https://www.unodc.org/documents/human-trafficking/2020/final\\_Female\\_victims\\_of\\_trafficking\\_for\\_sexual\\_exploitation\\_as\\_defendants.pdf](https://www.unodc.org/documents/human-trafficking/2020/final_Female_victims_of_trafficking_for_sexual_exploitation_as_defendants.pdf)

<sup>42</sup> Committee on the Elimination of Discrimination against Women, General Recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration, UN Doc. CEDAW/C/GC/38 (6 November 2020) [18]

rural areas<sup>43</sup>.

### **Addressing demand in the context of trafficking in persons**

Guideline 7 of the OHCHR Recommended Principles and Guidelines on Human Rights and Trafficking in Persons emphasizes that prevention strategies should take into account demand as a root cause of trafficking, including by 'analysing the factors that generate demand for exploitative commercial sexual services and exploitative labour and taking strong legislative, policy and other measures to address these issues.' The obligation to address the demand that fosters exploitation is also captured in article 9(5) of the Trafficking in Persons Protocol. In the context of trafficking, there is significant interest in the factors that contribute to demand for products produced and services provided by victims of trafficking. Given the diversity of forms that trafficking can take, addressing demand requires different responses that must be based on clear and evidence-based understandings. For instance, demand for brides fuelling trafficking into forced marriage requires wholly different measures to those required to tackle forced labour resulting from demand for cheap goods by reducing labour costs. In the former case, complex economic, social, cultural, societal and structural factors must be confronted, including poverty, discrimination, gender inequality and violence against women<sup>44</sup>. In the latter, demand can be addressed by reducing profits - and therefore incentives - for traffickers. Examples include measures to ensure fair and ethical recruitment of workers to reduce their vulnerability to exploitation, and in many cases it will also be appropriate to engage consumers (whether individuals or public or private entities), to purchase goods and services that have not been produced or provided by exploited people.

<sup>43</sup> See Committee on the Elimination of Discrimination against Women, General Recommendation No. 34 on the rights of rural women, UN Doc CEDAW/C/GC/34, 4 March 2016.

<sup>44</sup> Interlinkages between Trafficking in Persons and Marriage: Issue Paper (UNODC, 2020) 89, available at: [https://www.unodc.org/documents/human-trafficking/2020/UNODC\\_Interlinkages\\_Trafficking\\_in\\_Persons\\_and\\_Marriage.pdf](https://www.unodc.org/documents/human-trafficking/2020/UNODC_Interlinkages_Trafficking_in_Persons_and_Marriage.pdf)

The linkage between poor enforcement of **labour laws and protections** for workers and that can result in their exploitation emphasises the role that robust labour laws, policies and practices plays in preventing trafficking. Here, making the cost of non-compliance outweigh the cost of compliance is a strong method to address the demand for exploitable labour. The implementation of the International Labour Law framework, including by ensuring that recruitment practices are fair and ethical (and comply with ILO's General principles and operational guidelines for fair recruitment and the Dhaka Principles on Migration with Dignity), and strengthening the role that labour inspectors play in entering places of work, can prevent bad labour from descending into situations of forced labour and human trafficking<sup>45</sup>.

Many countries have also taken steps to address exploitation in the **supply chains** of large corporations. Here, those States that host corporate headquarters bear significant responsibility, including by introducing legislation with reporting requirements that apply extraterritorially to operations and supply chains abroad. Examples of legislative responses include the California Transparency in Supply Chains Act (2010), the UK Modern Slavery Act (2015), the Duty of Vigilance law of France (2017), and the Modern Slavery Act (2018) of Australia among others.

Such legislation sets out due diligence and transparency requirements for companies fulfilling certain criteria, calling for disclosure and transparency of certain categories of information on particular issues, such as modern slavery, child labour or forced labour and/or across a range of issues, including labour and human rights issues. Such requirements are more effective where they

<sup>45</sup> Also see: E4J University Module Series: Module 7: Prevention of trafficking in persons, <https://www.unodc.org/e4j/en/tip-and-som/module-7/key-issues/demand-side-strategies-discouraging-or-prosecuting-demand.html> and [Preventing Trafficking in Persons by Addressing Demand \(ICAT, 2014\)](#).

are mandatory, supported by mechanisms to monitor and enforce them, and result in legal consequences for non-compliance. The effective implementation of the UN Guiding Principles on Business and Human Rights can further serve to prevent human rights abuses in business practices and proactively engage them in their protection, including by providing access to remedies for people whose rights have been abused.

States have been repeatedly called upon to also address the demand for trafficking in persons for the purpose of **sexual exploitation**, particularly of women and girls, by putting in place or enhancing preventative measures including legislative and punitive measures to deter exploiters of trafficked persons (including public officials), and providing better protection for victims, particularly women and girls.<sup>46</sup> The Committee on the Elimination of Discrimination against Women calls on States to address demand as a root cause of trafficking, including by confronting cultural attitudes, beliefs, norms and stereotypes regarding male domination and the need to assert male control or power, patriarchal gender roles, male sexual entitlement, coercion and control that drive demand for sexual exploitation of women and girls<sup>47</sup>. The General Assembly has also called on governments to eliminate sex tourism demand, especially for children, through all possible preventative actions including legislative measures, policies and programmes, and encourages UNODC and others to promote travellers to support the fight against trafficking. The Committee on the Elimination of Discrimination against Women has emphasized that a gender-transformative approach is needed to confront the structural and systemic conditions that deprive women and girls of their fundamental rights and

increase their risk of being trafficked<sup>48</sup>. Beyond the situation of women and girls, trafficking prevention efforts must pursue equal enjoyment of human rights by people of all genders.

### **Addressing demand in the context of smuggling of migrants**

Demand is also fuelled by factors such as economic hardship, conflict, and persecution that may mean that people must be mobile in order to seek out safety or even asylum. In these cases, where safe and regular options are lacking, demand for smuggling services to facilitate both leaving a place and entering another, may increase. In cases where people have no choice but to use smuggling services, smugglers may be able to increase the fees they demand. Threats to human security therefore increase demand for smugglers, in some places, resulting in people considering smuggling services to be part of legitimate businesses, with smugglers providing valuable services to people in need. The fact that smugglers sometimes deliver their 'clients' safely to their destination means that awareness raising campaigns that simplistically portray all smugglers as violent and dangerous criminals may lack veracity and be largely ineffective. In other cases, smugglers may drive demand by smugglers themselves, who market their services and particular destinations to a target audience of would-be migrants.

Prevention measures to address demand for smuggling services then, requires efforts to effectively managed migration policies, economic development and livelihood opportunities in countries of origin, and humanitarian protection measures to allow provide people with viable choices to being smuggled.

<sup>46</sup> See for instance, General Assembly resolution 71/167 of 19 December 2016 on Trafficking in Women and Girls.

<sup>47</sup> Committee on the Elimination of Discrimination against Women, General Recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration, UN Doc. CEDAW/C/GC/38 (6 November 2020) [29-30]

<sup>48</sup> Committee on the Elimination of Discrimination against Women, General Recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration, UN Doc. CEDAW/C/GC/38 (6 November 2020) [49]

### Prevention challenges for UNODC

UNODC has a key role in supporting States to fulfill their obligations to prevent trafficking and smuggling, while upholding human rights. In practice, protection of rights can pose prevention challenges as smugglers exploit State protection policies to achieve their ends. For instance, smuggling modus operandi may abuse asylum procedures, or smuggle pregnant women, children, or other vulnerable people who should not be detained, or by instructing migrants to injure themselves to force rescue and assistance, thereby facilitating their onward smuggling. Smugglers may instruct that vessels be scuttled to force States to rescue them, rather than act to intercept and prevent smuggling incidents at sea. The cold reality that criminals will leverage obligations under international law for their criminal purposes, points to the importance of UNODC's work to support States to prevent these crimes and uphold their sovereignty, without compromising their human rights obligations.

Another challenge emerges from the corruption and/or complicity of State agencies to the perpetration of trafficking in persons and smuggling of migrants. Not acknowledging this reality can serve to endorse or perpetuate harm caused to individuals, including victims, migrants, perpetrators and others who are affected by State corruption.

It is important to understand that UNODC's crime prevention approach is only one component of a wider range of interventions required to combat trafficking in persons and smuggling of migrants. Other actors are working to address the factors that create and exacerbate vulnerability to both crimes that exist outside of the crime prevention framework, including by addressing the human rights violations that result in vulnerability to both crimes. In some cases, criminal justice approaches may not be appropriate. For instance, in situations of parents who sell their

daughter into a marriage or exploit their son in street begging in an effort to secure their child's survival and their own, may not always be effectively or appropriately addressed by criminal prosecution. Caution should also be exercised in efforts to approach conflict prevention through a crime prevention lens; a purely criminal justice approach may detract from humanitarian needs in conflict settings.<sup>49</sup>

Conflict and humanitarian emergencies also exacerbate both trafficking and smuggling, as a wider pool of vulnerable people become available to criminals for exploitation and demand for smuggling services to flee conflict increases. Particularly in relation to trafficking in persons, the Committee on the Elimination of Discrimination against Women and Girls points to the fact trafficking of women and girls is exacerbated during and after conflict and humanitarian emergencies, for a range of reasons including the "normalization" of gender-based violence, including conflict-related sexual violence, as an aggravating factor of pre-existing structural gender discrimination against women and girls. Given the inter-linkage between conflict, and trafficking and smuggling, conflict prevention is a means of trafficking and smuggling prevention. Noting the gender dynamics at play, Security Council Resolution 1325 (2000), that formally initiated the Women, Peace and Security Agenda, points to the importance of women in the prevention and resolution of conflicts and the importance of their equal participation and full involvement in all efforts to promote and maintain peace and security. The Resolution also emphasizes the importance of mainstreaming a gender perspective into peacekeeping operations<sup>50</sup>.

49 Trafficking in persons in conflict contexts: What is a realistic response from Africa? (Enhancing Africa's Response to transnational organized crime, 2019)

50 Thematic Paper on Countering Trafficking in Persons in Conflict Situations (UNODC, 2018) 64

**Table: Example of advocacy points [Tool 3.7](#) on prevention**

<b>Human rights / gender concern</b> User to specify issue that arose in advocating for a human rights-based / gender sensitive approach:	<b>Advocacy point to address concern</b> User to outline arguments that persuaded stakeholders of the value of human rights-based / gender sensitive approach
There is an erroneous perception that preventing migration serves to prevent trafficking in persons and smuggling of migrants	Many victims are trafficked through regular migration channels, or are trafficked internally. Preventing migration can serve to increase demand for smuggling services. Efforts to prevent irregular migration can undermine the right to seek asylum
Gender-responsive approaches are not taken to the design of prevention strategies and activities	Prevention activities that are not gender-responsive are often not calibrated to targeted beneficiaries and are therefore ineffective

## 1.3 Identification and referral

In the context of human trafficking, identification should ideally be aimed at identifying vulnerabilities to trafficking and exploitation rather than only identifying evidence that trafficking in persons as set out in the Trafficking in Persons Protocol has taken place. Identifying people before they are trafficked and exploited supports early access to support. For those who have already fallen victim of trafficking, their identification is a central human rights obligation of States. As noted in the OHCHR Recommended Principles and Guidelines on Human Trafficking and Human Rights, “a failure to identify a trafficked person correctly is likely to result in a further denial of that person’s rights” (guideline 2). The State must have procedures in place by which to strengthen its capacity to identify victims of trafficking, in a way that is human rights compliant in its design and application. Here, the role of national **referral mechanisms** in ensuring that victims are not only identified, but are appropriately referred to appropriate service providers is key to protecting their rights.<sup>51</sup>

Gender dimensions must be taken into consideration to strengthen identification of victims of trafficking. For instance, there may be barriers to identifying female victims of trafficking for sexual exploitation where they exist in mixed populations along side other women in the sex industry. In the context of trafficking into forced marriage, factors relating to the private setting of the exploitation and potential involvement of family members may dissuade victims from self-identifying or coming to the notice of authorities. Identification must take into account the special needs of women and children yet not be based on assumptions that only women and girls, or people of certain nationalities are victims of trafficking. Such assumptions can

result in failure to identify people, for instance, men or boys, or people along specific routes or in specific sectors, or who otherwise do not fit the assumed ‘profile’ of who is a victim of trafficking. Accordingly, actors who play a role in identification and referral (including public and private recruitment agencies, employers, police, border and immigration officers, embassy and consular officials, labour inspectors, social workers, healthcare providers and child protection actors) must be provided with trauma-informed, gender and child sensitivity training that counters stereotypical and discriminatory attitudes.

Identification must also be responsive to crises and conflict; the stakeholders who are likely to encounter victims of trafficking and others in need of protection may change at the onset of conflict, requiring a different set of actors to be engaged and equipped with necessary skills. Humanitarian workers and peacekeeping personnel should be equipped with indicators adapted to identify victims of trafficking among the persons they encounter. Importantly, services that identified potential victims may be referred into may be absent or have as a result of crises of conflict, meaning that referral mechanisms must be modified and be continually updated in line with realities on the ground.

Identification of victims of trafficking raises complex human rights considerations. On the one hand, failure to identify victims of trafficking can amount to continued abuse of their rights. For this reason, a presumption that a person who may be a victim of trafficking is a victim should apply, until further screening takes place to rule out this possibility. On the other hand, poorly conducted identification can be detrimental to rights, for instance, where they are conducted in a way that does not respect the privacy of people involved, or results in actions taken beyond identification

<sup>51</sup> For more on national referral mechanisms, see National Referral Mechanisms: Joining efforts to protect the rights of trafficked persons: A practical handbook (OSCE, 2004)

of victims of trafficking. Examples include raids of places of work that are conducted using unnecessary force, without respect for the dignity of the persons on the premises, and that result in detention or deportations of persons identified as living and working in the country irregularly. In this context, the Committee on the Elimination of Discrimination against Women “condemns the use of anti-trafficking interventions to justify violence against specific groups of women, particularly in the case of violent raids and entrapment operations by law enforcement authorities conducted with a view to dismantling trafficking networks.<sup>52</sup>” In some cases, where raids are carried out in brothels in countries where prostitution is illegal, those who are not identified as victims of trafficking may instead be charged with offences relating to involvement in the sex industry.

There have been reports of violence against women or children being perpetrated by authorities carrying out such raids<sup>53</sup>. Forcible removals of people from the places where they live and / or work may result in them having to leave behind their savings, their possessions or even their children. Persons who are removed may subsequently be detained prior to deportation, for prolonged or indefinite periods in shelters (as discussed in [Tool 1.4](#)).

Rights abuses and violations can also occur where people are identified as being victims of trafficking against their wishes and interests, including when they do not consider themselves to be victims. By way of example, many rights groups are pushing back against counter-trafficking work they consider to be harmful to human rights.<sup>54</sup> In cases where poor work conditions are conflated with situations of trafficking the result may be that, far from

having their rights upheld, workers - many of whom are migrants - instead lose their livelihood and may be placed into protection and criminal justice processes against their will. Identification and referral procedures should consider the specific needs and wishes of potential victims of trafficking in persons and act in their best interests. In order to do no harm to victims and potential victims of trafficking in identification and referral processes, national referral mechanisms in place must be rights-based, gender-sensitive, victim-centered and trauma-informed.

There are a number of reasons that trafficked people may not wish to be identified as such, including the possibility of long-term detention in closed shelters, mandatory return to country or place of origin, stigmatization, lack of understanding of identification and protection processes, or a simple lack of victim support services that meet their needs. These negative outcomes speak to the need to respect the agency of rights holders and to take human rights-based and gender-sensitive approaches that empower people to participate in the decisions that affect them.

### **Identification of children among trafficked or smuggled people**

International human rights law imposes special responsibilities on States in relation to identifying children who may be in need of assistance and support. At the national level, UNODC should work to ensure that child protection laws and frameworks for identification apply equally to children irrespective of their nationality. To ensure that children in need of protection are identified, States should apply a presumption that a person who may be a child is treated as a child until an age determination can be made. The paramount rule that applies to all situations involving children is the best interests of the child, as contained in the Convention on the Rights of the Child (CRC). States parties cannot prioritize other considerations, such as

<sup>52</sup> Committee on the Elimination of Discrimination against Women, General Recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration, UN Doc. CEDAW/C/GC/38 (6 November 2020) [46]

<sup>53</sup> Sex Workers Organising for Change: Self-representation, community mobilisation, and working conditions (GAATW, 2018); Collateral Damage: The Impact of anti-trafficking measures on human rights around the world (GAATW, 2007).

<sup>54</sup> Anti-Trafficking Review: Special Issue - Sex Work. Issue 12, April 2019, (GAATW, 2019)

law enforcement agendas against traffickers or smugglers, or border and migration management objectives over the best interests of the child.

Because the CRC applies to all children who are in the jurisdiction or control of the State, children who are non-citizens are as entitled to protection as nationals<sup>55</sup>. Child rights apply regardless of whether or not a child is determined to be a victim of trafficking. It is thus important to ensure that the process of identifying children as victims of trafficking is not used to deny them rights to which they are entitled simply by being children. At the national level, UNODC should work to ensure that child protection laws and frameworks for identification apply equally to children irrespective of their nationality. Identification approaches should be gender-responsive; in many countries, males who are victims of trafficking may be less likely to identify themselves as such. Men and boys may not be identified as victims where authorities are less willing to investigate crimes against them. This speaks to the need for gender-sensitive approaches to identification and referral.

### **Identification through screening interviews**

For all trafficked persons and smuggled migrants in need of protection, identification often takes place through screening interviews, including as to whether a person needs protection as an asylum seeker. Consideration should be given to how these screening interviews can be conducted in a way that is human rights based and gender responsive, including by avoiding potential profiling biases that can mean some victims are not recognized as such. Ideally, as stated at the outset, identification and screening should not only aim to recognize people who have been trafficked, but also detect vulnerabilities to trafficking so that early support can be provided and their exploitation prevented.

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<sup>55</sup> Human Rights and Human Trafficking: Fact Sheet No. 36. (OHCHR, 2014) 7



**Table: Example of advocacy points [Tool 3.7](#) on prevention**

<b>Human rights / gender concern</b> User to specify issue that arose in advocating for a human rights-based / gender sensitive approach:	<b>Advocacy point to address concern</b> User to outline arguments that persuaded stakeholders of the value of human rights-based / gender sensitive approach
Men and boys who are victims of trafficking are not identified	Identification systems may be weakened if they are informed by deficient or inaccurate profiles of who can be a victim of trafficking  Identification processes must be inclusive and allow for all victims of trafficking to be identified so that women and girls and men and boys can be identified along trafficking routes
Gender-sensitive approaches are not considered important in the identification and referral of trafficked persons or others in need of protection and assistance	Where gender-sensitive approaches are not taken, victims of trafficking may not effectively identified or may be misidentified.  Where gender-sensitive approaches are not taken, there law enforcement procedures may be exposed to risks of accusations of misconduct / misconduct maybe be more likely
Persons who may be in need of protection and assistance are deported without being appropriately and accurately identified and referred	If potential victims of trafficking or smuggled migrants are deported without being identified, potential evidence and intelligence is lost, meaning that traffickers and smugglers can continue their crimes with impunity.

## 1.4 Protection and assistance

Provision of sufficient protection and assistance to persons in need of it is an obligation that finds a strong basis in international law. Yet, there are also significant human rights risks where approaches to protection and assistance do not accord with that framework. What constitutes sufficient protection and assistance depends on individual needs and circumstances, and is guided by the International Human Rights Framework, UNTOC, the Trafficking in Persons Protocol and the Smuggling of Migrants Protocol. Importantly too, protection and assistance must be informed by gender perspectives that are essential to ensure that protection and assistance services are tailored to individual needs.

The criminal justice architecture of the UNTOC and the Protocols primarily concern protection and assistance in the context of a crime taking place and being pursued for prosecution. Article 24 to 26 of the UNTOC require that States Parties take measures to assist and protect victims of crime and cooperate with other enforcement authorities to protect victims and witnesses of crime (article 25(1)). There is an emphasis on protecting victims from retaliation and intimidation. The UNTOC speaks to the obligation of States parties to establish appropriate procedures for compensation and restitution (article 25(2)) and to enable the views and concerns of victims to be presented during the different stages of criminal proceedings, in a manner not prejudicial to the rights of the defence (article 25(3)).

### Protection from threats to life and safety

At the outset, victims of trafficking and smuggled migrants must be removed from situations where their lives or safety are in danger and have their immediate medical needs attended to. In the case of trafficking, the principle of protecting lives and safety was upheld by the European Court of Human Rights in the case of *Rantsev v Cyprus and Russia*,

which confirmed that if State authorities were aware or ought to have been aware of a risk of trafficking then failure to take appropriate measures, within the scope of their power to remove an individual from that situation or risk, amounts to a violation of that person's rights<sup>56</sup>.

In the case of migrant smuggling, article 16(1) of the Smuggling Protocol specifically requires States Parties to take measures - including legislation if necessary - to protect the rights of smuggled migrants, in particular the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment. This principle is restated again in the context of rescuing lives at sea (article 8). States parties are also obliged to protect migrants from violence (article 16(2)), and to assist migrants whose lives or safety are endangered by being smuggled (article 16(3)) on the basis of non-discrimination (article 19(2)) and taking into account special needs of women and children. In practice, these obligations require that border, immigration, law enforcement and other officials take positive actions to protect the lives and safety of migrants who are endangered. It also requires that the actions they take do not compromise migrants' rights.

### Protection and assistance of victims of trafficking

Guideline 6 of the OHCHR Recommended Principles and Guidelines on Human Rights and Trafficking in Persons (extracted in full at the end of this section) calls on States to ensure that victims are protected from further exploitation and harm, have access to adequate physical and psychological care that is not conditional on their willingness to cooperate in legal proceedings.

<sup>56</sup> The European Court of Human Rights (*Rantsev v Cyprus and Russia*, Application no. 25965/04, Judgment of 7 January 2010, para 286.

A key human rights principle underlying protection and assistance of victims of trafficking is that such protection and assistance should be on the basis of informed consent, and that victims should not be coerced or forced into receiving any services.<sup>57</sup> While there may be nuances in applying this principle in cases where victims do not have legal capacity to consent, in general the principle may include not subjecting victims to mandatory testing for HIV/AIDS or other diseases<sup>58</sup>. It is also important that provision of protection and assistance set out in article 6 of the Trafficking in Persons Protocol is not conditional on the victim's willingness to cooperate with criminal justice authorities<sup>59</sup>, nor on those who trafficked them being charged with a trafficking offence. A victim of trafficking is entitled to assistance whether or not a case is taken against the trafficker(s).

In relation to the special needs of women and children, consideration must be given to that the intersecting forms of discrimination that women may face - whether as migrant workers, as indigenous women or other identity factors - are also addressed in factored into the design of programmes and projects to protect and assist them. Engaging victims in the design of protection and assistance services helps to ensure that those needs are understood. Indeed, it is crucial that victims are involved in the development of the services that they are provided and be given an opportunity to provide feedback on them to the extent of their capacity<sup>60</sup>. This involvement is necessary to ensure that victims recover and are socially included, but also to ensure that scarce resources are allocated to services that are needed and wanted. UNODC should therefore

ensure that any protection and assistance interventions it supports are informed by beneficiaries' views, and not dictated by donors or other stakeholders whose agendas may not be based on human rights or gender equality. For instance, where donors have an interest in supporting closed shelters that may compromise rights of those accommodated within them, or denying services such as sexual and reproductive health services for female victims contrary to human rights, UNODC should actively engage with those donors to strengthen their understanding of human rights based approaches to protection and assistance, and guard against those that seek to protect victims from re-trafficking by restricting their rights or freedoms.

In respect of children, what is in their best interests (article 3, CRC) is also supported by the right of the child to be consulted (CRC article 12(1)(2)), meaning the child's views must be sought and taken into consideration in accordance with his or her age and maturity level. As with adults: (1) care and support for children must not be conditional on their cooperation with authorities; (2) they must not be coerced into receiving protection and support; (3) non-citizen children must be entitled to care on an equal basis to citizens; (4) they must be provided with information about their situation and entitlements; their views must be respected and given due weight; and (5) their privacy must be protected from arbitrary interference. In accordance with special needs, a legal guardian, organization or authority may need to be appointed to represent them<sup>61</sup>. Guideline 8 the OHCHR Recommended Principles and Guidelines on Human Rights sets out special measures for children. Further, Guideline 7.1 of the UNICEF Guidelines on the Protection of Child Victims of Trafficking (2006) emphasize the right that child victims have to immediate care and protection including security, safe accommodation, food, access to social and health services, psychological

<sup>57</sup> Recommended Principles and Guidelines on Human Trafficking and Human Rights (OHCHR, 2010) guideline 6

<sup>58</sup> Here it can be noted that while mandatory testing of persons for COVID-19 amounts to a limitation to their rights, it may be a justifiable limitation on public health emergency grounds, where necessary, not arbitrary and in accordance with law.

<sup>59</sup> Human Rights and Human Trafficking: Fact Sheet No. 36 (OHCHR, 2014) 14

<sup>60</sup> A Toolkit for guidance in designing and evaluating counter-trafficking programmes: Harnessing accumulated knowledge to respond to trafficking in persons (ICAT, 2016)

<sup>61</sup> Guidelines on the Protection of Child Victims of Trafficking (UNICEF, 2006)

support, legal assistance and education.

### **Rights-based approached to developing specialized services**

In some contexts, there is a risk that the development of specialized services for certain categories of people, such as trafficked persons or vulnerable migrants in need of protection, can inadvertently result instead in their denial of other services. This can result for instance, where identified victims of trafficking are placed in a specific service track that does not align with social protections available outside of that framework; access to skills training may be limited to courses provided or organized by the victim support agency caring for the victim, rather than all courses available in that location. Another example is where smuggled migrants in need of support are processed through immigration channels that do not interact with protection and assistance services. Therefore, it is imperative that the development of specialized services does not inadvertently result in denial of access to local protection systems, including asylum systems and child protection systems.

Conflict, humanitarian disasters, health pandemics and other crises can exacerbate vulnerability to trafficking and smuggling, and damage the mechanisms in place to protect people affected by them. Low-resourced countries unable to provide protection and assistance services before such events are acutely impacted, as protection and assistance needs increase while capacity to meet them diminishes. While victims of trafficking and smuggled migrants have the same rights to protection and assistance the State's capacity to fulfill its obligations may be severely impaired, highlighting the role of UNODC and other UN agencies in filling gaps<sup>62</sup>.

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<sup>62</sup> Thematic Paper on Countering Trafficking in Persons in Conflict Situations (UNODC, 2018) 49

## Recommended principles and guidelines on human rights and human trafficking

### Guideline 6: Protection and support for trafficked persons

The trafficking cycle cannot be broken without attention to the rights and needs of those who have been trafficked. Appropriate protection and support should be extended to all trafficked persons without discrimination.

States and, where applicable, intergovernmental and non-governmental organizations, should consider:

1. Ensuring, in cooperation with non-governmental organizations, that safe and adequate shelter that meets the needs of trafficked persons is made available.
2. The provision of such shelter should not be made contingent on the willingness of the victims to give evidence in criminal proceedings. Trafficked persons should not be held in immigration detention centres, other detention facilities or vagrant houses.
3. Ensuring, in partnership with non-governmental organizations, that trafficked persons are given access to primary health care and counselling. Trafficked persons should not be required to accept any such support and assistance and they should not be subject to mandatory testing for diseases, including HIV/AIDS.
4. Ensuring that trafficked persons are informed of their right of access to diplomatic and consular representatives from their State of nationality. Staff working in embassies and consulates should be provided with appropriate training in responding to requests for information and assistance from trafficked persons. These provisions would not apply to trafficked asylum-seekers.
5. Ensuring that legal proceedings in which trafficked persons are involved are not prejudicial to their rights, dignity or physical or psychological well-being.
6. 5. Providing trafficked persons with legal and other assistance in relation to any criminal, civil or other actions against traffickers/exploiters. Victims should be provided with information in a language that they understand.
7. Ensuring that trafficked persons are effectively protected from harm, threats or intimidation by traffickers and associated persons. To this end, there should be no public disclosure of the identity of trafficking victims and their privacy should be respected and protected to the extent possible, while taking into account the right of any accused person to a fair trial. Trafficked persons should be given full warning, in advance, of the difficulties inherent in protecting identities and should not be given false or unrealistic expectations regarding the capacities of law enforcement agencies in this regard.
8. Ensuring the safe and, where possible, voluntary return of trafficked persons and exploring the option of residency in the country of destination or third country resettlement in specific circumstances (e.g. to prevent reprisals or in cases where re-trafficking is considered likely).
9. In partnership with non-governmental organizations, ensuring that trafficked persons who do return to their country of origin are provided with the assistance and support necessary to ensure their well-being, facilitate their social integration and prevent re-trafficking. Measures should be taken to ensure the provision of appropriate physical and psychological health care, housing and educational and employment services for returned trafficking victims.

Source: *Recommended principles and guidelines on human rights and human trafficking*, United Nations, (UN doc. E/2002/68/Add.1)

## Deprivation of liberty of smuggled migrants

The obligation of States to respect human rights is particularly fraught in the context of immigration **detention**, which in some instances amounts to deprivation of liberty contrary to international law. The Smuggling Protocol acknowledges that some States will subject smuggled migrants to detention; its article 16 protection provision sets out that where smuggled migrants are detained, States “shall comply with its obligations under the Vienna Convention on Consular Relations, where applicable, including that of informing the person concerned without delay about the provisions concerning notification to and communication with consular officers” (article 16(5)).

International law requires that any detention not be arbitrary (ICCPR article 9; CRC, article 40(1); ICRMW article 16(4)). The Human Rights Committee’s General Comment No. 35 explains that “Detention in the course of proceedings for the control of immigration is not per se arbitrary, but the detention must be justified as reasonable, necessary and proportionate in the light of the circumstances and reassessed as it extends in time<sup>63</sup>.” Where detention is considered necessary, States should take steps to ensure that conditions are humane and in line with minimum standards and good practice, so it is in the least restrictive setting for the shortest period of time necessary to prepare for the return or removal of a person.

The Working Group on Arbitrary Detention has stated the principle that migrants in vulnerable situations or at risk - including survivors of trafficking, torture or other serious violent crimes - must not be detained<sup>64</sup>. In its revised deliberation on the deprivation of liberty of migrants, the Working Group addressed the particular issue of detained children. It emphasized that detaining children on the

basis of their parents’ migration status will always violate the principle of the best interests of the child and constitutes a violation of the rights of the child. The Committee on the Protection of the Rights of All Migrant Workers and their Families (CMW) and the Committee on the Rights of the Child have also addressed the principle of non-detention of migrant children<sup>65</sup>.

## International obligations in detention

In short, any detention of smuggled migrants must accord with international law and the obligations therein. These can be summarized as follows:

- Any deprivation of liberty of migrants on the basis of their migration status should be a measure of last resort
- Where detention takes place, it should be for the shortest period of time and in accordance with due process safeguard and conditions that meet relevant human rights standards
- Immigration detention of migrants who have special needs should be avoided
- Children should never be detained or separated from their families in accordance with the best interest of the child<sup>66</sup>.

## Deprivation of liberty of victims of trafficking

There are instances where victims of trafficking are deprived of their liberty contrary to international law. This can happen as a result of their misidentification; their non-willingness to cooperate in criminal proceedings pending

<sup>65</sup> See CMW General Comment No. 5 (2020) on migrants’ rights to liberty and freedom from arbitrary detention. Also see the CMW’s joint general comment No. 3/No. 22 of the Committee on the Rights of the Child (2017) on the general principles regarding the human rights of children in the context of international migration; its joint general comment No. 4/No. 23 of the Committee on the Rights of the Child (2017) on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return; its statements on ending immigration detention of children (2014).

<sup>66</sup> Revised Deliberation No. 5 on deprivation of liberty of migrants, Working Group on Arbitrary Detention, 7 February 2018; Principles and guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations (OHCHR, 2018), 11-13, 37; Recommended Principles and Guidelines on Human Rights at International Borders (OHCHR, 2014); General Comment 35, Article 9 (Liberty and Security of Person), UN Doc. CCPR/C/GC/35 (16 December 2014) [18].

<sup>63</sup> General Comment 35, Article 9 (Liberty and Security of Person), UN Doc. CCPR/C/GC/35 (16 December 2014) 18

<sup>64</sup> Revised Deliberation No. 5 on deprivation of liberty of migrants, Working Group on Arbitrary Detention, 7 February 2018

return to their countries of origin; because they have participated in certain activities (for instance work that may be illegal or irregular); or because they are placed in shelters from which they are unable to leave as a matter of policy. States often seek to justify detention in shelters on the basis of irregular immigration status, but victims of domestic trafficking have also been subject to detention in their own country. Detention violates human rights law if it is not specifically provided for in law or is contrary to law; is imposed in a discriminatory manner (for instance, is applicable only to women and girls); is imposed for a prolonged, unspecified or indefinite period; is unjust, unpredictable or disproportionate; is not subject to judicial or administrative review that can confirm its legality and continued necessity, and allow for release where grounds for its continuance do not exist<sup>67</sup>.

Victims are sometimes placed in State or non-State shelters, often without their consent or after they have retracted their initial consent. In extreme cases, shelters may be locked or surrounded by high fences and barbed wire to prevent victims from leaving giving the impression that there is a punitive element to their detention. In some cases, laws, policies and practices surrounding shelters for victims of trafficking may be discriminatory in purpose or effect, for instance, where women and girls are routinely placed in shelters against their will in the absence of due process, while on the other hand, men and boys are denied access to assistance and support for want of shelters to accommodate those in need. The activities or skills training programmes on offer in those settings may also confirm gender stereotypes, by offering some activities to females and other activities to males<sup>68</sup>.

Such practices are contrary to international

law. Protection and assistance services should be offered on an informed and voluntary basis. Victims should not be kept or detained in shelters or other facilities against their will. In exceptional cases where freedom of movement is restricted on the basis of security, such limitations should be on an exceptional basis and for a limited time.

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<sup>67</sup> See Anne T. Gallagher and Marika McAdam, *Freedom of movement for victims of trafficking* (ASEAN-ACT, 2020) 8

<sup>68</sup> For more on detention of victims in shelters, see Marika McAdam, *Continuing to pay the price for freedom: the ongoing detention of victims after their trafficking experience* (ASEAN-Australia Counter Trafficking, 2020)

**Table: Example of advocacy points [Tool 3.7](#) on protection and assistance**

<b>Human rights / gender concern</b>	<b>Advocacy point to address concern</b>
User to specify issue that arose in advocating for a human rights-based / gender sensitive approach:	User to outline arguments that persuaded stakeholders of the value of human rights-based / gender sensitive approach
Victim / witness protection and assistance is not considered to be worth investing TIP / SOM allocated resources into.	Persons who are protected and assisted in accordance with their human rights and in line with gender-sensitive approaches, are more likely to cooperate with authorities in criminal justice processes. For instance, victims who are detained contrary to their rights may be less willing to cooperate.
There is resistance to seeking feedback of victims of trafficking / smuggled migrants on protection and assistance services	If victim feedback is not sought, there is a risk that scarce resources will be wasted on services that are not wanted or needed and will fail to show effective results.
Paternalistic approaches are taken to providing assistance services to victims of trafficking, particularly women and girls.	Victims of trafficking are not objects of protection but are subjects of human rights. Unless they are actively engaged in developing assistance plans, the assistance they receive may be unwanted and ineffective. Women and girls are not empowered by paternalistic approaches that make assumptions about what is beneficial for them on the basis of their gender
There are insufficient protection and assistance services available for men and boys who are victims of trafficking	A gender analysis of the dynamics of trafficking and the responses thereto is required to ensure that services are available to all victims of trafficking who are in need of them, including people of all genders.
Donors pressure project managers / project staff to undertake activities that are not compliant with human rights, gender-sensitive and child-friendly approaches	Implementing activities that are not human rights-based, gender-sensitive and child-friendly are often ineffective in therefore do not represent good value for donor investment



## 1.5 Return and reintegration

The Smuggling of Migrants Protocol sets out a framework for returning smuggled migrants (article 18), and article 8 of the Trafficking in Persons Protocol concerns facilitating and accepting the safe repatriation of victims who are nationals or permanent residents. All persons have a right to return to their countries. This right can be damaged where (1) the countries of return do not admit them or support their readmission by the confirmation of their identities and issuance, where necessary, of the necessary travel and identity documents, or (2) where countries returning them interfere with their return, for instance, by detaining them in immigration facilities or shelters. Human rights concerns emerge when returns are carried out that should not take place, and in the process of return.

### Human rights considerations in carrying out returns and reintegration

In relation to the latter, human rights violations can result when people are returned in ways that do not respect their human rights and dignity<sup>69</sup>, such as when physical restraints are unnecessarily used. The return process should be safe and voluntary, taking into account the special needs of the returnee, and respecting their dignity. Yet there have been situations of non-nationals being returned in conditions that have resulted in psychological and physical harm, or even death.

Rights violations can also result where trafficked and smuggled people are returned to situations that made them vulnerable at the outset. UNODC should also be aware of programs that seek to protect victims from re-trafficking by restricting their options, in particular through actively discouraging the option of safe migration; such approaches may rather make them vulnerable. Accordingly, the success of a reintegration process should not

be measured against victims being returned to and remaining in their home communities.

Where people are returned, there are risks that they may be returned in ways that violate their right to privacy, resulting in risk of retaliation from traffickers or smugglers. Violations of privacy in return processes can also result in stigmatization from their family or community. For instance, victims of trafficking in sexual forms of exploitation may be stigmatized in ways that mean they are unable to integrate or to find work when they return home. Similarly, smuggled migrants may be stigmatized for their 'failed' attempt to be smuggled to another country, which results instead in them being returned home, often with smuggling debts to pay. For these reasons, social inclusion is a key component of a rights-based approach to returns, of both victims of trafficking and smuggled migrants. Social inclusion can be understood as "a process of improving the terms of participation in society for people who are disadvantaged - through enhanced opportunities, access to resources, voice, and respect for their rights<sup>70</sup>." In the case of victims of trafficking legislation may allow options for non-citizen victims of trafficking to remain in the country temporarily through special categories of visas that allow them to remain for a period of reflection, and or to participate in criminal justice processes. In other cases, victims may be able to remain on a more permanent basis.

### Human rights considerations preventing returns

In relation to returns that should not take place, international law prohibits collective expulsion (as noted above), and thus guarantees due process and individual assessments of persons before such returns are carried out. The principle of *non-refoulement* is recognized as

<sup>69</sup> For more on the return of victims of trafficking, see Guiding Principles on Human Rights in the Return of Trafficked Persons (OSCE / ODIHR, 2014)

<sup>70</sup> Trafficking in Persons, especially women and children, Report of the Special Rapporteur on trafficking in persons, especially women and children, UN. Doc. A/HRC/41/46 (23 April 2019) 4

constituting a norm of international customary law. In regard to asylum seekers and refugees, international refugee law establishes a prohibition on the return of refugees to any place where they face persecution under Article 33(1) of the 1951 Convention relating to the Status of Refugees.

The absolute prohibitions on torture and cruel, inhuman or degrading treatment or punishment in article 7 of ICCPR and article 3(1) of the CAT, also uphold this principle. Article 3(1) of the CAT states that “No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture”. In the case of trafficked persons, being trafficked does not in itself amount to a valid ground for claiming refugee status. However, some victims may qualify for international protection if what they would be subject to upon their return would amount to persecution for one of the reasons contained in the definition provided for in the 1951 Refugee Conventions, if the State does not provide effective protection. In

addition to prohibitions on returning a person to situations where they face persecution, or violations of the right to life or the prohibition against torture, States are also obligated to protect victims from re-victimization. Fulfilling this obligation may require that States not returned trafficked persons to a place where they are at risk of being re-victimized, subject to stigma, threats, intimidation, violence and retaliation.

Smuggled migrants and trafficked persons in need of international protection should be given the full opportunity to make a claim for asylum, including by being provided with information required and access to systems through which to make asylum claims. Return decisions must take a case-by-case approach to determine these issues; some people may need to be resettled elsewhere rather than be returned home. As with any decision relating to a child, decisions about return must accord with the child’s best interests.

**Table: Example of advocacy points [Tool 3.7](#) on return and reintegration**

<b>Human rights / gender concern</b>	<b>Advocacy point to address concern</b>
<p>User to specify issue that arose in advocating for a human rights-based / gender sensitive approach:</p> <p>Human rights-based, gender-sensitive and child-friendly return and repatriation of victims of trafficking and smuggled migrants is not prioritized</p>	<p>User to outline arguments that persuaded stakeholders of the value of human rights-based / gender sensitive approach</p> <p>Victims of trafficking / smuggled migrants who are not returned / repatriated in accordance with human rights obligations may result in evidentiary opportunities (e.g. testimonies) being lost.</p> <p>Ineffective return / repatriation may result in re-trafficking / re-smuggling that does not disrupt either crime</p>

## 1.6 Investigation

Investigation of serious crime is a human rights obligation particularly in the context of saving people whose lives and safety are in danger. The way that investigations are carried out also raises human rights and gender considerations. UNODC must act to promote rights-based and gender equal approaches to the investigation of migrant smuggling and trafficking in persons. Particularly in relation to the latter, for those States that fall within the jurisdiction of the European Court of Human Rights, the case

of *Rantsev v Cyprus and Russia* identified that States of origin, transit and destination have an obligation to investigate, by taking “such steps as are necessary and available in order to secure relevant evidence, whether or not it is located in the territory of the investigating State” and to cooperate with each other in cases of cross border trafficking.<sup>71</sup>

<sup>71</sup> The European Court of Human Rights (*Rantsev v Cyprus and Russia*, Application no. 25965/04, Judgment of 7 January 2010, para 286.

**Table: Considerations in conducting interviews with victims / witnesses:**

<b>Location</b>	Interviews should not be conducted in public areas where privacy cannot be guaranteed or in the presence of others who could influence the interviewee, including other witnesses or victims, or potential perpetrators, and other law enforcement officials who are not required to be present for the interview.
<b>Persons present</b>	<p>Persons conducting the interview should be aware of the rules of evidence in their jurisdiction, as this may have significant impact on how the interview is conducted, how the interviewee is interacted with, and what can be done with the information that emerges.</p> <p>Whenever possible, the preference of the victim or witness regarding the sex of the interviewer should be accommodated. Consider allowing the presence of support persons or friends during the interview, when requested by the victim or witness. Parents / appointed guardians may be required where victim or witnesses being interviewed are children. At the same time, it is important to be aware of the role of family members who may not be supportive of victims/witnesses, but may censor victims or even have been involved in the crime under investigation.</p>
<b>Trauma-sensitivity</b>	Retrieve any prior statements given by the victim or witness so as not to unnecessarily require the interviewee to recount traumatic experiences from their trafficking or smuggling experience. Interviewers should remain conscious of the interviewee’s emotional and physical needs by observing signs of distress and post-traumatic stress disorder. They should be prepared to provide information on or referrals to support services, and also keep in mind that victims who are traumatized or lack trust in authorities may not fully disclose their situation in an initial interview. It is also necessary to keep in mind that victims and witnesses may have difficulty responding to questioning if discussing sexual violence, if the use of certain terminology may be taboo, or if being a victim of sexual and gender-based violence could result in stigmatization.

<b>Consent</b>	Interviewers should always obtain the informed consent of the interviewees, including consent for the interview, the use of recording devices, the taking of photographs, conducting of physical examinations, possible subsequent uses of the information obtained and evidence collected, and the transfer of information to third parties if relevant, including other investigating agencies and the courts. It is also required that victims and witnesses (but not suspects) be informed that they can withdraw consent and request to suspend the interview.
<b>Content</b>	It is important to ask questions to obtain information that may be relevant in establishing the elements of crimes involving sexual and gender-based violence. However, these questions should be non-leading and use terminology used by the victim / witness.
<b>Use of interpreters</b>	Ensure that interpreters used in interviews are: (a) appropriately trained in working with victims and witnesses (including those who may be suffering trauma or have experienced sexual and gender-based violence); (b) sensitive to the cultural, religious and social context; and (c) comfortable with using the terminology of sexual and gender-based violence, in order to ensure that their personal views or discomfort do not affect interpretation. Both male and female interpreters should be available.

Extracted from *Gender Dimensions of Criminal Justice Responses to Terrorism* (UNODC, 2019:74)

A significant part of UNODC's technical cooperation involves criminal justice capacity building, including of law enforcers. UNODC's rights-based approach mitigates risk of its criminal justice capacity building work being detrimental to human rights. Examples may include special investigative techniques being badly applied or applied by inadequately-trained practitioners in ways that unjustifiably interfere with privacy or that put lives and safety in danger (for instance, including controlled delivery where human lives and safety are at risk), or evidence being collected in ways that amount to torture, or cruel, inhuman or degrading treatment or punishment.

*Select human rights relevant to the work of law enforcement officials include:*

- Right to life (ICCPR, Art 6)
- Right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (ICCPR, Art 7; CAT Article 2)
- Right to liberty, security of person, and non-arbitrary arrest or detention (ICCPR, art 9)
- Right to be informed of reasons for arrest (ICCPR, Art 9(2))
- Right to be brought promptly before a court (ICCPR, Art 9(3))
- Right not to be subjected to arbitrary or unlawful interference with privacy, family or home (ICCPR, Art 17)
- Right to freedom of association (ICCPR, Art 22)
- Right to liberty of movement (ICCPR, Art 12)
- Right not to be subjected to enforced disappearance (ICPED, Art 1)
- Obligation to take appropriate measures to investigate acts of enforced disappearance (ICPED, Art 3)

The human rights standards relevant to investigation of trafficking in persons and smuggling of migrants must be upheld. States are obliged to uphold the human rights of individuals who are affected by crimes in their jurisdictions. This obligation extends to taking a trauma-informed and victim-centred approach to victims of trafficking in investigations of trafficking in persons. Failure to uphold victims' rights throughout their engagement with the justice system, not only results in a failure of States to meet their obligations to victims of trafficking, but also undermines the integrity of the justice system.

Further, the treatment of persons who are suspected or accused of perpetrating those crimes that are mentioned in the UNODC Position Paper on human rights (2012) are:

- Law enforcement officials shall respect and protect human dignity and maintain and uphold the rights of all
- Law enforcement officials shall not inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment
- Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty. Firearms shall only be used in self-defence or defence of others against the imminent threat of death or serious injury
- Anyone who is arrested shall be informed at the time of the arrest of the reasons for his/her arrest and shall be promptly informed of any charges
- Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer. Pre-trial detention should be an exception and as short as possible
- Powers of seizure and confiscation must be applied in a non-arbitrary, case proportionate manner and – depending upon the procedure in national law – in conformity with the right to a fair trial

- Searches and arrests must be based on real suspicion of criminal intent and not solely on the grounds of race
- Any interference with the right to privacy, family, home or correspondence should be authorized by provisions of law that are publicly accessible, precise and proportionate to the security threat, and offer effective guarantees against abuse
- Evidence, including confessions, elicited as a result of torture or other cruel, inhuman or degrading treatment must not be used in any proceedings<sup>72</sup>.

It is important that criminal justice practitioners understand that treatment of suspected or accused smugglers and / or traffickers in a way that does not uphold their human rights, can undermine the integrity of criminal justice procedures against them, and reduce the likelihood of achieving justice.

In respect to **gender equality**, States have committed to ending discrimination against women. In the context of investigations, this obligation speaks to the need to anchor their efforts in women's rights, gender equality and the prohibition of discrimination against women and girls<sup>73</sup>, which has been acknowledged as a root cause trafficking in women and girls. Accordingly, investigating gender-based violence is a component of responding to both crimes. Also important in the investigative response to both crimes, is an understanding of how people of all genders experience these crimes and the criminal justice responses to them. For instance, sexual violence perpetrated against men and boys is a distinct form of gender-based violence. Intersecting with gender are traits

<sup>72</sup> UNODC and the promotion and protection of human rights position paper (UNODC, 2012) 14. The UNODC Position Paper is partially based on the UN Code of Conduct for Law Enforcement Officers, adopted by General Assembly resolution 34/169 of 17 December 1979 and the UN Basic principles on the use of force and firearms by law enforcement officials, adopted by the eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

<sup>73</sup> See for instance: General Recommendation No. 19: Violence against women, Committee on the elimination of discrimination against women, 11th Session (1992).

such as ethnicity, race and other factors that result in people having different experiences of crime and the criminal justice system. Ensuring that investigations are carried out in ways that are gender-sensitive requires that investigators are not only sufficiently trained to carry out investigations of complex and often transnational investigations of trafficking in persons and smuggling of migrants, but are also periodically given gender- and cultural-sensitivity training to ensure that investigative procedures are carried out in ways that ensure rights-based treatment of victims and people being investigated. In the context of counter-trafficking investigations, it also requires that investigators be equipped and encouraged to work in multi-disciplinary teams to ensure that needs of individuals can be appropriately identified and met.

**Gender mainstreaming** does not only speak to the need to ensure that gender-responsive approaches are taken to all activities. Gender mainstreaming also speaks to the need for institutional responses to reflect gender diversity. Women and other underrepresented groups including people who are not gender binary, ethnic and other minorities, should be included in national law enforcement agencies as part of the investigative response, and their capacity built so that they can meaningfully respond to these crimes. Their inclusion also has strong operational advantages, particularly with regard to the accurate identification of trafficked persons, many of whom may be more comfortable speaking with officers of a particular gender. Gender mainstreaming benefits from a portion of resources being dedicated to criminal justice capacity building through empowerment of women.

**Table: Example of advocacy points 3.7 on sentencing**

<b>Human rights / gender concern</b>	<b>Advocacy point to address concern</b>
User to specify issue that arose in advocating for a human rights-based / gender sensitive approach	User to outline arguments that persuaded stakeholders of the value of human rights-based / gender sensitive approach
Law enforcement officials consider fulfilment of human rights obligations to be barriers to effective investigation of TIP and SOM	Human rights and gender-based approaches to investigations of TIP and SOM can increase the likelihood that evidence collected will support prosecution, and be admissible and persuasive in court. Evidence collection in accordance with domestic law and human rights considerations is critical to the success of subsequent proceedings.
Law enforcement officials consider that evidentiary gains outweigh victims' rights in investigative approaches	Where evidence is collected contrary to human rights (for instance, through the use of controlled delivery of humans in a way that compromises life and safety) evidence may be inadmissible and investigators themselves become the subject of investigations or legal actions
Authorities think that resources invested in achieving gender parity among law enforcers are not well spent	Increased numbers of females among law enforcement officials increase the capacity of law enforcement officials to achieve a gender-sensitive approach to investigation and increases investigative capacity including through more successful interviewing practices with female victims / witnesses Female investigators are required in order to be able to effectively gather evidence from female victims / witnesses
Authorities think that women have the same opportunities as men to work in criminal justice system, but choose not to do so.	In law and on paper, women may have the same opportunities as men do to enter criminal justice practice, but face many barriers that men do not such as gender stereotyping, harassment, challenges combining work and home life
The onset of conflict has deprioritized the investigation of trafficking and smuggling	Data and evidence against potential traffickers in persons and smugglers of migrants should be collected so that they can be brought to justice later at such a stage that the country is equipped to prosecute as an important component of a country's post-conflict recovery and reconciliation Efforts against traffickers and smugglers should be sustained given that they may act to take advantage of conflict situations and exacerbate instability

## 1.7 Criminal justice and other data

As part of the wider effort to strengthen investigative capacity, increased effort is being invested into strengthening criminal justice data on smuggling of migrants and trafficking in persons and to disaggregate this data in ways that can offer useful insights as a basis on which to design appropriate responses. Police or prosecutors may collect data about perpetrators of crime and ongoing cases, as well as about victims. Border and immigration officials may record entries or exits, and attempts to irregularly cross borders. Service providers may also have case management data pertinent to services offered and provided to victims of trafficking or smuggled migrants in need of assistance. Where data is brought together it may offer a wider picture both within a given country or even more broadly across routes or regions.

The ability of such data to offer actionable insight depends on common understandings of crimes such as trafficking in persons and smuggling of migrants in line with international definitions, as well as phenomena such as what constitutes an irregular border crossing or facilitation thereof. Data is also more useful to shape response where it has been disaggregated in the same ways and is sufficiently nuanced to capture the various dimensions of the phenomenon. An important component of this is that gender-sensitive research and data collection efforts be deployed to learn about the role of people of all genders in both crimes, the drivers that lead to their involvement and the impact on these crimes on their lives, in order to develop targeted, evidence-based and gender-sensitive responses. Data on modes of coercion and control are also important to gather, including to show the gendered differences between means of control of victims of labour exploitation and sexual exploitation that can inform gender-sensitive responses. In the case of trafficking in persons, sexual orientation and gender identity is generally not captured in trafficking victim,

yet a growing body of research suggests that LGBTQI+ individuals are at higher risk of becoming victims of trafficking.

Depending on the context, the methods involved, and who is gathering data or conducting research, there may be legal and ethical requirements that must be adhered to in designing the data collection methodology, protecting the data that is collected, and in imposing conditions on how the data can be shared and with whom. This latter consideration is pertinent in the context of international cooperation, which may require criminal justice data to be shared across borders. Key human rights considerations relevant to data collection are privacy, data protection and confidentiality. Failures in these respects can have severe human rights implications. There have been situations where police have revealed the identity of trafficked persons to media, resulting in their stigmatization or even retaliation against them by traffickers. Where identities of informants become known, their lives and safety may be in danger. Beyond violating rights, the failure to safeguard the privacy of people involved in criminal justice processes can dissuade reporting of crime and undermine effective functioning of the criminal justice system in general. Information that is relevant to trafficking in persons settings affected by conflict should be securely and efficiently shared with UN entities, State and non-State actors that can effectively use it to identify and address trafficking.



**Table: Example of advocacy points [Tool 3.7](#) on criminal justice and other data**

<b>Human rights / gender concern</b> User to specify issue that arose in advocating for a human rights-based / gender sensitive approach	<b>Advocacy point to address concern</b> User to outline arguments that persuaded stakeholders of the value of human rights-based / gender sensitive approach
Authorities believe that adherence to human rights obligations in data collection and protection hampers effective data collection	Data that is collected in ways that are in accordance with human rights principles are more accurate and therefore offer a stronger evidence base for response
Data collecting authorities do not collaborate in or harmonize data collection efforts and approaches	Where data collection is harmonized with domestic, regional and international counterparts and partners, data is easier to share and aggregate, towards informing evidence-based and collaborative response
Compliance with ethical requirements, privacy and confidentiality laws in data collection is not considered necessary or important	Data that is not collected in compliance with ethical requirements, privacy and confidentiality laws may not be accepted by counterparts elsewhere. Data privacy / confidentiality requirements may result in retaliation against victims, disposal of evidence, and / or hiding of assets, detrimentally impacting responses against TIP / SOM. Data quality may be reduced / impaired where potential subjects are not willing to participate owing to concerns about data collection approaches.

OHCHR outlines key principles of relevance to ensuring that approaches to data are human rights based (extracted in the table below) that should be considered alongside any applicable legal and ethical requirements.

**Table: Human rights and gender-based approach to data**

Approach	Key principles	TIP and SOM specific considerations
<p><b>Participation:</b> Participation of relevant population groups in data collection exercises, including planning, data collection, dissemination and analysis of data</p>	<ul style="list-style-type: none"> <li>■ Consider a range of processes that facilitate and encourage participation</li> <li>■ Identify and address potential barriers to participation including in relation to language, culture, gender, social status and vulnerability</li> <li>■ Clearly communicate how participatory processes are conducted and the outcomes of these exchanges shared</li> <li>■ Ensure that the views of vulnerable or marginalized groups, and groups who are at risk of discrimination, are represented</li> <li>■ Maintain knowledge holdings and institutional memory in relation to information gathered through participatory processes</li> </ul>	<ul style="list-style-type: none"> <li>■ Relevant populations may be incarcerated or detained, whether for perpetrating TIP and SOM-related offences, for irregular migration or involvement in activities that may be illegal, or in the case of victims of trafficking, for criminal activities resulting from being trafficked, increasing the need to cooperate with authorities including to uphold the principle of non-punishment of victims of trafficking.</li> <li>■ Relevant populations may have been deported or returned <a href="#">Tool 1.5</a>, raising challenges as to how to access them when they are no longer in the jurisdiction, requiring international cooperation to achieve their participation.</li> <li>■ Relevant populations may be reticent to participate owing to concerns about being identified as being in irregular situations, or due to fear of persecution, increasing the need for protection of confidentiality and anonymity</li> </ul> <p><b>See: Planning and design checklist <a href="#">Tool 3.1</a>; Strategy and policy risk assessment and mitigation <a href="#">Tool 3.2</a>; Monitoring checklist <a href="#">Tool 4.1</a> and evaluation checklist <a href="#">Tool 4.2</a></b></p>

Approach	Key principles	TIP and SOM specific considerations
<p><b>Data disaggregation:</b> Disaggregation of data allows data users to compare population groups, and to understand the situations of specific groups. Disaggregation requires that data on relevant characteristics are collected</p>	<ul style="list-style-type: none"> <li>■ More detailed data than national averages is key in identifying and understanding inequalities</li> <li>■ Data should be disaggregated by key characteristics identified in international human rights law (including gender)</li> <li>■ Collection of data to allow disaggregation may require alternate sampling and data collection approaches</li> <li>■ Birth registration is foundational for robust data sets that allow accurate disaggregation</li> <li>■ Conclusions should not be drawn in the absence of comparative data. For example, data may show that trafficked persons from a given community have low education but this might be true for the community overall.</li> </ul>	<ul style="list-style-type: none"> <li>■ Inconsistent definitions and poor understanding of trafficking in persons and smuggling of migrants may mean that relevant data is not collected, or not appropriately disaggregated.</li> <li>■ Prosecution of traffickers under other laws, while sometimes the most effective response, may create difficulties in capturing data on the victims concerned.</li> <li>■ Lack of documentation or fraudulent / falsified documentation among smuggled and trafficked persons hampers data collection</li> <li>■ Lack of birth registration as a vulnerability factor to trafficking means that some migrant populations may not be registered</li> </ul> <p><b>See: Planning and design checklist <a href="#">Tool 3.1</a>; Monitoring checklist <a href="#">Tool 4.1</a> and evaluation checklist <a href="#">Tool 4.2</a></b></p>

Approach	Key principles	TIP and SOM specific considerations
<p><b>Self-Identification:</b> For the purposes of data collection, populations of interest should be self-defining. Individuals should have the option to disclose, or withhold, information about their personal characteristics. They should be clearly informed about the purpose of data collection and the risks involved in collection of their data</p>	<ul style="list-style-type: none"> <li>■ Data about personal characteristics should be provided by the individuals to whom the data refers (at the individual’s discretion)</li> <li>■ Data collection activities should be conducted in accordance with the human rights principle of ‘doing no harm’.</li> </ul>	<ul style="list-style-type: none"> <li>■ People who have been trafficked may not identify themselves as having been trafficked, and may not recognize that they are trafficked even when identified</li> <li>■ Groups who are subjected to data collection activities should be involved in the design of those activities to ensure that their needs and rights are protection and no harm is done.</li> <li>■ Smuggled migrants may have little incentive to identify themselves as having been smuggled, and may be seeking asylum for personal circumstances that they may not wish to disclose.</li> </ul> <p><b>See: Planning and design checklist <a href="#">Tool 3.1</a></b></p>
<p><b>Transparency:</b> Data collectors should provide clear, openly accessible information about their operations, including research design and data collection methodology. Data collected by State agencies should be openly accessible to the public</p>	<ul style="list-style-type: none"> <li>■ Official Statistics are part of the public’s right to information</li> <li>■ Information about how data is collected should be publicly available</li> <li>■ Data should be disseminated as quickly as possible after collection</li> </ul>	<ul style="list-style-type: none"> <li>■ Where state agencies collect data in relation to law enforcement operations on crimes of human trafficking and migrant smuggling, data may be classified. This speaks to the need to ensure that law enforcement officials have sufficient capacity <a href="#">Tool 3.4</a> to collect and share data in a way that upholds privacy and confidentiality, so it can be transparent without jeopardizing investigations and prosecutions.</li> </ul> <p><b>See: Monitoring Checklist <a href="#">Tool 4.1</a>; Evaluation Checklist <a href="#">Tool 4.2</a> and strategy and policy indicators <a href="#">Tool 4.3.1</a>.</b></p>

Approach	Key principles	TIP and SOM specific considerations
<p><b>Privacy:</b> Data disclosed to data collectors should be protected and kept private, and confidentiality of individuals' responses and personal information should be maintained</p>	<ul style="list-style-type: none"> <li>■ Privacy and confidentiality must be considered alongside access to information</li> <li>■ Ensure that any risk of violation of privacy is explained to participants, and that they can give, refuse or withdraw consent</li> <li>■ Information that identifies individuals or discloses an individual's personal characteristics should not be made public as a result of data dissemination</li> <li>■ Data collectors must have robust data protection mechanisms and procedures</li> <li>■ When personal data is released, this should only be done with the permission of the individual concerned (or their appropriate representatives)</li> </ul>	<ul style="list-style-type: none"> <li>■ Where privacy is violated in relation to data collected on persons who have been trafficked, stigmatization can result, with individuals not being accepted by their families or communities following their trafficking experience.</li> <li>■ Where smuggled migrants have paid smugglers in a bid to seek asylum, violations of their privacy may raise the risks that they will be harmed, whether in the country they are seeking asylum or upon return if their asylum claims are unsuccessful.</li> </ul>
<p><b>Accountability:</b> Data collectors are accountable for upholding human rights in their operations, and data should be used to hold States and other actors to account on human rights issues</p>	<ul style="list-style-type: none"> <li>■ Data can, and should, be used to hold human rights actors to account</li> <li>■ National Statistical Offices are human rights duty-bearers and are accountable for respecting, protecting and fulfilling human rights</li> </ul>	<ul style="list-style-type: none"> <li>■ Data collection can offer insights into State actions that violate human rights of victims of trafficking and smuggled migrants (such as interference with their freedom of movement, <i>refoulement</i> of persons who may be in need of protection, or treatment of children contrary to their rights).</li> <li>■ Similarly, data may reveal that persons charged with trafficking or smuggling offences are not treated in accordance with their rights. Such data should be appropriately acted upon to hold duty bearers to account.</li> </ul>

Source: Columns one and two extracted from: A Human Rights-Based Approach to Data (OHCHR, 2018)

## 1.8 Prosecution and defence

UNODC's approach to strengthening criminal justice responses to human trafficking and migrant smuggling requires rights-based and gender equality approaches to prosecution and defence. In pursuing the 'prosecution' objective of both the Trafficking in Persons Protocol and the Smuggling of Migrants Protocol, UNODC works to end impunity for human traffickers and migrant smugglers. Conviction rates for both crimes remain abysmally low for a range of complex reasons. Particularly in the case of trafficking in persons, where trafficked persons entitled to rights as victims of crime, the prosecution of traffickers is an important component their protection and access to justice and remedies. Crucially in the prosecution of traffickers, it is a victim-centred and trauma-informed approach

to human trafficking requires that the involvement of victims of trafficking in criminal justice proceedings does not result in their re-victimization and re-traumatization.

### **Rights of victims of trafficking in persons in criminal justice processes**

While the involvement of victims in prosecutions of traffickers is often key to successful conviction, victims must not be treated purely as criminal justice resources. The rights of victims of trafficking and victim/witnesses must be protected throughout criminal justice processes, with special account taken of their needs, including by respecting their dignity, by protecting their privacy and avoiding any delays in justice proceedings.

### **Sources of rights of victims of trafficking in persons in criminal justice processes**

- The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power states that victims must be 'entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered' and offer guidance to minimize some human rights risks faced by persons who participate as victims / witnesses.
- The OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking further provide that appropriate efforts be made to protect trafficked persons during investigations and trial processes, and any subsequent period when the safety of the trafficked person so requires.
- The Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime and the Model Guidelines for the Effective Prosecution of Crimes against Children (2017) are useful tools to support the protection of rights in criminal justice proceedings. Involving child victims / witnesses. The special rights, needs, vulnerabilities of children must always be considered in line with the best interests of the child as the primary consideration set forth in article 3 of the Convention on the Rights of the Child.

Some jurisdictions have taken victim-centred approaches that have resulted in procedure being put in place to ensure that victims of trafficking - particularly children - do not have to directly face accused persons in court, to protect victims from re-traumatization. Victim statements may in some jurisdictions be admitted in lieu of testimonies can achieve this or allowing victims to testify from behind

screens or via video-link from another room or another region or country if they have already returned home. In some cases, measures can be taken (such as the removal of robes and uniforms) to reduce the intimidation of formal courtroom settings, particularly in cases of children. Increased proactive investigative capacity has also resulted evidence aside from testimonies of victims, to shift dependency away

from victim testimony as the primary form of evidence. However, in many jurisdictions around the world, over reliance on victim testimony sometimes as the sole form of evidence, has meant that victims - including children - have been kept in shelters indefinitely against their best interests and well-being, as their testimony diminishes as they lose faith in criminal justice systems, meaning that traffickers may go free. Again, the victim-centred approach to criminal justice proceedings is confirmed as critical to their success in achieving convictions.

Consideration must be given to the impact that participation in court proceedings may have on victims and witnesses to crime. Victims of trafficking have a legitimate interest in proceedings against their traffickers and by virtue of article 6(6) of the Trafficking in Persons Protocol, States are required to ensure the their legal system contains measures that offer victims of trafficking the possibility of obtaining compensation for damage suffered. However, unless a rights and gender-based approach is taken, for instance, to understand the risk that of threats of gender-based violence and risks of stigmatization that may be used to intimidate or coerce victim-witnesses into retracting statements or giving testimony, their involvement in criminal justice procedures against perpetrators can result in violation of their rights. The participation of victims in criminal justice procedures can result in arbitrary detention in shelters and other facilities, violations of their right to privacy and exposure to risks of retaliation for their involvement.

Article 6 of the Trafficking Protocol obliges States to protect the privacy and identity of victims by making legal proceedings confidential, and ensure that its domestic legal or administrative system contains measures to provide victims, in appropriate cases, with a) information on court and administrative proceedings; and b) assistance to enable their views and concerns to be presented and considered during

proceedings, in a manner not prejudicial to the rights of the defence. States are required to consider implementing measures, in cooperation with NGOs and other relevant actors, to provide victims with counselling and information on their legal rights in a language they can understand. In implementing this article, States are to take into account the age, gender and special needs of victims of trafficking. In relation to age, particular account must be taken of the special needs of children but elderly people may also have special needs that need to be addressed. Child-friendly court processes can also be applied in cases where victims or witnesses are children.

The principles set out in the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* emphasize the need to provide victims with sufficient **information to make an informed** decision about their participation, including about the implications their participation may have on their safety and their stay in the country if the trial takes place in a country that is not their own. If they choose to participate, they should be kept informed of the process, and be given proper legal assistance throughout. Their privacy should be maintained throughout the process and any unnecessary delays avoided. Steps must be taken to ensure that any persons participating as witnesses are provided with legal and other assistance in relation to court proceedings, in a language and format they understand. Where witnesses are children, they will need to be provided with information in a way that is child friendly, and there may be situations where they should be accompanied by support persons.

### **Access to justice**

Access to justice, an integral component of fair trial proceedings, is a key component of Sustainable Development Goal No. 16 concerning peace, justice and strong institutions. Access to justice refers to the ability of people to seek and receive a remedy in formal

or informal justice processes, in compliance with human rights standards. It also includes fair trial guarantees of accused persons, including: the right to equality before courts and tribunals; the presumption of innocent until proven guilty; the right to a fair and public

hearing by a competent, independent and impartial tribunal established by law if they face criminal charges; procedural guarantees, and compensation for miscarriages of justice (article 14, ICCPR).

### Principles of a human rights-based approach to access to justice

A human rights-based approach to access to justice requires:

- **Participation:** meaning the courts reach out to communities with information about using the courts, provide access to everyone (close, affordable, welcoming, understandable), maximize community participation in decisions regarding services.
- **Accountability (and transparency):** meaning courts publicly account for the justice services they provide, have systems for user and community feedback and processes for dealing fairly with complaints by court users.
- **Non-discrimination (and equality):** meaning these principles are reflected in court decisions and courts cater for **empowerment:** meaning communities where court users are made aware of their rights, know how to claim them and receive assistance to do so, where needed. Access to justice for persons with disabilities on an equal basis to others (article 13(1) CRPD).
- **Legality:** meaning court decisions and processes are legal, including that they adhere to human rights standards.<sup>1</sup>

<sup>1</sup> Human Rights Toolkit, New Zealand Foreign Affairs and Trade and Federal Court of Australia (Pacific Judicial Strengthening Initiative, 2017)  
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Ensuring access to justice also requires that the **barriers** faced by particular individuals, including people who are responsible for looking after children or aging parents, children, people in rural areas, and migrants who may be in irregular situations, be overcome. The barriers faced by people in conflict-affected settings, may be particularly acute and require involvement of a range of State and non-state actors, including humanitarian actors, to effectively overcome.



**Table: Examples of barriers to accessing justice**

<b>Barrier: Lack of knowledge</b>	
<b>Possible causes</b>	<b>Possible solutions</b>
<ul style="list-style-type: none"> <li>■ Lack of opportunity to learn about the justice system (e.g. because of lower socioeconomic and education status; because people may not be informed in a way they can understand).</li> <li>■ Information not presented to people with disabilities in a way they can access</li> <li>■ Information not communicated to migrants in a language they can understand</li> </ul>	<ul style="list-style-type: none"> <li>■ Criminal justice outreach, including to target specific groups such as women, migrants, children, people with disabilities</li> <li>■ Disseminate easy to understand information in relevant languages</li> <li>■ Engage target audiences in design of information campaigns to increase understanding and knowledge about justice</li> </ul>
<b>Barrier: Lack of mobility, time and money</b>	
<b>Possible causes</b>	<b>Possible solutions</b>
<ul style="list-style-type: none"> <li>■ Lack of ability to travel owing to gender issues (e.g. role of women in home, child care commitments, requirement for women to obtain male permission)</li> <li>■ Lack of ability to travel (e.g. because cannot afford; immobility owing to age or disability)</li> <li>■ Lack of mobility owing to detention in immigration detention or accommodation in shelters</li> </ul>	<ul style="list-style-type: none"> <li>■ Allowances for court-related expenses (transport, food and accommodation)</li> <li>■ Disability access at courts</li> <li>■ Child care facilities at courts</li> <li>■ Court fee waivers for people in vulnerable situations</li> <li>■ Explore ways to support mobility, and reduce cost of mobility</li> <li>■ Circuit / mobile court services</li> <li>■ Remote access to courts including through technology (phone and internet)</li> <li>■ Arrangement for trafficked persons in shelters and detained migrants to be able to leave facilities to access justice</li> </ul>

<b>Barrier: Lack of access to legal assistance</b>	
<b>Possible causes</b>	<b>Possible solutions</b>
<p>Lack of functioning criminal justice system</p> <ul style="list-style-type: none"> <li>■ Insufficient number of lawyers / advocates to provide affordable or free labour of advocacy assistance</li> <li>■ Legal aid may not be available to men and women on an equal basis, e.g. women may not have equal access to family income which may be used as the basis to determine eligibility for legal aid</li> <li>■ Migrants in irregular situations may fear deportation or have already been deported</li> </ul>	<ul style="list-style-type: none"> <li>■ Advocate for expanded range of State-funded legal aid services available</li> <li>■ Strengthen engagement with legal aid and advocate for legal aid organisations to provide services</li> <li>■ Encourage legal aid services to be provided in a way they can be accessed by people in vulnerable situations, including in ways that are culturally sensitive and in a language that is understood</li> <li>■ Explore opportunities for law schools to provide support under supervision of qualified lawyers</li> <li>■ Explore options to regularize stay of irregular migrants to participate in criminal justice processes and opportunities to access legal aid remotely.<sup>1</sup></li> </ul>
<b>Barrier: Discriminatory laws and practices</b>	
<b>Possible causes</b>	<b>Possible solutions</b>
<ul style="list-style-type: none"> <li>■ Laws may be out-dated or discriminatory (e.g. against women)</li> <li>■ Courts may prioritize hearing some cases over others in ways that amount to discriminatory practices</li> <li>■ Criminal justice practitioners may be biased against certain people (e.g. people in the sex industry, people in irregular situations)</li> <li>■ Harmful gender stereotypes and bias of criminal justice personnel (including police, lawyers and judges), may manifest in cases being influenced by perceptions of victim and perpetrator behaviour</li> <li>■ Attitudes and beliefs about sexual / marital / other forms of violence may prevent people from accessing justice</li> </ul>	<ul style="list-style-type: none"> <li>■ Advocate for amendment of discriminatory laws and practices, in line with international human rights law</li> <li>■ Train criminal justice practitioners to apply human rights and gender equality standards</li> <li>■ Provide training on unconscious bias and develop monitoring mechanisms for cases involving vulnerable people</li> <li>■ Ensure that cases involving violent crimes have sufficient witness protection mechanisms in place</li> </ul>

<sup>1</sup> Also see: UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, resolution adopted by the General Assembly 67/187, 2012

<b>Barrier: Family / community pressure and risk of stigmatization</b>	
<b>Possible causes</b>	<b>Possible solutions</b>
<ul style="list-style-type: none"> <li>■ Family and community attitudes can make victims of crime feel that they are to blame, including owing to gender expectations</li> <li>■ Family and community attitudes may promote the idea that issues should be dealt with privately / informally, rather than through official justice channels</li> <li>■ Victims may be pressed not to testify against members of their family or community</li> <li>■ Victims and their families may have normalized the situation and not recognize it as exploitative, and/or have no faith in justice system to compensate victims for lost income, making them prefer to remain in the exploitative situation</li> </ul>	<ul style="list-style-type: none"> <li>■ Ensure that legal aid is available on an ongoing basis</li> <li>■ Ensure that independent counselling and advice is provided so that victims / others are given sufficient information</li> <li>■ Put in place measures to ensure that victims are not intimidated by perpetrators or their associates</li> <li>■ Outreach to increase understanding and increase confidence in the criminal justice system</li> <li>■ Collaborate with service providers to ensure relevant services are available to vulnerable people, particularly in cases involving women, children and persons with disabilities.</li> </ul>
<b>Barrier: Economic / social costs of participating in justice processes</b>	
<b>Possible causes</b>	<b>Possible solutions</b>
<ul style="list-style-type: none"> <li>■ Victims who seek justice in courts may be delayed in returning home</li> <li>■ People who participate in criminal justice processes as victims / witnesses, may not be able to work during proceedings or freedom of movement may be restricted</li> </ul>	<ul style="list-style-type: none"> <li>■ Explore ways for victims to access justice processes once they have been returned home (e.g. brought back for specific events; remote testimony by phone or internet)</li> <li>■ Explore opportunities for victims to be accommodated in community settings and work during criminal justice processes</li> <li>■ Explore opportunities for compensation outside the criminal justice system including civil remedies and state-funded compensation schemes.</li> </ul>

Source: Adapted from PJSI, 2017:13-15, and UNODC, 2019:16

Human rights-based approaches require attention to be given to access to justice for persons with disabilities (article 13(2) CRPD), so that people engaged in court proceedings are able to recognize disabilities and ensure that needs are met. Measures that may need to be taken to ensure inclusive court rooms and procedures in trials involving people with disabilities (whether they are victims, witnesses or alleged perpetrators), include: (1) removing communication barriers (both audio and visual); (2) ensuring information is provided and explained in a way that can be understood; and (3) ensuring that physical barriers to participation are overcome. In addition, rights-based approaches need to consider possible attitudinal issues of relevant actors who may make assumptions about people with their disabilities and their capacity to participate in proceedings<sup>74</sup>.

### Right to a fair trial

The balance of rights that must take place in criminal justice responses to trafficking and smuggling requires consideration of the rights of the defence, and the rights of trafficked and smuggled persons themselves. For instance, how to ensure that a defendant can face his or her accuser in court, while also efficiently repatriating victims of trafficking to their home countries?

A key human right to respect, protect and fulfil in the context of prosecution is the **right to a fair trial** (ICCPR, article 14). All persons, including alleged traffickers and smugglers, are entitled to a fair and public trial. Rules surrounding the administration of justice must be upheld to ensure that persons on trial receive a fair trial and public hearing by a competent, independent and impartial tribunal. Laws that are unduly restrictive on the rights of accused persons, or are insufficiently protective of the rights of victims and witnesses, and poor quality prosecutions can result in violations of the right to fair trial.

<sup>74</sup> Human Rights Toolkit, New Zealand Foreign Affairs and Trade and Federal Court of Australia (Pacific Judicial Strengthening Initiative, 2017) 31-2

Criminal justice capacity building efforts often focus on strengthening capacity of prosecutors, which is vital to ensuring they have sufficient capacity to confront well-trained lawyers engaged by often well-resourced criminals. Yet an effective defence is a key component of effective justice systems, and its absence can violate the rights of an accused person to receive a fair trial, many of whom may come from marginalized sections of society. There are also instances of victims of trafficking being prosecuted as being traffickers themselves, underscoring the criticality of strong support for victims, understanding their vulnerability owing to prior or concurrent victimization and application of the principle of non-punishment. There are significant gender issues at play here too. UNODC research also shows that women comprise a comparatively large portion of persons convicted for trafficking, relative to other crimes. Court cases and other qualitative data indicate that many convicted women used to recruit other women, and that particularly in the field of trafficking for the purpose of sexual exploitation, many are former victims who have taken the opportunity to recruit new victims to reduce their debt to traffickers or otherwise end their own exploitation. These considerations point to the fact the complexity of differentiating between traffickers and victims.

### Select human rights relevant to prosecutions and defence:

- Right to a fair trial (ICCPR, Art 14)
- Right to be presumed innocent (ICCPR, Art 14(2))
- Adequate time and facilities for defence (ICCPR, Art 14(3)(b))
- Prohibition on use of evidence obtained by torture (CAT, Art 15)
- Prohibition on retroactive criminal offences (ICCPR, Art 15)
- Timeliness of criminal proceedings (ICCPR, Art 9(3), Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Art 38))

There are several relevant human rights standards set out in UNODC's 2012 position paper on human rights, including the following:

- Everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty by law and to be tried by a competent, independent and impartial tribunal
- Criminal proceedings must be started and completed within a reasonable time
- In the determination of any criminal charge, persons shall have the right to adequate time and facilities for the preparation of defence and to defend themselves through legal assistance of their own choosing. In any case where the accused does not have sufficient means to pay, and the interests of justice so require, legal assistance shall be assigned without payment by the accused
- Both the accused and the prosecution in a criminal trial must be in a procedurally equal position during the course of the trial and have an equal opportunity to make their case
- The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any direct or indirect restrictions, improper influences, inducements, pressures, threats or interferences
- Witnesses, relatives and defence counsel, as well as persons participating in the investigation, shall be protected against all ill-treatment or intimidation as a consequence of the investigation or evidence given.

The UN *Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, adopted by the General Assembly 67/187, 2012 emphasize **legal aid** as a foundation for the enjoyment of other rights in fair, human and efficient criminal justice system, including the right to a fair trial. Legal aid is a key consideration too in human rights and gender-related dimensions relevant to victims' rights

during criminal justice proceedings, the rights of children, women and others in conflict with the law, as well as prisoners<sup>75</sup>. In particular, principle 10 on equity in access to legal aid, indicates that special measures should be taken to ensure meaningful access to **legal aid for women, children and groups with special needs**, including, but not limited to, the elderly, minorities, persons with disabilities, persons with mental illnesses, persons living with HIV and other serious contagious diseases, drug users, indigenous and aboriginal people, **stateless persons, asylum seekers, foreign citizens, migrants and migrant workers, refugees and internally displaced persons**. Such measures should address the special needs of those groups, including gender sensitive and age-appropriate measures. Research has shown access to legal aid is particularly limited for women, with access to justice often limited to female victims with suspects and accused women often able to access justice. Women may not only lack financial resources to afford legal advice, but are also at higher risk of discrimination by criminal justice officials and abandonment by their families owing to harmful gender stereotypes<sup>76</sup>.

<sup>75</sup> United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules) A/RES/65/229 (2011); The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) A/RES/70/175 (2015); United Nations Model Strategies And Practical Measures On The Elimination Of Violence Against Children In The Field Of Crime Prevention And Criminal Justice A/RES/69/251 (2014).

<sup>76</sup> Gender brief for UNODC staff: Mainstreaming gender in justice projects (UNODC, 2020)

**Table: Fair trial standards**

Standard	Source
The right not to be detained or without a valid reason and the right to not be tortured in detention	Article 9 and Article 7 ICCPR
Equality before courts and tribunals	Article 14(1) ICCPR
Fair and public hearing by a competent, independent and impartial tribunal established by law; criminal judgments to be made public except where the interests of a juvenile person otherwise requires	Article 14(1) ICCPR
The right to be presumed innocent until proven guilty according to law	Article 14(2) ICCPR
To be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her	Article 14(3) ICCPR
To have adequate time and facilities for the preparation of his/her defence and to communicate with counsel of his own choosing	Article 14(3)(a) ICCPR
To be tried without undue delay	Article 14(3)(b) ICCPR
To be tried in his/her presence, and to defend himself/herself in person or through legal assistance of his own choosing; to be informed, if he/she does not have legal assistance, of this right; and to have legal assistance assigned to him/her, in any case where the interests of justice so require, and without payment by him/her in any such case if he does not have sufficient means to pay for it	Article 14(3)(d) ICCPR
To examine, or have examined, the witnesses against him/her and to obtain the attendance and examination of witnesses on his/her behalf under the same conditions as witnesses against him (the right to call witnesses and examine witnesses against them)	Article 14(3)(e) ICCPR
To have the free assistance of an interpreter if he/she cannot understand or speak the language used in court	Article 14(3)(f) ICCPR
Not to be compelled to testify against himself/herself or to confess guilt (the right to remain silent)	Article 14(3)(g) ICCPR
In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation (Special protections for juveniles and other vulnerable persons); child accused of having infringed criminal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth	Article 14(4) ICCPR; 10(2)(b) ICCPR; CRC article 40; Beijing Rules; CEDAW; CRPD.
The right to his/her conviction and sentence being reviewed by a higher tribunal according to law (the right to appeal)	Article 14(5) ICCPR
When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he/she has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him	Article 14(6) ICCPR
No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country (the right not to be tried for the same offence twice).	(Article 14(7)) ICCPR

**Table: Fair trial standards**

<b>Human rights / gender concern</b> User to specify issue that arose in advocating for a human rights-based / gender sensitive approach	<b>Advocacy point to address concern</b> User to outline arguments that persuaded stakeholders of the value of human rights-based / gender sensitive approach
Victims of trafficking are made to participate in criminal justice proceedings against their will and best interests	Unless victims are assisted and protected in accordance with their rights, their testimony against traffickers will weaken as they lose trust and faith in the criminal justice proceedings. Upholding victims' rights and supporting their reintegration is key to achieving their cooperation and preserving their testimonies. Alternatives to victim testimony such as use of statements and evidence obtained through special investigative techniques is key to both upholding victims' rights and to effective prosecutions of traffickers.
Training of defence lawyers in pursuit of an accused person's right to a fair trial is avoided because of concerns that prosecution of traffickers and smugglers will be hampered	Unless defence lawyers are trained alongside prosecutors, prosecutors are not able to fully develop their skills and will lack capacity to confront organized criminals who have engaged highly-skilled lawyers to defend them, meaning that prosecutions less likely to be effective. Fair trials are less likely to leave fewer grounds for appeal for convicted traffickers / smugglers.

A rights-based approach to trafficking in persons and smuggling of migrants requires that prosecutions be measured not only by their quantity but also by the quality of criminal justice processes and outcomes, including their adherence to human rights norms and standards. Given the relatively high reported risk of the punishment/prosecution of victims of trafficking in persons, as well as a tendency of criminal investigations to target lower-level offenders, special consideration may also need to be given to the human rights consequences that may result from convictions. UNODC's work to increase prosecutions may result in the treatment of persons incompatible with the UN Standard Minimum Rules for Treatment of Prisoners (the Nelson Mandela Rules).

Accordingly, UNODC's efforts to strengthen the prosecution of traffickers and smugglers must work hand in hand with its prison and criminal justice system reform efforts. The gendered differences of peoples' experiences as prisoners, including because they are female or because they are LGBTQI+ are also important to ensuring rights-based treatment of persons sentenced to imprisonment.

## 1.9 Sentencing

Sanctions imposed on convicted smugglers and traffickers must be effective, dissuasive and proportionate. Where sentences are too lenient, justice may not be served and public confidence in the justice system may be undermined. However, sanctions that are too severe may fail to meet human rights standards, for instance, where mandatory minimum custodial sentences, corporal punishment or the death penalty (which UNODC advocates for the abolition of) are imposed. Where they are punishable by a maximum deprivation of liberty of at least four years or a more serious penalty, smuggling of migrants and trafficking in persons constitute “serious crimes” as defined in article 2(b) of UNTOC. And indeed, many States prescribe maximum penalties that are significantly higher. Here it is important to understand that some human rights instruments restrict the types of punishments that States can impose.

Select human rights relevant to sentencing:

- Prohibition on torture or cruel, inhuman or degrading treatment or punishment (ICCPR, Art 7, CRC, Art 37, CAT, Art 16)
- Treatment of prisoners (ICCPR, Art 10)
- Prohibition of the death penalty (ICCPR-OP2)
- Restrictions on application of the death penalty (ICCPR, Art 6(2); Report of the Special Rapporteur A/HRC/4/20, para 53; ECOSOC Res 1984/50)
- Prohibition on imprisonment related to contractual obligations (ICCPR, Art 11)
- Provision of adequate facilities for prisoners (Standard Minimum Rules for the Treatment of Prisoners, paras 9-26)
- Communication with family and visits (Standard Minimum Rules, paras 37- 39)
- Proportionality of penalties – A/CONF.144/28/Rev.1 at p.164

Article 10(4) of the UNTOC requires that persons found liable to offences established under the

UNTOC and its Protocols be subject to ‘effective, proportionate and dissuasive criminal or non-criminal sanctions’. Further, article 11(1) requires States to make the commission of offences liable to sanctions that ‘take into account the gravity of that offence’. Article 2(b) of UNTOC defines ‘serious crime’ as conduct constituting an offence punishable by at least four years. As serious crimes, human trafficking and migrant smuggling are not meant to capture minor criminal conduct. Yet cases abound of severe sentences being imposed on minor offenders for their involvement in ‘trafficking’ or ‘smuggling’. The complexity of both crimes, involving actors of varying levels of culpability and sometimes even vulnerability, means that the specifics of individual cases should inform what is an ‘effective, proportionate and dissuasive’ sentence in the circumstances.<sup>77</sup>

### Aggravated sentences in the Smuggling of Migrants Protocol

Article 6(3) of Smuggling of Migrants Protocol requires States to adopt legislative and other measures as may be necessary to establish as aggravating circumstances, those that endanger or are likely to endanger the lives or safety of the migrants concerned or that entail inhuman or degrading treatment, including for exploitation, of such migrants. The inclusion of exploitation as an aggravated circumstance here (which is ‘without prejudice to the scope and application’ of the Trafficking Protocol) underscores the complex interrelationship between migrant smuggling and human trafficking<sup>78</sup>.

The standards that UNODC’s human rights policy (2012) sets out in relation to sentencing state that the severity of penalties must be

<sup>77</sup> Legislative guide for the protocol to prevent, suppress and punish trafficking in persons, especially women and children (UNODC, 2020) 50

<sup>78</sup> Interpretative notes, A/55/383/Add.1, 3 November 2000, paragraph 96.



proportionate to the criminal offence, that imprisonment should be used as a penalty of last resort, and that the choice between penalties should take into account likelihood of rehabilitation. Where persons are deprived of their liberty, they must be treated with humanity and respect for their inherent dignity. In international law, this means that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, in accordance with the United Nations Standard Minimum Rules for Treatment of Prisoners (The Nelson Mandela Rules<sup>79</sup>). Prisoners are also entitled to be provided with clothing and separate and sufficient bedding, food of nutritional value adequate for health and strength, drinking water, adequate bath and shower facilities, and adequate medical facilities. Prisoners shall be allowed under necessary supervision to communicate with their family and friends at regular intervals, both by correspondence and visits.

### **Human rights of women in prison**

To ensure the human rights of women in prison and their children, in accordance with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial measures for women offenders (the Bangkok Rules), access needs to be given to maternity and health services and hygiene products especially related to reproductive health such as menstruation, menopause, pregnancy and breastfeeding. Legislation should provide for alternatives to incarceration for mothers with underage children and pregnant women<sup>80</sup>. Where prisons do not have the capacity to fulfill these standards, the principle of 'do no harm' emerges in relation to the human rights implications of UNODC's work to increase the prosecution and subsequent imprisonment of convicted traffickers and smugglers. These efforts should come hand in hand with its efforts in respect of prison reform. Pursuit

of prosecutions and serving out sentences for serious crimes cannot be delayed while prisons are reformed. Therefore, States must be supported to improve prison systems in accordance with human rights obligations, at the same time as they are supported to impose punishments that are proportionate to the gravity of the offence. This may involve promoting consideration of aggravating and mitigating circumstances (for instance, where perpetrators of trafficking are former victims) to determine appropriate punishments for individual offenders.<sup>81</sup>

<sup>81</sup> See Female victims of human trafficking for sexual exploitation as defendants: A case law analysis (UNODC, 2020) 94-100, available at: [https://www.unodc.org/documents/human-trafficking/2020/final\\_Female\\_victims\\_of\\_trafficking\\_for\\_sexual\\_exploitation\\_as\\_defendants.pdf](https://www.unodc.org/documents/human-trafficking/2020/final_Female_victims_of_trafficking_for_sexual_exploitation_as_defendants.pdf)

<sup>79</sup> The United Nations Standard Minimum Rules for Treatment of Prisoners (The Nelson Mandela Rules) General Assembly resolution 70/175, annex, adopted on 17 December 2015

<sup>80</sup> For more information, see Handbook on Women and Imprisonment (2nd Edition, UNODC, 2014).

## Gender dimensions / stereotypes in approaches to deprivation of liberty

**Sentencing:** Harsher sentences may be imposed on women because of the gender expectations imposed on them resulting in the perception that women's criminality is a higher transgression than the same crime perpetrated by a male. Lack of understanding of the 'pathways' of women into crime being marred by abuse and victimization, and criminal behavior connected to relationships with others, may mean sentences are not appropriately mitigated.<sup>82</sup> On the other hand, research has also suggested that female criminal behavior has been perceived as a less serious problem than male criminal behavior<sup>83</sup>. Female offenders may get more lenient sentencing because of their perceived lack of agency.

**Sexual abuse of persons deprived of their liberty:** Sexual abuse can manifest in inmates being abused by staff or being 'traded' among male prisoners, even where there are separate facilities for males and females, sometimes with complicity of guards. In some countries, sexual abuse of males deprived of their liberty is more prevalent than sexual abuse of females in those settings. However, in many of the countries that UNODC works, women and LGBTQI+ people are more likely to be subject to sexual abuse than male offenders. Women who have been charged with 'crimes against morality' are particularly vulnerable. Regardless of the gender of the victim, perpetrators are predominantly male.

**Needs of persons deprived of their liberty:** Women have a range of particular needs in detention that may not be considered in prison systems designed to accommodate males. Deprivation of liberty may not take into consideration the role of caregivers and mothers, which are usually attributed to women by societies and communities, and the subsequent impacts on both the women and their children. It also may overlook the economic impacts on families where breadwinners (who may be women or men) are imprisoned, and the psychological impact on children in female-headed households when mothers are incarcerated.

**Alternatives to deprivation of liberty:** Women may be disadvantaged in accessing alternatives to imprisonment, for example, where gender-neutral conditions are imposed on (1) bail conditions that require regular reporting to authorities, which disadvantage those who are primary carers or women who can only travel with a male chaperone), and (2) cash bonds that women cannot afford because they do not have equal access to household economic resources.

<sup>82</sup> Resource Package for Paroling Authorities on Criminal Justice Involved Women (National Parole Resource Centre), available at: <https://www.nationalparoleresourcecenter.org/resource-package-justice-involved-women/womens-unique-pathways-into-crime.htm>

<sup>83</sup> Gender brief for UNODC staff: Mainstreaming gender in justice projects (UNODC, 2020) 13

Source: *Handbook on Gender Dimensions of Criminal Justice Responses to Terrorism* (UNODC, 2019:15-16). Also see the *UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules)*, General Assembly Resolution 65/229 on 21 December 2010 and *Handbook on Women and Imprisonment* (2nd ed., UNODC, 2014:14-15).

## Death penalty

Some countries provide for corporal punishment (such as caning or whipping) for some offences, even for administrative, immigration-related offences. Some even prescribe the death penalty for some crimes. The **death penalty** is prohibited for States parties to the Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty (ICCPR-OP2) adopted in 1989. For countries that have not yet abolished the death penalty - including UNODC partner countries - the sentence of death may be imposed only 'for the most serious crimes' (ICCPR 6(2)) and not on children or pregnant women (article 6(5)). Importantly, article 6(6) of the ICCPR States that this provision cannot be invoked to delay the abolition of capital punishment. Where trial procedures do lead to the imposition of the death penalty it is imperative that they are based on the right to a fair trial (as per article 14 of the ICCPR set out above). A death penalty that is imposed following a trial that is not fair, constitutes a violation of the right to life (ICCPR, Article 6).

On the basis of these considerations, and because the UN advocates the abolition of the death penalty, UNODC should not establish nor participate in any tribunal that allows the death penalty to be imposed. Further, it should encourage Member States not to allow for the imposition of the death penalty, even for 'the most serious crimes in accordance with law' as (set out in article 6(2) of the ICCPR) and not to increase the number of crimes that carry the death penalty. Vially, in the case of children in conflict with the law, article 37 of the CRC states that "Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age."

When providing technical assistance for capacity building in countries that do retain the death penalty, UNODC staff should

promote implementation of the 'Safeguards guaranteeing the rights of those facing the death penalty' (1984) to avoid its work contributing to practices contrary to those guidelines. UNODC should also identify measures that that Government may be willing to adopt to annul use of the death penalty in human trafficking or smuggling of migrants cases.

To achieve these goals, UNODC can inform government counterparts of the human rights implications of the use of the death penalty. These include its impediment to mutual legal assistance, extradition and other forms of international cooperation, as many States are legally unable to cooperate with a State in a way that might lead to the application of the death penalty. The threat of the death penalty can increase the danger to victims as traffickers may take extreme measures to eliminate the evidence against them. In some jurisdictions, the possibility of the death penalty or other severe sentences may also increase reluctance to convict.

UNODC should be prepared to explain to stakeholders the challenges it faces in engaging with and providing support to States that apply the death penalty. If a State continues to apply the death penalty to human trafficking and migrant smuggling offences, consideration will need to be given to whether UNODC's technical assistance amounts to aiding or assisting the human rights violation, and the extent to which it is responsible for them. In such situations, continued support could be considered as legitimizing those actions and may need to be withdrawn.

**Table: Table: Example of advocacy points [Tool 3.7](#) on sentencing**

<b>Human rights / gender concern</b>	<b>Advocacy point to address concern</b>
<p>User to specify issue that arose in advocating for a human rights-based / gender sensitive approach:</p>	<p>User to outline arguments that persuaded stakeholders of the value of human rights-based / gender sensitive approach</p>
<p>Sentences against smugglers are not effective, dissuasive and proportionate to the gravity of the offence and do not take into account aggravating factors</p>	<p>Where sentences are too lenient, justice may not be served and public confidence in the justice system is undermined. Where sentences do not effectively prevent recidivism and deter offending, traffickers are able to re-victimize people.</p>
<p>The death penalty is provided for in domestic legislation (on trafficking in persons / smuggling of migrants) and / or is applied in practice</p>	<p>Use of the death penalty dissuades counterparts in other countries from sharing intelligence. Use of the death penalty is a barrier to extradition. UNODC faces significant difficulties in engaging with and providing support to States that apply the death penalty.</p>

## Part 2

### TOOLS TO ANALYSE THE HUMAN RIGHTS AND GENDER EQUALITY SITUATION IN THE PROGRAMME / ACTIVITY LOCATION

The tools contained in this section are offered to support users to analysis the human rights and gender equality situation in the project country, to inform programme and activity design and development. Incorporating a gender perspective into situational analysis is an important stage of any programme, project or activity design to ensure that the roles and needs and participation of people of all genders are reflected. These tools are also supportive of a conflict sensitive approach to programming being one that understands the context and how the activities / interventions interact with it, in order to minimize negative impacts and maximize positive impacts.<sup>84</sup>

Users may be required to refer to a range of information sources. In addition to those resources flagged in specific tools, treaty-based bodies and bodies created under the United Nations Charter bodies (see Annex 3 and 4),

may offer recommendations or raise concerns regarding State law, policies and practices that are directly or indirectly relevant to trafficking in persons and smuggling of migrants that should be integrated into the design of interventions and be widely publicized among stakeholders.



<sup>84</sup> Haider, H., (2014). Conflict Sensitivity: Topic Guide. Birmingham, UK: GSDRC, University of Birmingham, available at: <https://gsdrc.org/topic-guides/conflict-sensitivity/>

### 2.1 General Country Profile

The following table can be populated with data from:

- UN Data: <http://data.un.org> for general information; economic, social, environment and infrastructure indicators
- UNDP Human Development Indicators: <http://hdr.undp.org/en/countries> for information on human development, gender development and gender inequality
- United Nations Human Rights Index: [www.universalhumanrightsindex.org](http://www.universalhumanrightsindex.org) bringing together information from Treaty Bodies established under international human rights treaties, Universal Periodic Review of the Human Rights Council and Special Procedures and searchable by country.

<b>Country Name:</b>	
Capital	
Population	
Sex ratio	
Literacy rate	
Ethnic groups	
Languages spoken	
Religions	
Age Structure	
Median age	
<b>POLITICAL CONTEXT</b>	
Recent conflicts / unrest	
Political parties / system	
Recent transitions / changes	
Bilateral / Regional relationships	
Memberships of regional alliances / processes	
<b>ECONOMIC PROFILE</b>	
Source: UNDP Human Development Index, Transparency International Index	
Unemployment rate	
Gross National Income per capita	
Labour force participation rate (female / male)	
Seats held by women in National Parliament	
Average income	
Income inequality (Gini co-efficient)	
Corruption level (Transparency International Corruption Perception Index: <a href="https://www.transparency.org/en/cpi/">https://www.transparency.org/en/cpi/</a> )	
<b>DEVELOPMENT PROFILE</b>	
Source: UNDP Human Development Index	

Human Development Index	
Human Development Index Ranking	
Life expectancy at birth (UNDP), disaggregated by sex	
Expected years of schooling (UNDP), disaggregated by sex	
Individuals using the internet (per 100 inhabitants), disaggregated by sex	
<b>MOVEMENT PROFILE</b>	
Source: IOM; UNHCR	
Net migration rate, disaggregated by sex	
Refugees, IDPs, and stateless disaggregated by sex	
<b>HUMAN RIGHTS AND GENDER EQUALITY PROFILE</b>	
Source: UN Human Rights Index; UNDP Human Development Index	
Human rights concerns in the areas of <b>justice</b>	
Gender equality concerns in the area of <b>justice</b>	
Human rights concerns in the area of <b>trafficking in persons</b>	
Gender equality concerns in the area of <b>trafficking in persons</b>	
Human rights concerns in the area of <b>smuggling of migrants</b>	
Gender equality concerns in the area of <b>smuggling of migrants</b>	
Human rights concerns in the area of <b>migration</b>	
Gender equality concerns in the area of <b>migration</b>	
<b>CRISES AND CONFLICT</b>	
Conflict	
Climate change	
Forced movement patterns and trends	
Arbitrary detention	
Attacks on humanitarian actors	

## 2.2 International Legal Context

Ratification status for human rights treaties can be accessed at [treaties.un.org](https://treaties.un.org) or at [ohchr.org](https://www.ohchr.org)

Ratification status of the eight fundamental ILO Conventions listed below can be found at: [ilo.org/dyn/normlex/en](https://ilo.org/dyn/normlex/en)

This table can also be completed by selecting the appropriate country from the drop-down menu at: [indicators.ohchr.org](https://indicators.ohchr.org)

This table is designed to help users identify **the international human rights and other relevant treaty obligations of the country / countries**. Where States are party to international instruments, they have voluntarily committed themselves to fulfil the obligations set out therein. Knowing what commitments States have voluntarily made can be useful in advocating for and supporting their efforts in this respect.

Instrument		Reservations / Declarations?
<b>TRANSNATIONAL CRIME INSTRUMENTS</b>		
United Nations Convention against Transnational Organized Crime (UNTOC), 2000		
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UNTOC, 2000		
Protocol against the Smuggling of Migrants by Land, Sea or Air, supplementing the UNTOC, 2000		
United Nations Convention against Corruption, 2005		
<b>HUMAN RIGHTS INSTRUMENTS</b>		
ICCPR International Convention on Civil and Political Rights, 1976		
ICCPR Op 1 Optional Protocol to the International Convention on Civil and Political Rights, 1976		
ICCPR Op 2 Second Optional Protocol to the International Convention on Civil and Political Rights, aiming at the abolition of the death penalty, 1991		
ICESCR International Covenant on Economic, Social and Cultural Rights, 1976		
ICESCR Optional Protocol to the International Covenant on Economic, Social and Cultural Rights,		
ICERD International Convention on the Elimination of All forms of Racial Discrimination, 1969		
CEDAW Convention on the Elimination of all forms of discrimination against women 1979		



Instrument		Reservations / Declarations?
Optional Protocol to the Convention on the Elimination of all forms of discrimination against women, 2000		
CRC Convention on the Rights of the Child, 1983		
CRC Op 1 CRC Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2000		
CRC Op 2 CRC Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000		
CRC Op 3 Optional Protocol on the Convention on the Rights of the Child on a communications procedure, 2014		
CAT Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1987		
CAT Op 1 Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2006		
ICRMW International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 1990		
ICRD Convention on the Rights of Persons with Disabilities, 2008		
ICRD Op 1 Optional Protocol to the Convention on the Rights of Persons with Disabilities, 2008		
ICPPED International Convention for the Protection of all Persons from Enforced Disappearance, 2010		
<b>INTERNATIONAL REFUGEE LAW</b>		
The Convention relating to the Status of Refugees, (1951 Refugee Convention)		
1967 Protocol to the 1951 Convention relating to the Status of Refugees		
<b>INTERNATIONAL LABOUR LAW</b>		
Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)		
Right to Organize and Collective Bargaining Convention, 1949 (No. 98)		
Forced Labour Convention, 1930 (No. 29)		

Instrument		Reservations / Declarations?
2014 Protocol to the Forced Labour Convention		
Abolition of Forced Labour Convention, 1957 (No. 105)		
Minimum Age Convention, 1973 (No. 138)		
Worst Forms of Child Labour Convention, 1999 (No. 182)		
Equal Remuneration Convention, 1951 (No. 100)		
Discrimination (Employment and Occupation) Convention, 1958 (No. 111)		

## 2.3 National Legal Context

This table can be completed on the basis of an assessment of domestic legislation. UNODC's online knowledge portal, SHERLOC offers insights into domestic legislation on many countries: <https://sherloc.unodc.org/cld/v3/sherloc/legdb>

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

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

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

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

## 2.4 Institutional Context and Capacity

This tool can be completed by looking to Concluding Observations of United Nations human rights treaty bodies, as well as thematic and country reports of United Nations Special Rapporteurs of the Human Rights Council, and reports and recommendations of the human rights Universal Periodic Review Process. For trafficking in persons, information from the GRETA reports of the Council of Europe and the OSCE Special Representative's reports can offer further insights and recommendations: <https://www.osce.org/secretariat/107636>

Documents of the United Nations human rights index may be accessed at <https://www.universalhumanrightsindex.org>

Universal Periodic Review reports can be accessed at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx>

OHCHR field presences may also be consulted for up to date information at country or regional-level. In addition, reports of national civil society organizations and international nongovernmental organizations are consulted for additional knowledge of country situations.

This table has been designed to help users identify **what is the level of State human rights commitment and capacity, and how active civil society organizations are on human rights issues**. These findings may help users to then better design and implement rights-based and targeted activities that address identified capacity gaps in human rights and gender-sensitivity.

INSTITUTIONAL PROFILE	
National Plans of Action on Trafficking in Persons /Smuggling of Migrants (whether standalone or embedded into National Action Plans on migration, organized crime or other issues) that address human rights and gender equality	
National Human Rights Institute (NHRI): (If there is a NHRI, is it accredited by the International Coordinating Committee on National Institutions according to the Paris Principles?)	
National coordinating mechanism on trafficking in persons / smuggling of migrants, and agencies involved: (if a national coordination mechanism exists, does it involve state / non-state actors? Does it meet regularly? What is its purpose? Does it achieve its purpose?:	
NGOs / Civil Society Organizations active on trafficking in persons:	
NGOs / Civil Society Organizations active on smuggling of migrants:	
Key duty bearers addressing trafficking and smuggling of migrants (generally State agencies or private sector actors who States have outsourced their responsibilities to):	

Capacity of duty bearers to fulfil their human rights and gender-related obligations				
Which are the <b>most relevant State stakeholders</b> in the country, who bear human rights obligations in addressing trafficking in persons and smuggling of migrants? (e.g. legislators, policy-makers, law enforcers, ministries etc.)				
Key stakeholder 1:				
Key stakeholder 2:				
Key stakeholder 3:				
Key stakeholder 4:				
Key stakeholder 5:				
What level of <b>understanding</b> do key duty bearers have of their human rights obligations in addressing trafficking in persons and smuggling of migrants?				
To be completed on the basis of the user's judgment / experience and updated as user learns more from further engagement / research	<b>High</b> Stakeholder explicitly and directly addresses human rights in its work and independently active in promoting rights	<b>Medium</b> Stakeholder indirectly addresses human rights in its work / open to promoting rights	<b>Low</b> Stakeholder does not address human rights in its work, but receptive to improvement	<b>None</b> Stakeholder indifferent or hostile to human rights and not receptive to improvement
Key stakeholder 1:				
Key stakeholder 2:				
Key stakeholder 3:				
Key stakeholder 4:				
Key stakeholder 5:				
What level of <b>understanding</b> do key duty bearers have of the importance of gender equality in responding to trafficking in persons and smuggling of migrants?				
To be completed on the basis of the user's judgment / experience and updated as user learns more from further engagement / research	<b>High</b> Stakeholder explicitly and directly pursues gender equality in its work and independently promotes gender equality	<b>Medium</b> Stakeholder indirectly addresses gender equality in its work / open to strengthening gender equality	<b>Low</b> Stakeholder does not address gender equality in its work, but receptive to improvement	<b>None</b> Stakeholder indifferent or hostile to gender equality and not receptive to
Key stakeholder 1:				
Key stakeholder 2:				
Key stakeholder 3:				
Key stakeholder 4:				
Key stakeholder 5:				

Do duty bearers (State agencies) have adequate <b>resources</b> to fulfil their human rights obligations in addressing trafficking in persons and smuggling of migrants?				
To be completed on the basis of the user's judgment / experience and updated as user learns more from further engagement / research	<b>More than adequate</b>	<b>Adequate</b>	<b>Inadequate</b>	<b>None</b>
Key stakeholder 1:				
Key stakeholder 2:				
Key stakeholder 3:				
Key stakeholder 4:				
Key stakeholder 5:				
Does the stakeholder's composition of staff show a commitment to gender equality?				
To be completed on the basis of the user's judgment / experience and updated as user learns more from further engagement / research	<b>More than adequate</b> There are women employed in senior management roles	<b>Adequate</b> There are some women working in programmatic / operational roles	<b>Inadequate</b> There are women employees, but not at senior levels of institution	<b>None</b> No women are employed by the stakeholder institution
Key stakeholder 1:				
Key stakeholder 2:				
Key stakeholder 3:				
Key stakeholder 4:				
Key stakeholder 5:				
How would you rate stakeholder commitment / engagement on human rights-based approaches to <b>trafficking in persons</b> ?				
To be completed on the basis of the user's judgment / experience and updated as user learns more from further engagement / research	<b>High</b> Stakeholder strongly committed to human rights based approach in addressing human trafficking in persons	<b>Medium</b> Stakeholder open to increasing human rights-based approach in addressing trafficking in persons	<b>Low</b> Stakeholder does not take human rights based approaches in addressing trafficking but receptive to improvement	<b>None</b> Stakeholder indifferent or hostile to human rights based approaches to trafficking in persons and not receptive to improvement
Key stakeholder 1:				



Key stakeholder 2:				
Key stakeholder 3:				
Key stakeholder 4:				
Key stakeholder 5:				
How would you rate stakeholder commitment / engagement on human rights based approaches <b>smuggling of migrants</b> ?				
To be completed on the basis of the user's judgment / experience and updated as user learns more from further engagement / research	<b>High</b> Stakeholder strongly committed to human rights based approach in addressing smuggling of migrants	<b>Medium</b> Stakeholder open to increasing human rights-based approach in addressing smuggling of migrants	<b>Low</b> Stakeholder does not take human rights based approaches in addressing smuggling but open to doing so	<b>None</b> Stakeholder indifferent or hostile to human rights based approaches to smuggling of migrants
Key stakeholder 1:				
Key stakeholder 2:				
Key stakeholder 3:				
Key stakeholder 4:				
Key stakeholder 5:				
What are the key <b>barriers</b> stakeholders face in exercising their human rights and gender equality obligations?				
Key stakeholder 1:				
Key stakeholder 2:				
Key stakeholder 3:				
Key stakeholder 4:				
Key stakeholder 5:				

## 2.5 Determining whether UNODC can support non-UN security forces

In its work to prevent and address human trafficking and migrant smuggling, UNODC frequently works with police, border control, military or security forces, for instance, through capacity building, provision of technical assistance and other support. Some authorities violate rights in responding to trafficking in persons or smuggling of migrants, for instance, where border, immigration, coast guard or other agencies use push-backs of smuggled migrants that may amount to refoulement or arbitrarily detain victims of trafficking, including children, or incarcerate persons convicted of perpetrating these crimes in conditions that amount to torture.

UNODC is required to carry out due diligence before providing support to or accepting support from authorities. The 2011 Human Rights Due Diligence Policy on UN support to non-UN Security Forces (HRDDP) is relevant in determining whether UNODC can work with authorities or not, and in assessing the possible risks that may be involved in doing so. According to HRDDP, the UN cannot provide support where there are substantial grounds

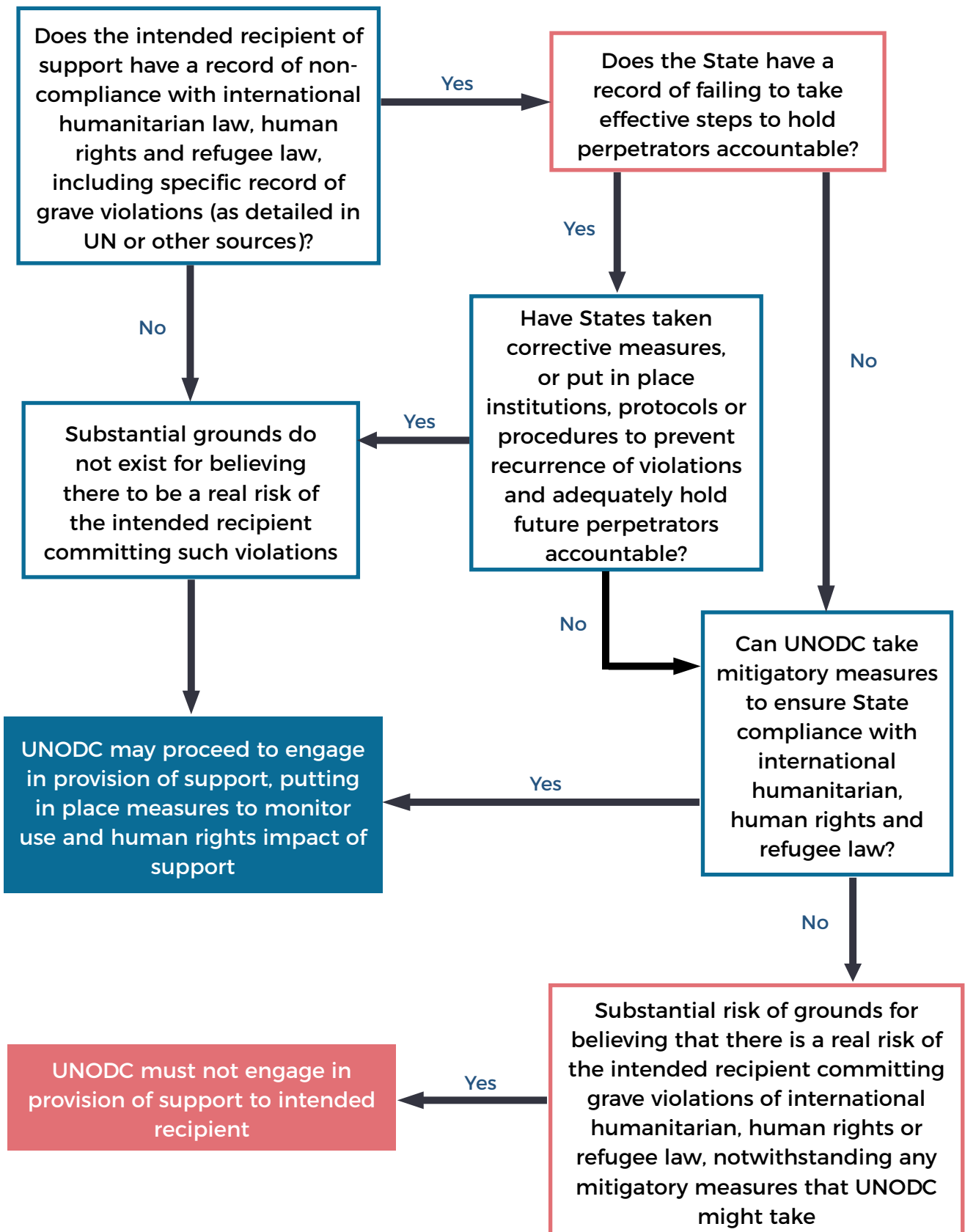
for believing that there is a real risk of entities committing grave violations of international humanitarian, human rights or refugee law and where authorities fail to take the necessary corrective or mitigating measures. This HRDDP applies to:

- National military
- Paramilitary
- Police
- Intelligence services
- Border control
- Security forces
- Authorities responsible for management, administration or command or control of such forces

The flow chart below offers a simplified summary of considerations that UNODC must undertake in determining whether it can provide support in the context of its work to prevent and address human trafficking and migrant smuggling. More information should be sought by referring directly to the HRDDP and to any country-specific guidance that may be in place.



**Flowchart: Determining whether UNODC can support non-UN security forces**



## 2.6 Practical barriers faced by specific rights-holders

This template has been designed to help users to identify **the practical barriers that may exist for rights-holders' enjoyment of their human rights** to inform strategies to overcome those barriers.

Capacity of rights holders to access / claim their rights				
Who are the most <b>relevant rights-holders</b> for the UNODC programme / intervention? (e.g. trafficked persons, persons at risk of being trafficked, smuggled migrants, persons at risk of being smuggled, persons accused or convicted of trafficking or smuggling, other)				
Rights-holders (specify)	Barriers rights-holders face in claiming rights			
What level of <b>awareness and understanding</b> do vulnerable groups of rights holders have of their rights?				
This section of the table can be completed on the basis of the user's judgment / experience and updated as user learns more from further engagement / research	High	Medium	Low	None
	Group is aware of their rights and understands their implications	Group is aware of their rights and has some understanding of their implications	Group is aware of their rights but does not understand their implications	Group has no awareness of their rights
	Women			
	Men			
	LGBTQI+			
	Asylum seekers and refugees			
	Migrants			
	Migrants in irregular situations			
	Stateless people			
	Children			
Other (specify, e.g., indigenous people, ethnic minority):				

Capacity of rights holders to access / claim their rights				
Where there is a significant disparity between responses for different groups, suggest potential reasons why:				
Are rights holders <b>provided with information</b> about their rights by the State?				
	<b>Always</b>	<b>Sometimes</b>	<b>Rarely</b>	<b>Never</b>
Women				
Men				
LGBTQI+				
Asylum seekers and refugees				
Migrants				
Migrants in irregular situations				
Stateless people				
Children				
Other (specify, e.g. indigenous people, ethnic minority):				
Where there is a significant disparity between responses for different groups, suggest potential reasons why:				
Do rights holders have <b>access to justice</b> (e.g. courts, tribunals, complaint mechanisms)?				
Women	Yes:	No:	If no, suggest potential reasons why:	
Men	Yes:	No:	If no, suggest potential reasons why:	
LGBTQI+	Yes:	No:	If no, suggest potential reasons why:	
Migrants	Yes:	No:	If no, suggest potential reasons why:	
Migrants in irregular situations	Yes:	No:	If no, suggest potential reasons why:	
Stateless people	Yes:	No:	If no, suggest potential reasons why:	

Capacity of rights holders to access / claim their rights	
Children	Yes: No: If no, suggest potential reasons why:
Other (specify, e.g. indigenous people, ethnic minority):	Yes: No: If no, suggest potential reasons why:
Do rights holders have <b>access to legal representation</b> of their choice?	
Women	Yes: No: If no, suggest potential reasons why:
Men	Yes: No: If no, suggest potential reasons why:
LGBTQI+	Yes: No: If no, suggest potential reasons why:
Migrants	Yes: No: If no, suggest potential reasons why:
Migrants in irregular situations	Yes: No: If no, suggest potential reasons why:
Stateless people	Yes: No: If no, suggest potential reasons why:
Children	Yes: No: If no, suggest potential reasons why:
Other (specify, e.g. indigenous people, ethnic minority):	Yes: No: If no, suggest potential reasons why:
Where there is a significant disparity between responses for different groups, suggest potential reasons why:	Yes: No: If no, suggest potential reasons why:

# Part 3

## TOOLS TO MAINSTREAM HUMAN RIGHTS AND GENDER EQUALITY IN PROGRAMMING



### 3.1 Planning and design checklist

The human rights and gender equality information obtained in **Situational Analysis** [Part 2](#) can inform the **planning and design** of activities, interventions and programmes to prevent and address human trafficking and/or migrant smuggling. The following programmatic checklist is offered to support users to that end.

PROGRAMME PLANNING AND DESIGN				
Question	Yes	No	In part	If yes or in part, how will this be addressed?
Framework				
Have relevant international human rights instruments that the State has ratified been identified? <a href="#">2.2</a>				
Has national compliance of international human rights obligations been identified? <a href="#">2.3</a>				
Evidence base				
Have human rights and gender equality reports by UN organizations, NGOs, civil society groups or others been consulted in strategy development? <a href="#">Annex 3</a> & <a href="#">4</a>				
Has relevant information on how gender influences peoples' experiences, knowledge and involvement in human trafficking and smuggling of migrants and criminal justice system response (e.g. for complainants / victims, witnesses and accused persons) been identified, collected and reflected in planning?				
Has background data / situational analysis information been disaggregated by age, sex, gender, race, ethnicity, language, religion, nationality, disability, marital, birth or other status? <a href="#">3.4</a>				
Is the project / activity based on data that has been gathered in a gender-sensitive way e.g. focus groups of both men and women, separate women focus groups? <a href="#">1.3</a> , <a href="#">3.4</a>				
Risk identification and management				
Have human rights-based and gender equality objectives and indicators been specifically included in the strategy development? <a href="#">4.3.1</a>				



PROGRAMME PLANNING AND DESIGN				
Question	Yes	No	In part	If yes or in part, how will this be addressed?
Have human rights risks of the planned intervention / programme been identified and a mitigation plan been developed and put in place?				
Have the implications of conflict / humanitarian crises been considered and effort made to ensure the intervention / programme is resilient to changes?				
Consultation and participation				
Have beneficiaries of all genders including those from relevant marginalized groups been consulted in the design of the intervention / programme in a participatory and non-discriminatory way?				
Have partners of all genders been able to freely participate in strategy development and planning?				
Personnel / human resources				
Have human rights and gender specialists with expertise in trafficking in persons and smuggling of migrants, been consulted throughout the process of planning and strategy development?				
Do UNODC TIP and SOM focal points have competencies in human rights-based approaches and gender equality, and if not, received training, or have specialists with relevant expertise been hired to fill capacity gaps?				
Do UNODC staff / consultants who will engage directly with vulnerable populations have sufficient training to do so in accordance with respect for human rights and gender sensitivity?				
Have UNODC programme / project staff / consultants been briefed on human rights and gender issues?				

PROGRAMME PLANNING AND DESIGN				
Question	Yes	No	In part	If yes or in part, how will this be addressed?
<b>Budgeting and procurement</b>				
Do project budgets allow for human rights and gender capacity in planning for staff recruitment and training, and have donors been approached to support these efforts?				
Do procurement processes for the project / activity comply with the United Nations Procurement Manual, including by ensuring that goods and services are only procured from providers who respect human rights and gender-sensitive considerations of their employees?				
<b>Programmatic integration</b>				
Does the planned intervention / programme advance human rights protections for marginalized groups?				
Have human rights and gender-related linkages with other projects / programmes been identified and incorporated into the strategy / plan?				
Have human rights and gender-related linkages with humanitarian work been identified and incorporated into the strategy / plan in conflict-affected areas?				
<b>Sustainable capacity building</b>				
Does the planned project / programme, contribute to the capacity of national counterparts to promote full compliance with their international human rights obligations?				
Is a plan in place to ensure that national counterparts can take ownership of programmes, and maintain a human rights-based approach and without compromising the human rights of stakeholders?				

## 3.2 Strategy and policy risk assessment and mitigation

**Strategy and policy development goal:** Beneficiary countries have capacity, tools and information to develop, implement, monitor and evaluate evidence-based strategies and policies against TIP and SOM, aligned with international instruments.

**HRBA / gender goal:** Strategies and policies developed in accordance with human rights based and gender sensitive approach

**Monitoring and evaluation:** Go to [4.3.1](#) for monitoring and evaluation **indicators** on strategy and policy.

Instructions: User to specify likelihood and impact, and add additional identified risks. Risk mitigation strategy is to be developed where risk likelihood and impact are medium and/or high.

Risk			Mitigation
Identified risk (examples)	Likelihood High / Medium / Low	Impact High / Medium / Low	Risk Mitigation Strategy (examples)
1. The evidence base on which strategies and policies are developed is deficient, or strategies and policies are not based on evidence.			Promote strategies and policies that explicitly identify evidence relied on, and check that evidence is reliable.
2. Strategies and policies rely on data that was collected contrary to human rights of research participants / data subjects. <a href="#">1.3</a>			Promote research and data collection methodologies that are in accordance with legal and ethical practice, and consult with local ethics review committee on the need for review and approval.
3. Rights-adverse practices, including through politicization of migration and SOM, including: collective expulsion of smuggled migrants encountered in unsafe conditions (e.g. at sea) without being removed from situations that endanger life or safety or screened for potential asylum claims; or detention resulting in treatment amounting to torture or inhumane or degrading treatment, or even death. <a href="#">1.9</a>			Regular communication with counterparts to allow for identification of corrective measures, and to increase understanding of rights obligations under the Smuggling of Migrants Protocol, UNCLOS, international human rights and refugee law.  Draft strategies and policies to be sensitive to political issues, while ensuring that any decisions taken to avoid human rights and gender-sensitive explicit language do not result in dilution of programmatic commitments thereto.

Risk			Mitigation
Identified risk (examples)	Likelihood High / Medium / Low	Impact High / Medium / Low	Risk Mitigation Strategy (examples)
4. Strategies or policies introduced to prevent smuggling of migrants result in people being prevented from fleeing humanitarian crises, conflict or seeking asylum, or being diverted to other routes where lives and safety are endangered <a href="#">1.9</a>			Promote strategies and policies that are based on evidence and research, and designed on the basis of wider considerations, including crises, conflict and persecution to ensure that asylum seekers are identified among smuggled migrants. Increase understanding among key stakeholders of the right to leave one's own country (ICCPR article 12(2)), and the right to seek asylum (1951 Refugees Convention and 1967 Protocol), and the focus of the Smuggling Protocol on addressing transnational organized crime involvement in facilitating irregular movement for project, not on addressing irregular migration.
5. Strategies or policies introduced to prevent transnational trafficking in persons or smuggling of migrants result in discriminatory policies that may make existing inequalities worse (e.g. policies that restrict outward migration of young women or persons of particular ethnic minorities or deny entry / exit visas to men of a certain age) <a href="#">1.9</a>			Advocate for non-discriminatory strategies and policies, emphasizing that discriminatory policies can exacerbate vulnerability to trafficking and exploitation. Build State capacity to differentiate between discriminatory practices and justifiably differential treatment.
6. Widespread human rights violations of rights-holders in general population of citizens, reduce priority given to human rights of non-citizens			Align strategy and policy development with country's needs, emphasizing in training that human rights apply to all within the beneficiary country's jurisdiction irrespective of nationality or other Status. Integrate UNODC's strategy within wider UN system and UN country team, including for instance, by aligning priorities with efforts to promote human rights (OHCHR), development (UNDP), migration (IOM) and refugee protection (UNHCR).

Risk			Mitigation
Identified risk (examples)	Likelihood High / Medium / Low	Impact High / Medium / Low	Risk Mitigation Strategy (examples)
7. Proposed work and programme activities are duplicative of the work of other organizations and / or bilateral / regional assistance arrangements.			Increase cooperation with other organizations in design, implementation, monitoring and evaluation of activities, through partnerships in direct assistance to victims of trafficking and vulnerable migrants (IOM); asylum-seekers and refugees (UNHCR); child protection (UNICEF). Ensure on-going engagement in national and regional mechanisms for coordination and incorporate stakeholder mapping in capacity needs assessments.
8. Engagement of private sector actors in criminal justice response to counter-trafficking activities reduces capacity of UNODC and State counterparts to hold them to account for criminal conduct			Promote distinctions to be drawn between labour law infractions and criminal law, and between civil responses and criminal responses. Ensure that any working arrangements made with private sector partners do not undermine capacity of UNODC to engage with State authorities on combating trafficking and smuggling (including for instance by not signing non-disclosure agreements or entering into other agreements that would prevent UNODC from reporting criminal conduct to authorities)
9. Evaluation of strategies and policies is not conducted in accordance with human rights and gender equality norms and standards. <a href="#">4.2</a>			Draw attention of State counterparts to evaluation methodologies that are deficient and encourage States counterparts to develop evaluation approaches in accordance with human rights norms and standards, including to allow for participation of beneficiaries and their access to evaluation outcomes.
10. Strategies and policies developed on migration do not take into account labour supply-demand and demographic realities, resulting in people who are engaged in facilitating movement of people for non-profit purposes, being criminalized as smuggling of migrants <a href="#">1.1</a>			Draw attention of States to possible policy solutions to irregular migration patterns.

Risk			Mitigation
Identified risk (examples)	Likelihood High / Medium / Low	Impact High / Medium / Low	Risk Mitigation Strategy (examples)
11. Strategies and policies developed on trafficking and smuggling issues are not responsive to conflict and crises <a href="#">1.6</a> , <a href="#">1.7</a> , <a href="#">1.9</a>			Put in place strategies and enter into coordination agreements in advance of conflicts. Engage with relevant stakeholders on conflict / crises preparedness to ensure strategies and policies are equipped to respond
Additional risks identified by user:			Risk mitigation strategy:

### 3.3 Legislative assistance risk assessment and mitigation

**Legislative assistance goal:** Beneficiary countries adapt their national legal frameworks on trafficking in persons and smuggling of migrants to international standards and other good practices.

**HRBA / Gender goal:** Legislative frameworks are developed or amended in a way that explicitly upholds human rights and gender equality in a way that is inclusive of / does not exclude marginalized groups

**Monitoring and evaluation:** Go to [4.3.2](#) for monitoring and evaluation **indicators** on legislative assistance.

Instructions: User to specify likelihood and impact, and add additional identified risks. Risk mitigation strategy is to be developed where risk likelihood and impact are medium and/or high.

Risk			Mitigation
Identified risk (examples)	Likelihood High / Medium / Low	Impact High / Medium / Low	Risk Mitigation Strategy (examples)
1. Legislation that UNODC assists to develop is applied in a way that is discriminatory (e.g. to migrants, or to women or to women) and/or in violation of human rights (e.g. because of application of corporal punishment). <a href="#">1.1</a>			Disengagement or continue engagement while insisting on certain safeguards, and positive activities to promote human rights standards.
2. Specialized laws on organized crimes (e.g. on trafficking in persons, smuggling of migrants, corruption) are misinterpreted and applied in a way that compromises right to a fair trial. <a href="#">1.1</a> , <a href="#">1.5</a>			Ensure that the provisions are defined in law in accordance with international law, and supported with explanatory notes where need be. Identify fair trial guarantees in relevant domestic instruments. Develop legal tools promote standards and practices compatible with the right to a fair trial.

Risk			Mitigation
Identified risk (examples)	Likelihood High / Medium / Low	Impact High / Medium / Low	Risk Mitigation Strategy (examples)
3. Laws criminalizing trafficking in persons are applied in a way that result in punishment or criminalization of victims of trafficking, including those who may have been engaged in unlawful activities during their victimization, with potentially discriminatory effects on particular individuals and groups (e.g. including migrant workers who may be misidentified as victims of trafficking) <a href="#">1.1</a> , <a href="#">1.6</a>			Emphasize in legislative assistance that criminalization of some activities can undermine response to human trafficking and result in violation of the rights of people who are trafficked into those activities. Advocate for the inclusion of a specific non-punishment provision to protect victims of trafficking for criminal acts they perpetrated as a direct result of being trafficked and / or advocate for application of other principles of criminal law (including duress as a defence and/or exonerating or mitigating circumstances).
4. Laws criminalizing smuggling of migrants are applied in a way that results in criminalization of persons who are acting for humanitarian purposes. <a href="#">1.1</a>			Emphasize the 'financial and material benefit' purpose element as a minimum mandatory feature of the smuggling offence in accordance with the definition provided for in article 3(a) of the Smuggling Protocol and/or at a minimum, ensure that acting for non-profit humanitarian purposes is including as a defence or exonerating circumstance in legislation.
5. Laws criminalizing smuggling of migrants are applied in a way that results in smuggled migrants being criminalized as accomplices in their own smuggling, or for administrative migration offences. <a href="#">1.1</a>			Emphasize the 'non-criminalization' provision article 5 of the Smuggling Protocol, and explain that smuggled migrants may need to be protected and supported to participate as witnesses against smugglers.
6. Victims of trafficking or people vulnerable to human trafficking are criminalized for instance, for participation in illegal activities, or for immigration offences such as irregularly departing from, entering into or remaining in a country), resulting in rights-violating practices (and undermining response to human trafficking). <a href="#">1.1</a>			Emphasize the principle of non-criminalization of victims of trafficking and strengthen understanding of criminal justice practitioners of detriment of criminalizing victims of trafficking, in efforts to prosecute traffickers.



Risk			Mitigation
Identified risk (examples)	Likelihood High / Medium / Low	Impact High / Medium / Low	Risk Mitigation Strategy (examples)
7. Sentencing rules or guidelines applicable to trafficking in persons or smuggling of migrants raise possibility of application of corporal punishment or death penalty to convicted traffickers or smugglers. <a href="#">1.5</a>			Inform State of implications of use of death penalty, including as an impediment to international cooperation through intelligence sharing and extradition. Explain to State counterparts the challenges that UNODC faces in engaging with and providing legislative support to States that apply the death penalty, and the need to consider withdrawing technical assistance if the State will not consider annulling or applying safeguards to the mandatory use of the death penalty to human trafficking or smuggling of migrants.
Additional risks identified by user:			Risk mitigation strategy:

### 3.4 Criminal justice capacity building risk assessment and mitigation

**Criminal justice capacity building goal:** Beneficiary countries provide a strengthened criminal justice response to trafficking in persons and smuggling of migrants.

**HRBA / gender goal:** Criminal justice duty bearers have increased capacity to take human rights-based and gender-sensitive approaches to their counter-trafficking and smuggling work

**Monitoring and evaluation:** Go to [4.3.3](#) for monitoring and evaluation **indicators** on criminal justice capacity building.

Instructions: User to specify likelihood and impact, and add additional identified risks. Risk mitigation strategy is to be developed where risk likelihood and impact are medium and/or high.

Risk			Mitigation
Identified risk (examples)	Likelihood High / Medium / Low	Impact High / Medium / Low	Risk Mitigation Strategy (examples)
1. Criminal justice system is insufficiently developed to serve as a basis for building effective human rights based and gender equality approaches to human trafficking and migrant smuggling. <a href="#">2.4</a>			Ensure capacity building activities are embedded in the overall criminal justice system reform programme, with an emphasis on human rights and gender equality capacity building.
2. Frequent turnover of criminal justice officials limits the effectiveness of human rights and gender equality capacity building activities.			Work with counterparts to identify appropriate staff to train (from among those likely to be in positions for minimum of 2 - 3 years); embed human rights training into existing trainings at local institutions; and integrate human rights training into broader programmes.

Risk			Mitigation
Identified risk (examples)	Likelihood High / Medium / Low	Impact High / Medium / Low	Risk Mitigation Strategy (examples)
3. Training courses with human rights and gender components do not translate into changes in performance, due, for example to (1) participants lacking prerequisite knowledge and skills (2) unsuitable training materials or processes, (3) shortcomings in systems and infrastructure (such as a lack of standard operating procedures for cooperation between different law enforcement entities); and (4) lack of operational resources.			Locate all training activities and identify appropriate participants within a clear and realistic long-term capacity building strategy, developed in consultation with local counterparts. Regularly collect evaluation and feedback data and adjust accordingly.
4. Efforts to strengthen human rights-based response to human trafficking and migrant smuggling undermined by corruption.			Work with anti-corruption specialists at UNODC and in country to ensure programme activities consider and address the likelihood of complicity in trafficking and smuggling, its potential impact and opportunities to mitigate both.
5. Efforts to increase prosecution capacity result in prosecutions that do not uphold human rights including the right of suspects to a fair trial. <a href="#">1.4</a>			Ensure human rights guidance is provided in all criminal justice capacity building efforts, including by addressing the right to a fair trial, and by ensuring that capacity building of defence lawyers is prioritized alongside capacity building of prosecutors Embed work to prevent and address human trafficking and migrant smuggling into wider criminal justice reform efforts.

Risk			Mitigation
Identified risk (examples)	Likelihood High / Medium / Low	Impact High / Medium / Low	Risk Mitigation Strategy (examples)
6. Efforts to increase prosecutions and convictions of human traffickers and migrant smugglers exacerbate or result in poor treatment of incarcerated persons. <a href="#">1.5</a>			Embed work to prevent and address human trafficking and migrant into wider criminal justice reform efforts. Ensure human rights guidance is provided in all criminal justice capacity building efforts, including by addressing the right to a fair trial, and by ensuring that capacity building of defence lawyers is prioritized alongside capacity building of prosecutors.
7. Efforts to increase investigations and prosecutions result in low-level actors in organized criminal networks being disproportionately targeted. <a href="#">1.2</a> , <a href="#">1.4</a> , <a href="#">1.5</a>			Ensure that criminal justice capacity building activities emphasize the organized crime role and function of the UNTOC in reading the Trafficking in Persons and Smuggling of Migrants Protocol. Advocate for high quality prosecutions as a measure of successful response, rather than conviction rates. Assist counterparts in developing and using arrest matrices to differentiate between the value of different prosecutions. Consider building capacity and procedures on plea bargaining.
8. Efforts to increase investigations and prosecution result in crimes of facilitation of irregular migration being charged as migrant smuggling or human trafficking, and/or exploitative labour practices being charged as human trafficking. <a href="#">1.2</a> , <a href="#">1.4</a> , <a href="#">1.5</a>			Ensure that criminal justice capacity building activities integrate and address human trafficking and migrant into wider criminal justice response frameworks, emphasize the distinctions between human trafficking for the purpose of forced labour and labour that is exploitative, as well as between migrant smuggling and facilitation of irregular migration.

Risk			Mitigation
Identified risk (examples)	Likelihood High / Medium / Low	Impact High / Medium / Low	Risk Mitigation Strategy (examples)
9. Increased awareness of risks of trafficking in persons and smuggling of migrants results in actions that fail to distinguish between those who are trafficked or smuggled, and those who are migrating for other reasons, resulting in failures to fulfill human rights obligations. <a href="#">1.6</a>			Ensure that capacity building approaches address the distinction between human trafficking, migrant smuggling and other phenomenon, and the rights-based obligations owed to all categories of persons encountered by authorities.
10. Increased capacity to identify and investigate the crime of trafficking in persons results in violations of rights through raids, rescues or 'crackdowns' at places of work. <a href="#">1.6</a>			Ensure that all programme activities emphasize the need for responses to be rights based, and for identification, protection and assistance of victims of trafficking to be provided on the basis of full and informed consent.
11. Increased capacity to identify and investigate the crime of migrant smuggling contributes to targeting of migrants and / or 'crackdowns' on migrants / migration. <a href="#">1.6</a>			Increase understanding of the target of efforts to prevent and address migrant smuggling being migrant smugglers and not migrants. Emphasize human rights of migrants in all programme activities, irrespective of their status, and the importance of legal migration pathways and processes as a means of addressing migrant smuggling.
12. Increased emphasis on use of special investigative techniques in human trafficking and migrant smuggling investigations results in human rights violations. <a href="#">1.2</a>			Ensure that criminal justice capacity building addresses the human rights risks and obligations in use of special investigative techniques, including but not limited to privacy rights in use of surveillance and wiretapping, the right to life in use of controlled delivery.

Risk			Mitigation
Identified risk (examples)	Likelihood High / Medium / Low	Impact High / Medium / Low	Risk Mitigation Strategy (examples)
13. Victim participation in criminal justice procedures against suspected traffickers is to their detriment, including from a human rights and gender equality perspective. <a href="#">1.4</a>			<p>Ensure that participation of victims of trafficking in criminal justice procedures does not result in their prolonged or indefinite detention in shelters, or delays in their repatriation or violate their rights as victim / witnesses. This includes ensuring that criminal justice procedures are child-friendly.</p> <p>Increase efforts to ensure that victims / witnesses are provided with information on court and administrative proceedings in ways that they understand. Consider the role of victim advocates, and ensure that victims participating as witnesses have a right to be present during legal proceedings and express their views.</p>
14. Convictions of human traffickers and migrant smugglers, directly or indirectly, contribute to rights-detrimental conditions and treatment. <a href="#">1.5</a>			<p>Ensure that prison reform considerations are integrated into wider efforts to build fair and effective criminal justice systems, including by referring to norms and standards including the Standard Minimum Rules for the Treatment of Prisoners, the Body of Principles for the Protection of All Persons under Any Form of Detention and Imprisonment; Basic Principles for the Treatment of Prisoners; United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules); United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules).</p>

Risk			Mitigation
Identified risk (examples)	Likelihood High / Medium / Low	Impact High / Medium / Low	Risk Mitigation Strategy (examples)
15. Increased capacity to prosecute serious crime, results in the imposition of the death penalty for convicted traffickers or smugglers. <a href="#">1.5</a>			<p>Insist on application of safeguards, and identify measures the State may be willing to adopt e.g. annulling mandatory use of the death penalty so judiciary can consider specific circumstances of each case, prohibiting application of death penalty to children and reducing the list of crimes the death penalty applies to.</p> <p>Inform State of implications of use of death penalty, including as an impediment to international cooperation through extradition.</p> <p>Work with donors and UN country teams to communicate to the State the difficulty UNODC has in supporting law enforcement where death penalty could be imposed and to actively promote ratification of and / or adherence to the Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty.</p>
16. Gender bias and assumptions based on gender stereotypes, and insufficient numbers of officers of different genders undermine capacity of law enforcement to effectively identify male / female victims or male / female perpetrators. <a href="#">1.6</a>			<p>Ensure gender dimensions are taken into account in any capacity building efforts.</p>
17. Enforcement efforts are undermined by social tolerance for practices that are seen as related to cultural norms or traditions but can directly or indirectly result in trafficking.			<p>Build relationships with organizations with the potential to influence social / cultural norms and raise awareness of trafficking implications of practices.</p>

Risk			Mitigation
Identified risk (examples)	Likelihood High / Medium / Low	Impact High / Medium / Low	Risk Mitigation Strategy (examples)
18. Lack of support services available for criminal justice actors to refer trafficked persons and migrants in need of protection to. <a href="#">1.7</a>			Advocate for greater resource allocation to victim support initiatives in collaboration with other agencies.
19. Efforts to strengthen human rights-based response to human trafficking and migrant smuggling undermined by conflict <a href="#">1.9</a>			Work with humanitarian actors and other stakeholders working in conflict setting to consider the impact that conflict may have on trafficking and smuggling issues and actors affected, to strengthen resilience of interventions. Emphasize the need to collect evidence during times of conflict, so that perpetrators of serious crimes including trafficking in persons and smuggling of migrants can be brought to justice in the future.
Additional risks identified by user:			Risk mitigation strategy:



### 3.5 Regional and trans-regional cooperation risk assessment and mitigation

**Regional and trans-regional cooperation goal:** Beneficiary countries contribute to strengthened regional and trans-regional cooperation related to trafficking in persons and smuggling of migrants.

**HRBA / Gender goal:** Strengthened regional and trans-regional cooperation strengthen human rights based and gender sensitive approaches to trafficking in persons and smuggling of migrants.

**Monitoring and evaluation:** Go to [4.3.4](#) for monitoring and evaluation **indicators** on regional and trans-regional cooperation.

Instructions: User to specify likelihood and impact, and add additional identified risks. Risk mitigation strategy is to be developed where risk likelihood and impact are medium and/or high.

Risk			Mitigation
Identified risk (examples)	Likelihood High / Medium / Low	Impact High / Medium / Low	Risk Mitigation Strategy (examples)
1. National cooperation capacity is insufficient to support regional or trans-regional cooperation, and results in cooperative mechanisms that are not supportive or are detrimental to rights-based and gender-responsive approaches			Work with national counterparts to build national cooperation capacity, and identify key stakeholders for regional and trans-regional cooperation, ensuring that human rights actors are involved.
2. Human trafficking and migrant smuggling issues are addressed in regional and trans-regional cooperation mechanisms that deal primarily with migration, risking that domestic trafficking will be overlooked or that migrant smuggling will be addressed exclusively as a migration issue, rather than a crime prevention issue requiring rights-based and gender-sensitive responses			In programme activities to strengthen regional and trans-regional cooperation, include activities that (a) provide guidance on the relationship between TIP, SOM and migration / irregular migration issues, and (b) emphasize the primacy of human rights in all cooperative arrangements

Risk			Mitigation
Identified risk (examples)	Likelihood High / Medium / Low	Impact High / Medium / Low	Risk Mitigation Strategy (examples)
3. MOUs, joint operation agreements and other arrangements on trafficking and smuggling are misused for other purposes (e.g. including migration control) or to circumvent human rights and other obligations under international law (e.g. MOUs on interception of migrants at sea)			Support States to understand obligations under international law in different jurisdictional zones and extraterritorially, including the obligations that emerge in customary international law and human rights obligations that are triggered by the exercise of effective control.
4. Joint operations result in the use of investigative techniques contrary to the human rights of potential suspects, victims and / or witnesses <a href="#">1.2</a>			Encourage countries to refer to international norms and good practice standards in any joint operation arrangements
5. Mutual legal assistance and extradition agreements raise risks of practices that violate human rights, including extradition to countries where the death penalty may be imposed			Insist on human rights guarantees in any cooperative arrangement that UNODC supports, including express guarantees that persons are not extradited to places where they would face the death penalty for human trafficking of migrant smuggling offences. Increase understanding among officials of the death penalty as an impediment to international cooperation, including as a barrier to extradition.

Risk			Mitigation
Identified risk (examples)	Likelihood High / Medium / Low	Impact High / Medium / Low	Risk Mitigation Strategy (examples)
6. Cooperative agreements on return and reintegration result in returns being carried out contrary to the human rights of returnees, because they do not respect the rights and dignity of people being returned, are not gender-sensitive or are carried out contrary to the principle of non-refoulement, or because people are returned to situations of vulnerability or that otherwise risk human rights violations. <a href="#">1.8</a>			<p>Ensure that any cooperative arrangements on return and reintegration explicitly uphold the principle of non-refoulement.</p> <p>Emphasize that any return processes of migrants must be safe and dignified and carried out in accordance with human rights of individuals concerned and in ways that are age and gender sensitive.</p> <p>Ensure that social inclusion and reintegration is routinely integrated into return processes for both smuggled and trafficked people.</p>
7. Cooperative agreements reached between actors are compromised by the onset of conflict and the engagement of new stakeholders			<p>Identify and engage with new stakeholders in relation to trafficking and smuggling issues in conflict settings.</p> <p>Diversify partnerships with various state, non-state and private actors to identify cooperative arrangements to make responses to prevent and address human trafficking and migrant more resilient to conflict.</p>
Additional risks identified by user:			Risk mitigation strategy:

### 3.6 Protection and assistance risk assessment and mitigation

**Protection and assistance goal:** Beneficiary countries improve the scope and quality of their protection response, including identification, referral and support for victims of trafficking, vulnerable smuggled migrants and other vulnerable migrants.

**HRBA / Gender goal:** Victims of trafficking, vulnerable smuggled migrants and others are protected and assisted in accordance with human rights based and gender-based approaches.

**Monitoring and evaluation:** Go to [4.3.5](#) for monitoring and evaluation **indicators** on protection and assistance.

Instructions: User to specify likelihood and impact, and add additional identified risks. Risk mitigation strategy is to be developed where risk likelihood and impact are medium and/or high.

Risk		Mitigation	
Identified risk (examples)	Likelihood High / Medium / Low	Impact High / Medium / Low	Risk Mitigation Strategy (examples)
1. Victims of trafficking are not identified as victims of trafficking, and so are not protected and assisted in accordance with their human rights. <a href="#">1.6</a>			In screening procedures, promote the introduction of the presumption that where a person may be a victim of trafficking he or she is treated as such, until further determination can be made.
2. Lack of support services that victims of trafficking and smuggled migrants in need of protection can be referred to upon being identified. <a href="#">1.6</a> , <a href="#">1.7</a>			Build local capacity to provide assistance, including through low-cost responses to improve circumstances including victim-friendly, child-friendly, trauma-informed and gender-sensitive interview processes.

Risk			Mitigation
Identified risk (examples)	Likelihood High / Medium / Low	Impact High / Medium / Low	Risk Mitigation Strategy (examples)
3. Victims of trafficking do not wish to receive protection and assistance services or deliberately avoid engaging with authorities. <a href="#">1.7</a>			Work to identify and address barriers by advocating for services that address needs and compensation, and by training officials to engage with victim groups to seek their feedback in developing and implementing human rights-based and gender sensitive approaches that include special measures for children. Further work to remove barriers to victims of trafficking and smuggled migrants in need of protection from coming forward, including mandatory return, detention in shelters or other facilities; fear of stigmatization, fear of retribution by traffickers or others.
4. NGOs and civil society actors face challenges operating in the country, impacting on their capacity to support protection and assistance. <a href="#">1.7</a>			Highlight to counterparts, the crucial role of civil society and NGOs in protecting and assisting victims of trafficking and smuggled migrants, as integral to effective and human rights based approaches to prevent and address human trafficking and migrant, including in support of successful prosecutions.
5. Measures taken to protect and assist persons are discriminatory, contrary to article 14(2) of the Trafficking Protocol, for instance, where measures negatively affect the rights of the individuals involved and overwhelmingly affect women and girls (e.g. where women and girls are arbitrarily detained in shelters). <a href="#">1.7</a>			Advocate for responses that promote gender equality between people of all genders, to ensure that any differential treatment is justified and does not amount to discrimination. Ensure that types of trafficking that have disproportionately severe effects on men, women and children are recognized as gender-related persecution.

Risk			Mitigation
Identified risk (examples)	Likelihood High / Medium / Low	Impact High / Medium / Low	Risk Mitigation Strategy (examples)
6. Protection and assistance is not provided on the basis of informed consent, such that people are subject to mandatory testing (such as for diseases such as HIV/AIDS) or forced to undergo physical examinations. <a href="#">1.7</a>			Incorporate human rights based approaches and gender sensitivity training into capacity building efforts for (1) protection and assistance, and (2) evidence collection aspects of investigation.
7. Protection and assistance are not provided on the basis of specific needs of individuals (particularly those in vulnerable situations), including that it is not gender-sensitive or informed by the best interests of the child as the primary consideration. <a href="#">1.7</a>			Incorporate human rights based approaches and gender sensitivity training into capacity building efforts for protection and assistance.
8. Protection and assistance is conditional on willingness to participate in criminal justice processes or on traffickers being charged with a trafficking offence. <a href="#">1.7</a>			Increase understanding of best practice approaches including reflection periods (for victims of trafficking), and the importance of (1) providing protection and assistance irrespective of willingness to participate in criminal justice processes, (2) not making victim identification contingent on traffickers being charged as such (3) maintaining privacy and confidentiality and (4) measures to improve courtroom practices.

Risk			Mitigation
Identified risk (examples)	Likelihood High / Medium / Low	Impact High / Medium / Low	Risk Mitigation Strategy (examples)
9. Asylum seekers who are identified as victims of trafficking or smuggled migrants face barriers to accessing procedures for asylum claims.			<p>Ensure that procedures and processes for identifying potential victims of trafficking or smuggled migrants are integrated with asylum procedures and vice versa.</p> <p>Advocate for measures to be put in place to ensure that a victim's inability or unwillingness to cooperate with criminal justice processes does not negatively impact access to asylum.</p> <p>Ensure that gender-dimensions are taken into account in obtaining information from potential asylum seekers about the extent of their persecution.</p>
10. Victims of trafficking and / or smuggled migrants who are children are not identified as children but treated as adults in contravention of their rights as children. <a href="#">1.6</a>			<p>Promote the introduction of a presumption in identification process that, where a trafficked person or smuggled migrant appears to be a child, they are treated as a child for the purposes of protecting and assisting them until it is proven otherwise. Work with States to introduce rapid identification processes for child victims of trafficking.</p>
11. Involvement of interest groups / donors as partners in counter-trafficking projects, with particular religious or other agenda, results in rights-adverse protection and assistance, for instance, involving interference with freedom of religion and belief of victims who receive services, and right to health, including through denial of access to sexual and reproductive health services.			<p>Work with donors / partners to emphasize the primacy of rights in UNODC counter-trafficking work, including respect for freedom of religion and belief in provision of support services to people of all genders regardless of their circumstances, including their migration status, engagement in the informal sector, and engagement in criminal activities during their exploitation.</p>

Risk			Mitigation
Identified risk (examples)	Likelihood High / Medium / Low	Impact High / Medium / Low	Risk Mitigation Strategy (examples)
12. Onset of conflict / other humanitarian crises has diminished capacity of State to identify and provide protection and assistance services to victims / others in need of support <a href="#">1.6</a>			Adapt identification tools to conflict settings; map protection and assistance mechanisms in place, and extent to which their functioning is impaired, including service providers outside existing state mechanism, to identify alternative avenues for referral and opportunities to strengthen resilience of relevant protection and assistance providers
Additional risks identified by user:			Risk mitigation strategy:



### 3.7 Advocacy table

The way that UNODC communicates about its work has impact on whether inclusion of **human rights and gender equality considerations** will be supported or rejected by stakeholders. In addition to emphasizing that human rights and gender equality goals are in compliance with international law, it is also strategically important to underline how human rights based and gender-responsive approaches are vital to strengthen objectives to prevent and address human trafficking and migrant.

The table below offers some **examples of advocacy points** on human rights and gender equality that can be offered in response to particular issues that may arise. It also offers users space to document their own lessons learnt from their work to take human rights and gender-equality approaches for the purpose of:

1. Reporting on project implementation, its challenges and successes;
2. Strengthening rights-based and gender-sensitive advocacy, and
3. Informing future programming.

**Table: Example of advocacy points and approaches taken to address them**

Human rights / gender concern	Advocacy point to address concern
User to specify issue that arose in advocating for a human rights-based / gender sensitive approach:	User to outline arguments that persuaded stakeholders of the value of human rights-based / gender sensitive approach:
1. Legislation <a href="#">1.1</a>	
There is reticence to support human rights and gender based approaches to domestic legislation on trafficking in persons and smuggling of migrants	Human rights based approaches to domestic legislation on trafficking and smuggling <a href="#">Tool 2.3</a> will help States to fulfil their obligations under the UNTOC and the Protocols thereto, and also under the international human rights instruments that States may be party to <a href="#">Tool 2.2</a>  Human rights and gender equality approaches are based on commitments State parties have already made by virtue of their ratification of international human rights instruments.
Victims of trafficking are criminalized for crimes committed as a direct result of being trafficked Smuggled migrants are criminalized for being smuggled, or for migration-related offences	Victims of trafficking are criminalized for crimes committed as a direct result of being trafficked Smuggled migrants are criminalized for being smuggled, or for migration-related offences
User to complete:	User to complete:
User to complete:	User to complete:

2. Investigation <a href="#">1.2</a>	
Law enforcement officials consider fulfilment of human rights obligations to be barriers to effective investigation of TIP and SOM	Human rights and gender-based approaches to investigations of TIP and SOM can increase the likelihood that evidence collected will support prosecution, and be admissible and persuasive in court. Evidence collection in accordance with domestic law and human rights considerations is critical to the success of subsequent proceedings.
Law enforcement officials consider that evidentiary gains outweigh victims' rights in investigative approaches	Where evidence is collected contrary to human rights (for instance, through the use of controlled delivery of humans in a way that compromises life and safety) evidence may be inadmissible and investigators themselves become the subject of investigations or legal actions
Authorities think that resources invested in achieving gender parity among law enforcers are not well spent	Increased numbers of females among law enforcement officials increase the capacity of law enforcement officials to achieve a gender-sensitive approach to investigation and increases investigative capacity including through more successful interviewing practices with female victims / witnesses Female investigators are required in order to be able to effectively gather evidence from female victims / witnesses
Authorities think that women have the same opportunities as men to work in criminal justice system, but choose not to do so.	In law and on paper, women may have the same opportunities as men do to enter criminal justice practice, but face many barriers that men do not such as gender stereotyping, harassment, challenges combining work and home life
The onset of conflict has deprioritized the investigation of trafficking and smuggling	Data and evidence against potential traffickers in persons and smugglers of migrants should be collected so that they can be brought to justice later at such a stage that the country is equipped to prosecute as an important component of a country's post-conflict recovery and reconciliation Efforts against traffickers and smugglers should be sustained given that they may act to take advantage of conflict situations and exacerbate instability
User to complete:	User to complete:
User to complete:	User to complete:

3. Criminal justice and other data <a href="#">1.3</a>	
Authorities believe that adherence to human rights obligations in data collection and protection hampers effective data collection	Data that is collected in ways that are in accordance with human rights principles are more accurate and therefore offer a stronger evidence base for response
Data collecting authorities do not collaborate in or harmonize data collection efforts and approaches	Where data collection is harmonized with domestic, regional and international counterparts and partners, data is easier to share and aggregate, towards informing evidence-based and collaborative response
Compliance with ethical requirements, privacy and confidentiality laws in data collection is not considered necessary or important	Data that is not collected in compliance with ethical requirements, privacy and confidentiality laws may not accepted by counterparts elsewhere. Data privacy / confidentiality requirements may result in retaliation against victims, disposal of evidence, and / or hiding of assets, detrimentally impacting responses against TIP / SOM. Data quality may be reduced / impaired where potential subjects are not willing to participate owing to concerns about data collection approaches.
User to complete:	User to complete:
User to complete:	User to complete:
4. Prosecution and defence <a href="#">1.4</a>	
Victims of trafficking are made to participate in criminal justice proceedings against their will and best interests	Unless victims are assisted and protected in accordance with their rights, their testimony against traffickers will weaken as they lose trust and faith in the criminal justice proceedings. Upholding victims' rights and supporting their reintegration is key to achieving their cooperation and preserving their testimonies. Alternatives to victim testimony such as use of statements and evidence obtained through special investigative techniques is key to both upholding victims' rights and to effective prosecutions of traffickers.
Training of defence lawyers in pursuit of an accused person's right to a fair trial is avoided because of concerns that prosecution of traffickers and smugglers will be hampered	Unless defence lawyers are trained alongside prosecutors, prosecutors are not able to fully develop their skills and will lack capacity to confront organized criminals who have engaged highly-skilled lawyers to defend them, meaning that prosecutions less likely to be effective. Fair trials are less likely to leave fewer grounds for appeal for convicted traffickers / smugglers.

User to complete:	User to complete:
User to complete:	User to complete:
<b>5. Sentencing <a href="#">1.5</a></b>	
Sentences against smugglers are not effective, dissuasive and proportionate to the gravity of the offence and do not take into account aggravating factors	Where sentences are too lenient, justice may not be served and public confidence in the justice system is undermined. Where sentences do not effectively prevent recidivism and deter offending, traffickers are able to re-victimize people.
The death penalty is provided for in domestic legislation (on trafficking in persons / smuggling of migrants) and / or is applied in practice	Use of the death penalty dissuades counterparts in other countries from sharing intelligence. Use of the death penalty is a barrier to extradition. UNODC faces significant difficulties in engaging with and providing support to States that apply the death penalty.
User to complete:	User to complete:
User to complete:	User to complete:
<b>6. Identification and referral <a href="#">1.6</a></b>	
Men and boys who are victims of trafficking are not identified	Identification systems may be weakened if they are informed by deficient or inaccurate profiles of who can be a victim of trafficking. Identification processes must be inclusive and allow for all victims of trafficking to be identified so that women and girls and men and boys can be identified along trafficking routes.
Gender-sensitive approaches are not considered important in the identification and referral of trafficked persons or others in need of protection and assistance	Where gender-sensitive approaches are not taken, victims of trafficking may not effectively be identified or may be misidentified. Where gender-sensitive approaches are not taken, there law enforcement procedures may be exposed to risks of accusations of misconduct / misconduct maybe be more likely
Persons who may be in need of protection and assistance are deported without being appropriately and accurately identified and referred	If potential victims of trafficking or smuggled migrants are deported without being identified, potential evidence and intelligence is lost, meaning that traffickers and smugglers can continue their crimes with impunity.

User to complete:	User to complete:
User to complete:	User to complete:
7. Protection and assistance <a href="#">1.7</a>	
Victim / witness protection and assistance is not considered to be worth investing TIP / SOM allocated resources into.	Persons who are protected and assisted in accordance with their human rights and in line with gender-sensitive approaches, are more likely to cooperate with authorities in criminal justice processes. For instance, victims who are detained contrary to their rights may be less willing to cooperate.
There is resistance to seeking feedback of victims of trafficking / smuggled migrants on protection and assistance services	If victim feedback is not sought, there is a risk that scarce resources will be wasted on services that are not wanted or needed and will fail to show effective results.
Paternalistic approaches are taken to providing assistance services to victims of trafficking, particularly women and girls.	Victims of trafficking are not objects of protection but are subjects of human rights. Unless they are actively engaged in developing assistance plans, the assistance they receive may be unwanted and ineffective. Women and girls are not empowered by paternalistic approaches that make assumptions about what is beneficial for them on the basis of their gender
There are insufficient protection and assistance services available for men and boys who are victims of trafficking	A gender analysis of the dynamics of trafficking and the responses thereto is required to ensure that services are available to all victims of trafficking who are in need of them, including people of all genders.
Donors pressure project managers / project staff to undertake activities that are not compliant with human rights, gender-sensitive and child-friendly approaches	Implementing activities that are not human rights-based, gender-sensitive and child-friendly are often ineffective in therefore do not represent good value for donor investment
User to complete:	User to complete:
User to complete:	User to complete:

8. Return and reintegration <a href="#">1.8</a>	
Human rights-based, gender-sensitive and child-friendly return and repatriation of victims of trafficking and smuggled migrants is not prioritized	Victims of trafficking / smuggled migrants who are not returned / repatriated in accordance with human rights obligations may result in evidentiary opportunities (e.g. testimonies) being lost. Ineffective return / repatriation may result in re-trafficking / re-smuggling that does not disrupt either crime
User to complete:	User to complete:
User to complete:	User to complete:
9. Prevention <a href="#">1.9</a>	
There is an erroneous perception that preventing migration serves to prevent trafficking in persons and smuggling of migrants	Many victims are trafficked through regular migration channels, or are trafficked internally. Preventing migration can serve to increase demand for smuggling services. Efforts to prevent irregular migration can undermine the right to seek asylum
Gender-responsive approaches are not taken to the design of prevention strategies and activities	Prevention activities that are not gender-responsive are often not calibrated to targeted beneficiaries and are therefore ineffective
User to complete:	User to complete:
User to complete:	User to complete:

### 3.8 Awareness raising checklist

The following checklist is offered to support the design of awareness raising material that promotes human rights and gender equality. Further information about designing awareness raising campaigns particularly in the context of counter-trafficking can be found in Section 3 of the [Toolkit for guidance in designing and evaluating counter-trafficking programmes: harnessing accumulated knowledge to respond to trafficking in persons](#) (ICAT, 2016), on raising awareness of trafficking risks and responses.

In awareness raising information, communications and campaign and other material, have you...?	
1. Used legal terms including 'trafficking in persons' and 'smuggling of migrants' correctly and distinctly? <a href="#">1.1</a>	
2. Checked that any data or other information used is accurate and accurately represented? <a href="#">1.3</a>	
3. Avoided negative racial, gender, ethnic, national and other stereotypes?	
4. Designed messages that promote human rights and gender equality?	
5. Considered human rights and gender equality risks, and other unintended consequences?	
6. Designed messages that do not stigmatize or discriminate against particular groups of people (e.g. men, women, migrants, minorities)?	
7. Avoided language that excludes any group or words that suggest superiority of one gender over another?	
8. Avoided gender stereotyping for women and men (e.g. women as victims / women as mothers and men as providers etc.)?	
9. Avoided gender stereotyping of men, women and individuals with variations in sex characteristics, diverse sexual orientation and/or diverse gender identities?	
10. Avoided gender-biased language (for instance, male words like mankind to mean all of humanity, chairman rather than chairperson, etc.)?	
11. Avoided using judgmental language?	
12. Avoided using sexualized photos / images / likenesses?	
13. Ensured images are inclusive and diverse, while ensuring they are informed by and targeted to a specific audience?	
14. Applied a 'flip it' test for any material / narrative developed, by replacing the gender of the character to uncover and address any potential bias?	
15. Avoided photos / images / footage that sensationalize violence and exploitation?	
16. Avoided photos / images / footage / likenesses of individuals that could give the false impression that the individual is a victim of trafficking, a smuggled migrant, a trafficker or a smuggler, or at risk of being?	
17. Avoided photos / footage / images / likenesses that place individuals at risk of being identified?	
18. Obtained informed consent of individuals who are identifiable in photos / footage / images / likeness of individuals with the consent of persons portrayed?	
19. Developed and designed material with the participation of representatives of the target audience, giving consideration to gender equality?	

## Part 4

### TOOLS FOR MONITORING, EVALUATION AND LEARNING IN HUMAN RIGHTS AND GENDER EQUALITY



#### 4.1 Monitoring checklist

Monitoring happens throughout implementation to ensure that UNODC human trafficking and migrant smuggling interventions / programmes are delivered in a way that is consistent with human rights and gender equality principles and objectives. This effort extends from ensuring a participatory, non-discriminatory approach to delivery, through to transparency about progress and results. It also means ensuring that the partners that UNODC engage with have positive human rights records, and that procurement processes for goods and services are likewise human rights and gender literate and compliant<sup>85</sup>. Efforts to ensure that human rights and gender-based approaches are taken throughout implementation can be supported by the design and application of measurable **indicators** [Tool 4.3](#) to monitor progress. Such

indicators may also be instructive in evaluations. Partners including OHCHR, UN Women and non-government organizations should be encouraged to participate in the monitoring of human rights and gender equality outcomes of interventions of both State and non-state actors. Measures to support monitoring at the national level include ensuring that legislators, policymakers, service-providers, law enforcers, prosecutors and the judiciary also monitor their actions and activities from a human rights-based perspective. Some countries have established independent human rights institutions, such as human rights commissions, that conduct inquiries into national situations and advise governments of actions that fall short of international obligations. UNODC has a role to play in equipping those institutions to also consider responses to both trafficking in persons and smuggling of migrants.

<sup>85</sup> See: United Nations Procurement Manual, Department of Operational Support, Office of Supply Chain Management Procurement Division (30 September 2019)



PROGRAMME PLANNING AND DESIGN				
Question	Yes	No	In part	If yes or in part, how will this be addressed?
Framework				
Have relevant international human rights instruments that the State has ratified been identified? <a href="#">2.2</a>				
Has national compliance of international human rights obligations been identified? <a href="#">2.3</a>				
Evidence base				
Have human rights and gender equality reports by UN organizations, NGOs, civil society groups or others been consulted in strategy development? <a href="#">Annex 3 &amp; 4</a>				
Has relevant information on how gender influences peoples' experiences, knowledge and involvement in human trafficking and smuggling of migrants and criminal justice system response (e.g. for complainants / victims, witnesses and accused persons) been identified, collected and reflected in planning?				
Has background data / situational analysis information been disaggregated by age, sex, gender, race, ethnicity, language, religion, nationality, disability, marital, birth or other status? <a href="#">3.4</a>				
Is the project / activity based on data that has been gathered in a gender-sensitive way e.g. focus groups of both men and women, separate women focus groups? <a href="#">1.3</a> , <a href="#">3.4</a>				
Risk identification and management				
Have human rights-based and gender equality objectives and indicators been specifically included in the strategy development? <a href="#">4.3.1</a>				
Have human rights risks of the planned intervention / programme been identified and a mitigation plan been developed and put in place?				
Have the implications of conflict / humanitarian crises been considered and effort made to ensure the intervention / programme is resilient to changes?				

PROGRAMME PLANNING AND DESIGN				
Question	Yes	No	In part	If yes or in part, how will this be addressed?
<b>Consultation and participation</b>				
Have beneficiaries of all genders including those from relevant marginalized groups been consulted in the design of the intervention / programme in a participatory and non-discriminatory way?				
Have partners of all genders been able to freely participate in strategy development and planning?				
<b>Personnel / human resources</b>				
Have human rights and gender specialists with expertise in trafficking in persons and smuggling of migrants, been consulted throughout the process of planning and strategy development?				
Do UNODC TIP and SOM focal points have competencies in human rights-based approaches and gender equality, and if not, received training, or have specialists with relevant expertise been hired to fill capacity gaps?				
Do UNODC staff / consultants who will engage directly with vulnerable populations have sufficient training to do so in accordance with respect for human rights and gender sensitivity?				
Have UNODC programme / project staff / consultants been briefed on human rights and gender issues?				
<b>Budgeting and procurement</b>				
Do project budgets allow for human rights and gender capacity in planning for staff recruitment and training, and have donors been approached to support these efforts?				
Do procurement processes for the project / activity comply with the United Nations Procurement Manual, including by ensuring that goods and services are only procured from providers who respect human rights and gender-sensitive considerations of their employees?				

PROGRAMME PLANNING AND DESIGN				
Question	Yes	No	In part	If yes or in part, how will this be addressed?
<b>Programmatic integration</b>				
Does the planned intervention / programme advance human rights protections for marginalized groups?				
Have human rights and gender-related linkages with other projects / programmes been identified and incorporated into the strategy / plan?				
Have human rights and gender-related linkages with humanitarian work been identified and incorporated into the strategy / plan in conflict-affected areas?				
<b>Sustainable capacity building</b>				
Does the planned project / programme, contribute to the capacity of national counterparts to promote full compliance with their international human rights obligations?				
Is a plan in place to ensure that national counterparts can take ownership of programmes, and maintain a human rights-based approach and without compromising the human rights of stakeholders?				

## 4.2 Evaluation checklist

In relation to **evaluation** of activities that have been implemented, the UNODC Evaluation Handbook emphasizes that all UNODC **evaluations** must consider human rights and gender factors, and all evaluation processes, products and deliverables must respond to human rights and gender quality standards<sup>86</sup>. That Handbook states: “It is mandatory for the United Nations entities to consider human rights and gender equality principles and standards in the design, implementation and evaluation processes of all interventions, regardless of whether these issues are the focus of the intervention itself<sup>87</sup>.”

UNODC’s guidance note on gender mainstreaming offers insight into integrating gender criteria into evaluations<sup>88</sup>. **Gender-responsive evaluations** are assessments that provide “credible and reliable evidence-based information about the extent to which an intervention has resulted in progress (or lack thereof) towards intended and / or unintended results regarding gender equality and the empowerment of women<sup>89</sup>.” They must be sensitive to the diverse forms of discrimination that people of all genders face, and require analysis of gender-related strategy, processes and practices used by an intervention.

In summary, principles that underline UNODC evaluations include equality, inclusion, participation, non-discrimination and fair power relations, both in respect of what the evaluation examines, and how the evaluation is carried out<sup>90</sup>.

In relation to *what the evaluation entails*, issues that should be considered include:

- The extent to which human rights

<sup>86</sup> UNODC Evaluation Handbook (2017, UNODC), 4.

<sup>87</sup> UNODC Evaluation Handbook (2017, UNODC), 30

<sup>88</sup> Mainstreaming Human Rights and Gender Equality (2013, UNODC), 40-41

<sup>89</sup> How to Manage Gender-Responsive Evaluation: Evaluation Handbook (UN Women, 2015) 4

<sup>90</sup> UNODC Evaluation Handbook (2017, UNODC), 123

and gender equality were integrated (mainstreamed) into the design, implementation, monitoring and evaluation

- Progress or lack of progress towards intended human rights and gender equality results
- The degree to which gender relations have changed as a result of the intervention. The extent to which the intervention responded to and affected the human rights of different stakeholders, including women, men, boys, girls, sexual minorities, people with disabilities, etc.

In relation to *how the evaluation is carried out*, consideration should be given to:

The involvement of a diversity of stakeholders involved in the evaluation process (potentially including stakeholders from beneficiaries, partner organizations, UNODC staff, consultants and government agencies)

- Involvement of external stakeholders with expertise in human rights and gender (potentially including civil society organizations, international organizations, research institutions, human rights and women’s organizations)
- Integrating human rights and gender equality into the scope of analysis, criteria and key questions used for the evaluation
- Using participatory approaches, methods and tools
- Reflecting human rights and gender-equality analysis in evaluation findings, conclusions and recommendations<sup>91</sup>.

Tangible examples of efforts undertaken by UNODC to mainstream human rights and gender equality into evaluation include:

- Hiring evaluation staff and consultants with human rights and gender expertise to support evaluation processes, including by

<sup>91</sup> UNODC Evaluation Handbook (2017, UNODC), 124

- developing guidelines and tools
- Increasing understanding among internal and external stakeholders about human rights and gender, including by ensuring evaluation teams receive relevant guidance as part of their key reading material
- Including human rights and gender experts on evaluation teams conducting in-depth evaluations to further strengthen and facilitate organizational learning, and to the extent possible, ensuring representation of both genders on evaluation teams
- Ensuring training to enhance evaluation function expertise and capacity for human rights and gender responsive evaluation
- Having persons involved in evaluation, actively participate in and contribute to the

United Nations Evaluation Group (UNEG) working group on human rights and gender equality<sup>92</sup>.

<sup>92</sup> UNODC Evaluation Handbook (2017, UNODC), 35-36

**Table: Reflecting human rights and gender quality into evaluation criteria**

	Human Rights	Gender Equality
<b>UNODC Evaluation Criteria</b>	The extent to which the intervention is guided by human rights standards and principles following a human rights-based approach and addressing issues such as non-discrimination, participation, accountability and social transformation	The extent to which the intervention integrates a gender perspective (gender mainstreaming) and addresses issues such as power relations and social transformation, equal inclusion and participation, and the empowerment of women and marginalized groups.
Relevance: The extent to which the intervention conforms to the needs of participants and other stakeholders, compliments existing initiatives, and aligns with organizational mandates and policies.	The human rights relevance of the intervention. E.g. extent to which intervention is aligned with international and regional human rights instruments, national policies and strategies; extent to which intervention is informed by needs of diverse stakeholders	The gender equality relevance of the intervention, determined by the needs of rights holders (women, girls, men, boys) and duty bearers. E.g. extent to which intervention is informed by and tailored to analysis of underlying barriers to gender equality; relevance of stakeholder participation in intervention.

	Human Rights	Gender Equality
Effectiveness: The extent to which intended outcome-level results are being achieved	Extent to which result framework was defined, monitored and achieved by human rights, and human rights were incorporated into design, implementation and evaluation.	Extent to which results framework was defined, monitored and achieved by gender equality, and gender equality was incorporated into design, implementation and evaluation.
Efficiency: The extent to which resources and inputs are managed and used in an optimal way.	Analysis of costs / benefits of integrating human rights into interventions on short, medium and long-term basis.	Analysis of costs / benefits of integrating gender equality into interventions on short, medium and long-term basis
Sustainability: The degree to which processes started and results obtained are likely to remain in place after intervention completion	Extent to which an intervention has advanced long-term respect, protection and fulfilment of human rights, including through institutional, attitudinal and behavioural change.	Extent to which the intervention has advanced long-term pursuit and fulfilment of gender equality, including through institutional, attitudinal and behavioural change.
Impact: The lasting changes—positive and negative, intended and unintended—arising from the intervention.	Actual, lasting realization of human rights by rights-holders and capacity of duty-bearers to respect, protect and fulfil rights.	Actual, lasting realization of gender equality among men, women, boys and girls, including access to and use of resources, opportunities, power etc.
Cooperation and partnerships: The cooperation that results and the partnerships that have been cultivated from the intervention.	Cooperation and partnerships: The cooperation that results and the partnerships that have been cultivated from the intervention.	The extent to which cooperation and partnerships developed / strengthened by the intervention reflect and advance gender equality.

EVALUATION				
Question	Yes	No	In part	If yes or in part, how will this be addressed?
Have quantitative and qualitative evaluation indicators been designed to ensure data on human rights and gender equality will be collected?				
Are human rights and gender equality integrated in the scope of analysis for evaluating the intervention?				
Have human rights and gender equality been integrated into evaluation criteria, with questions that specifically address how both have been integrated into the design, planning and implementation of the intervention, and the results achieved?				
Do evaluation mission staff / consultants have human rights and gender equality expertise, and have they been briefed on relevant human rights and gender issues?				
Do evaluation methodologies make use of sex and gender-disaggregated data?				
Are conflict / crises responses monitored for their human rights impact on trafficking and smuggling programmes?				
Do programme beneficiaries know how to access programme evaluations?				
Do evaluation findings, conclusions and recommendations reflect an human rights based and gender responsive analysis, outlining gaps and successes?				
Have project staff reviewed evaluation reports to ensure human rights and gender based perspectives are reflected, including to reflect gaps and successes?				
Have human rights and gender equality recommendations been developed on the basis of human rights and gender responsive analysis? (See table below)				

EVALUATION OF HUMAN RIGHTS AND GENDER EQUALITY RECOMMENDATIONS				
Question	Yes	No	In part	If yes or in part, how will this be addressed?
In relation to human rights and gender equality recommendations developed...				
Are they relevant to the object and purpose of the evaluations?				
Were they developed in consultation with stakeholders?				
Are they supported by evidence and conclusions				
Do they clearly identify target group(s) for each (e.g. UNODC, state, non-state actors)				
Are they clearly stated with priorities for each action				
Are they actionable and reflect an understanding of UNODC follow-up constraints				



## 4.3 Monitoring and evaluation indicators

### 4.3.1 Strategy and policy Indicators

**Strategy and policy development goal:** Beneficiary countries have capacity, tools and information to develop, implement, monitor and evaluate evidence-based strategies and policies against TIP and SOM, aligned with international instruments.

**HRBA / gender goal:** Strategies and policies developed in accordance with human rights based and gender sensitive approach.

Expected result	Human rights and gender INDICATOR	Source of information and Means of verification	Results / Targets
1. Strategy and Policy Development Beneficiary countries have capacity, tools and information to develop, implement, monitor and evaluate evidence-based strategies and policies against TIP and SOM, aligned with international instruments.			
1.1. Multi-agency strategies and policies to prevent and address TIP and SOM are developed and / or strengthened, on the basis of reliable data, accumulated knowledge and respect for human rights and gender equality	Agreed process and criteria for participant selection to support strengthening of existing policies, strategies and national action plans in accordance with human rights-based and gender-sensitive approaches Training program developed in partnership with relevant local counterpart institution to tailor human rights and gender-sensitive approach to country context and capacity	Inputs of local counterpart institutions into training programme design and development Workshop feedback and evaluation reports Workshop participant profiles	Nominated participants are appropriately qualified and positioned to participate in trainings Trainings tailored to country context and capacity, and participant capacity, special needs

Expected result	Human rights and gender INDICATOR	Source of information and Means of verification	Results / Targets
	Policies, strategies, and action plans rely on human rights-based research and data that has been collected, shared and protected on the basis of applicable legal and ethical principles and disaggregated on the basis of gender, age, nationality and other potential grounds for discrimination, as appropriate.	Research protocols and data collection tools Legal and ethical data collection frameworks / principles relied on Reports / approvals / exemptions of ethics review committees	Policies, strategies and action plans are implemented Research and data collection done in accordance with human rights and gender equality principles
	TIP and SOM strategies, policies and action plans developed or existing ones revised to explicitly incorporate human rights and gender components. Number of strategies, policies and action plans developed that reduce opportunities for traffickers and smugglers.	Strategies, policies and action plans Stakeholder reports and consultations	Policies, strategies and action plans are implemented Findings from stakeholder reports / consultations be generalizable or verifiable
	Time frame and national coverage of national policy on addressing human trafficking and migrant that incorporate human rights and gender components	Strategies, policies and action plans Stakeholder reports and consultations	Policies, strategies and action plans are implemented equally across a given country and implementation can be equally gauged
	Interagency task forces / coordination bodies on TIP and SOM include stakeholders specialized in human rights and gender issues	Legislation / policy documents outlining formation, composition and mandates of interagency task forces / coordination bodies Human rights and gender stakeholder consultation meetings	Legislation / policy documents outlining formation, composition and mandates of interagency task forces / coordination bodies Human rights and gender stakeholder consultation meetings

Expected result	Human rights and gender INDICATOR	Source of information and Means of verification	Results / Targets
	Human rights and gender specialized stakeholders consulted in development of TIP and SOM strategies and policies	Consultation reports Human rights and gender stakeholder feedback	Appropriate human right and gender equality representatives consulted Inputs obtained through consultation reflected in development of strategies and policies
	Specific mandate of (accredited) national human rights institutions to address rights of non-citizens	Mandate of national human rights institutions Consultation with national human rights institution	Human rights of non-citizens explicitly addressed by national human rights institution
1.2. Targeted TIP and SOM crime prevention action plans developed and implemented along selected TIP and SOM routes	Human rights, gender-sensitive and child-sensitive tools used to inform development of prevention plans	Tools developed Progress and monitoring reports	Use is made of this Toolkit, and Toolkit is appropriately calibrated for country context / programme activity Staff allocate sufficient time and capacity to effectively use tools
	Countries along TIP and SOM routes adopt rights-based, gender-sensitive and child protection approaches to action plans	Action plans	Action plans formulated with stakeholder inputs
1.3. TIP and SOM policies are based on a strengthened understanding of human rights obligations and approaches	Crime prevention plans explicitly include human rights and gender considerations, including those flagged in this Toolkit	Human rights risk mitigation strategies in place	Human rights risks identified and mitigated in implementation of crime prevention policies

### 4.3.2 Legislative assistance Indicators

**Legislative assistance goal:** Beneficiary countries adapt their national legal frameworks on trafficking in persons and smuggling of migrants in line with international standards and other good practices.

**HRBA / Gender goal:** Legislative frameworks are developed or amended in a way that explicitly upholds human rights and gender equality in a way that is inclusive of / does not exclude marginalized groups

Expected result	Human rights and gender INDICATOR	Source of information and Means of verification	Results / Targets
2. Legislative assistance Beneficiary countries adapt their national legal frameworks on trafficking in persons and smuggling of migrants in line with international standards and other good practices			
2.1. Gaps and inconsistencies in national laws and procedures on TIP and SOM identified with clear recommendations for improvement through law changes, judicial decree or other means as appropriate	State has taken steps to implement international human rights treaties it has ratified into the interpretation and application of national laws and procedures on TIP and SOM	Treaties and reservations thereto and any implementing legislation	Ratification of treaties tantamount to their implementation. Reservations do not detract from implementation.
	Country assessment of domestic legislation conducted and shared with government stakeholders, and captures human rights, gender equality and child protection issues	Country assessments Stakeholder consultations	Persons carrying out assessment of domestic legislation have requisite human rights, gender and child-protection capacity Sufficient consultation with human rights, gender and child-protection specialists in conducting legislative assessments

Expected result	Human rights and gender INDICATOR	Source of information and Means of verification	Results / Targets
	Initiatives to promote legislative development (legal drafting workshops and assistance, technical working groups) in accordance with human rights instruments.	Initiatives to promote legislative development (legal drafting workshops and assistance, technical working groups) in accordance with human rights instruments.	Adequately qualified persons nominated to participate in workshops Staff, consultants and others who deliver workshops and provide assistance have appropriate human rights, gender and child-protection expertise Initiative addresses practical constraints and designed and delivered with support and agreement of key stakeholders including politicians
	Country signing and taking concrete steps or expressing intention to sign international human rights treaties.	Treaties signed, consent to be bound expressed.	State committed to implementing obligations in good faith
	Recommendations from legislative reviews and / or proposals delivered for legislative reform or judicial guidance to align national legal frameworks with human rights treaties.	National legislative assessment reports Consultations with stakeholders	National legislative assessments undertaken with a human-rights and gender equality approach. Human rights and gender-specialized stakeholders have been consulted.
	Entry into force of domestic law that upholds equality between people of all genders and criminalizes all forms of violence against women	National legislation / amending instruments	National legislation implemented.
	Entry into force of domestic law that prohibits discrimination on any of the grounds provided for in international law	National legislation / amending instruments	National legislation implemented.

Expected result	Human rights and gender INDICATOR	Source of information and Means of verification	Results / Targets
	Entry into force of safeguards for persons facing the death penalty (including minimum age, pregnancy, disability).	Safeguards in law / policy	Safeguards applied; relevant stakeholders aware of safeguards.
2.2. Key national stakeholders and decision-makers support the alignment of the legal TIP and SOM framework with international law and standards and other good practice	Number of key stakeholders (male / female) who participate in legislative capacity building workshops addressing human rights and gender issues.	Participant lists Workshop materials Workshop reports	Adequately qualified persons nominated to participate in workshops; staff, consultants and others who deliver workshops and provide assistance have human rights, gender and child-protection expertise.
	Number of stakeholders (male / female) who have increased understanding of implications of human rights obligations and gender sensitivity on TIP and SOM legislation.	Workshop evaluations / post-workshop evaluations and monitoring of work	Evaluations offer meaningful insight into participant capacity to apply new knowledge. Evaluations offer meaningful insight into changed practice as a direct result of activity.
	Amendments made to address any identified discriminatory treatment of particular groups of rights holders in national legislation, including to draft legislation protecting gender equality	Amended legislation	Amended legislation applied in non-discriminatory ways.
	Amendments made to national law to bring the age of the child (below 18) into accord with international law	Amended legislation	Amended legislation be applied effectively and equally in all regions.
	Amendments made to national law to prohibit application of the death penalty for TIP and SOM, and to meet minimum standards for application of death penalty	Amended legislation Non-application of the death penalty for TIP and SOM crimes	Amended legislation applied effectively and equally in all regions.

### 4.3.3 Criminal justice capacity building Indicators

**Criminal justice capacity building goal:** Beneficiary countries provide a strengthened criminal justice response to trafficking in persons and smuggling of migrants.

**HRBA / gender goal:** Criminal justice duty bearers have increased capacity to take human rights based and gender sensitive approaches to their work to prevent and address human trafficking and migrant

Expected result	Human rights and gender INDICATOR	Source of information and Means of verification	Results / Targets
3. Criminal Justice capacity building Beneficiary countries provide a strengthened criminal justice response to trafficking in persons and smuggling of migrants			
3.1. Comprehensive, realistic and sustainable criminal justice capacity development strategy on TIP and SOM developed and agreed by key stakeholders, including funders	Country has introduced capacity development strategy to prevent and address human trafficking and migrant that explicitly integrates human rights, gender-equality, and child protection components	National strategy / strategies Stakeholder consultations	Criminal justice system adequate to respond to TIP and SOM in accordance with human rights, gender equality and child-protection
	Number of national initiatives to strengthen / implement criminal justice strategy in accordance with human rights and gender equality obligations	National strategies Stakeholder consultations	Strategies are tailored to country context (including conflict and humanitarian crises) and capacity

Expected result	Human rights and gender INDICATOR	Source of information and Means of verification	Results / Targets
<p>3.2. Strengthened national capacity to provide criminal justice responses to trafficking in human beings and / or migrant smuggling</p>	<p>Training materials specifically refer to relevant local laws and procedures                      Training is tailored to the specific TIP/SOM patterns found in the country, including conflict settings                      Training is aligned to specific standards agreed with national / local counterpart institutions                      Curriculum identifies and addresses potential national / local barriers to implementation of human rights, gender sensitive and child-friendly process.</p>	<p>Training curricula                      Agreements entered into with national training academies</p>	<p>Training curricula tailored to local context and capacity                      Training curricula delivered effectively</p>
	<p>Number of participants (male / female) trained in human rights, gender equality and child protection issues in combating TIP and SOM</p>	<p>Participant lists                      Workshop agendas</p>	<p>Nominated participants are appropriately qualified or positioned to participate in trainings                      Staff, consultants and others who deliver training have TIP / SOM related human rights, gender and child-protection expertise</p>



Expected result	Human rights and gender INDICATOR	Source of information and Means of verification	Results / Targets
	Percentage of training participants (male / female) demonstrating improved knowledge of human rights, gender equality and child protection issues	Pre and post-evaluations Workshop reports Assessment reports	Nominated participants are appropriately qualified or positioned to participate in trainings Law staff turnover facilitates skill retention Increased number of female investigators and prosecutors participating in capacity building activities
	Increased number of female investigators and prosecutors participating in capacity building activities	Participant / contact lists	Female attendees nominated by States are appropriately skilled / qualified to participate Application of gender quotas results in increased participation of appropriately skilled / qualified females (rather than merely increasing number of female participants)
	Number of TIP / SOM cases investigated and prosecuted in accordance with human rights obligations to victims, witnesses and perpetrators	Reports from beneficiary countries on official statistics Consultation with State stakeholders Mission reports Reports from human rights and other groups	Reports from beneficiary countries on official statistics Consultation with State stakeholders Mission reports Reports from human rights and other groups

Expected result	Human rights and gender INDICATOR	Source of information and Means of verification	Results / Targets
	Number of investigations and prosecutors of overall portion of all investigators and prosecutors to have received training on human rights based approaches to investigating and prosecuting TIP and SOM; proportion of female trainees among them	Mission reports Training evaluations Participant lists	Low turnover of personnel strengthens impact / sustainability of trainings Female participants sent to participate in trainings are appropriately skilled / qualified
	Proportion of law enforcement officers (male / female) to have received training on human rights implications use of detention for migrants in irregular situations; proportion of female trainees among them	Mission reports Training evaluations Participant lists	Training on human rights based and gender-sensitive approaches to detention does not inadvertently increase detention of migrants
	Proportion of persons arrested / detained (male / female) for alleged trafficking and smuggling crimes provided with legal representation (including through legal aid)	Case files / reports Consultations with stakeholders	Persons arrested are high-level actors; legal representation appointed have sufficient TIP / SOM expertise to provide sufficient defence
	Legal time limits for arrest or detention before being informed of reasons for arrest and detention, and being brought before court	Laws / policy setting time limits Case and court files / records Consultations with persons arrested / detained	Pressure to reduce time limits does not result in poor quality evidence-gathering

Expected result	Human rights and gender INDICATOR	Source of information and Means of verification	Results / Targets
	Proportion of officials formally investigated for abuse of power, complicity or other crime relevant to TIP / SOM; Proportion of formal investigations resulting in disciplinary action	Case files / reports Consultations with stakeholders	Powerful actors are targeted in abuse of power / complicity investigations (and low-level actors are not used as scapegoats)
	Number of smuggling of migrants sentences that are aggravated on the basis of circumstances provided for in article 6(3) of the Smuggling Protocol	Court records / media reports Consultations with stakeholders	Domestic legislation on smuggling of migrants accords with international definition
	Proportion of requests for legal assistance and free interpreters (male/female) being met in criminal proceedings	Court records / case files Stakeholder consultations	Interpreters sufficiently screened, certified or trained in TIP / SOM issues; recruitment process upholds integrity of criminal proceedings

#### 4.3.4 Regional and trans-regional cooperation Indicators

**Regional and trans-regional cooperation goal:** Beneficiary countries contribute to strengthened regional and trans-regional cooperation related to trafficking in persons and smuggling of migrants.

**HRBA / Gender goal:** Strengthened regional and trans-regional cooperation strengthens human rights based and gender sensitive approaches to trafficking in persons and smuggling of migrants

Expected result	Human rights and gender INDICATOR	Source of information and Means of verification	Results / Targets
4. Regional and trans-regional cooperation goal Beneficiary countries contribute to strengthened regional and trans-regional cooperation related to trafficking in persons and smuggling of migrants			
4.1. Strengthened national capacity to cooperate at regional and trans-regional level in criminal matters related to TIP and SOM.	Number of regional and trans-regional cooperation agreements / initiatives on TIP and SOM that explicitly reflect human rights, gender equality and child protection issues	Recommendations and documents from regional and trans-regional meetings Cooperation agreements	Regional and trans-regional political relationships effectively facilitate cooperation efforts Cooperation agreements are implemented in practice
	Number of criminal justice practitioners (male / female) that demonstrate understanding of human rights, gender and child protection implications in international cooperation on TIP and SOM	Assessment reports Meeting reports Stakeholder consultations	Nominated participants are appropriately qualified and positioned to participate in trainings Low staff turnover facilitates skill retention
	Number of stakeholders trained to cooperate across borders on TIP and SOM in accordance with human rights, gender and child protection issues	Pre and post training evaluations Agendas and participant lists	Nominated participants are appropriately qualified or positioned to participate in trainings Low staff turnover facilitates skill retention

Expected result	Human rights and gender INDICATOR	Source of information and Means of verification	Results / Targets
	National human rights institutions participating in national coordination mechanisms on TIP and SOM; human rights institutions are accredited	Accreditation documentation Consultation with national human rights institutions	Human rights institutions have specialized TIP and SOM expertise
	Number of UN organizations, NGOs and civil society groups consulted in the design or regional or trans-regional cooperation agreements	Consultation with stakeholders Stakeholder meeting records	Views of less powerful / influential stakeholders given equal consideration to those of more powerful / influential stakeholders
	Number of human rights and gender specialized stakeholders included in regional and trans-regional cooperation agreements on TIP / SOM supported by UNODC	Cooperation agreements	Stakeholders included in cooperation agreements are active members, with sufficient capacity to be effective in promoting human rights and gender equality
	Collaborative relationships established with State actors, that UNODC staff / consultants actively engage to address human rights and gender equality dimensions of work	Cooperation agreements	Human rights and gender equality issues raised with collaborative partners, to positive effect.

### 4.3.5 Protection and assistance Indicators

**Protection and assistance goal:** Beneficiary countries improve the scope and quality of their protection response, including identification, referral and support for victims of trafficking, vulnerable smuggled migrants and other vulnerable migrants.

**HRBA / Gender goal:** Victims of trafficking, vulnerable smuggled migrants and others are protected and assisted in accordance with human rights and gender-based approaches.

Expected result	Human rights and gender INDICATOR	Source of information and Means of verification	Results / Targets
5. Protection and assistance Beneficiary countries improve the scope and quality of their protection response, including identification, referral and support for victims of trafficking, vulnerable smuggled migrants and other vulnerable migrants			
5.1. Governments and civil society partners in target countries have the skills and mechanisms to identify and screen both adult and child migrants for vulnerabilities, including trafficked victims, unaccompanied minors and smuggled migrants, and refer them to relevant service providers	Number of initiatives on identification, referral and assistance of victims of trafficking, smuggled migrants and other vulnerable migrants in line with human rights, gender equality and child protection standards	Government reports and consultations with state actors NGO reports and consultations with NGOs Mission reports Existence of national referral mechanisms in place	Rights of migrants in irregular situations recognized
	Number of State and non-state actors trained to identify and refer trafficked persons and smuggled migrants	List of participants Training material / curricula	Willingness of state and non-state actors to cooperate in training Nominated participants are appropriately qualified and positioned to participate in trainings Staff, consultants and others who deliver training have human rights, gender and child-protection expertise

Expected result	Human rights and gender INDICATOR	Source of information and Means of verification	Results / Targets
	Proportion of persons identified (men, women and children) as in need of protection and assistance effectively identified and referred through National Referral mechanism	National referral mechanism Guidelines and procedures in place to support identification of men, women and children	
	Percentage of training participants (male / female) who apply human rights, gender and child protection standards in their work on TIP and SOM	Post-training follow up survey / monitoring	Sufficient resources to adhere to standards Low staff turnover facilitates retention of knowledge
	National referral mechanisms in place apply to victims of trafficking and smuggled migration in need of protection, irrespective of nationality, gender or status	National referral mechanisms State and non-state reports and consultations	National referral mechanism applied in practice There are sufficient services available on which to establish an NRM
	Number of countries that have transnational referral mechanisms in place that apply to victims of trafficking and smuggled migration in need of protection irrespective of nationality, gender or status	Transnational referral mechanisms State and non-state reports and consultations	Transnational referral is not misused to carry out deportation, forced return, refoulement or extradition

Expected result	Human rights and gender INDICATOR	Source of information and Means of verification	Results / Targets
	Number of identified victims of trafficking in persons (male, female, adult, child) who are accommodated in shelters; information and consent-based procedures; existence of procedures to challenge accommodation in shelters	State and non-state reports and consultations including with shelters	Alternatives to closed-shelter systems
5.2. Expanded and improved implementation and monitoring of support service for victims of trafficking and migrants in need of protection, in line with international law and standards	Number of state and non-state stakeholders (male / female) trained to provide services to trafficked persons, smuggled migrants and persons accused of TIP and SOM in accordance with international law and standards	Participant lists Training material / curricula	Nominated participants are appropriately qualified and positioned to participate in trainings Staff, consultants and others who deliver training have human rights, gender and child-protection expertise
	Number of countries to adopt guidelines / SOPs for integrating human rights, gender and child protection considerations into protection mechanisms and referral frameworks relevant to victims of trafficking and smuggled migrants in need of protection	Guidelines and SOPs	Guidelines / SOPs are applied in practice



Expected result	Human rights and gender INDICATOR	Source of information and Means of verification	Results / Targets
	Number of trafficked and smuggled persons identified (male / female) and assisted by stakeholder beneficiaries of UNODC interventions	State and non-state actor reports and consultations  Official government statistics	Persons identified and assisted wish to be identified and assisted
	Number of times national referral mechanisms have been deployed to assist and refer victims of trafficking and smuggled migrants	State and non-state actor reports and consultations  Official government statistics	State and non-state actor reports and consultations  Official government statistics
	Number / proportion of smuggled or trafficked persons detained on the basis of a court order / action; Number / proportion of habeas corpus and similar petitions filed and persons released from conditions amounting to arbitrary detention; Number of reported cases of arbitrary detention, including post-trial awaiting removal orders	Court orders / reports  Country reports of Working Group on Arbitrary Detention, international organizations, NGOs and civil society organizations	Challenges to detention reflect that rights-holders have information about their rights and are equipped to challenge detention
	Number of registered / accredited / active NGOs (per 100,000 persons) involved in protecting human rights of trafficked or smuggled persons.	Government registration documentation  Consultation with State and NGOs	Registration / accreditation programmes do not impede capacity of NGOs to engage on TIP and SOM

Expected result	Human rights and gender INDICATOR	Source of information and Means of verification	Results / Targets
	Level of engagement of (accredited) national human rights institutions in overseeing protection and assistance of smuggled migrants and trafficked persons	Consultations with national human rights institutions; Reports / communications of national human rights institutions	National human rights institutions have TIP and SOM expertise; Government accreditation programmes do not interfere with independence of human rights institution
	Proportion of received complaints of treatment by trafficked persons or smuggled migrants to be have been followed up by national human rights institution / ombud / other mechanism.	Complaints received by complaints mechanisms; Consultations with stakeholders including human rights institutions	Human rights institutions have sufficient capacity to address TIP and SOM issues TIP and SOM issues do not distract human rights institutions from higher human rights priorities
	Proportion of communications sent by Special Rapporteurs relevant to TIP and SOM to be effectively responded to by the Government	Government responses to Special Rapporteur communications	
5.3. Beneficiary countries develop frameworks for protection and assistance of children in the context of migration flows including trafficked victims, unaccompanied minors, children left behind, and child offenders	Number of guidelines for the assistance and protection of children who have been trafficked, smuggled, are witnesses or perpetrators to these crimes	Guidelines in place Reports and consultations with state and non-state actors, including child representatives among them	Rights of migrants in irregular situations are recognized; children who are not citizens receive protection on a par with those who are citizens Guidelines in place are applied in practice

Expected result	Human rights and gender INDICATOR	Source of information and Means of verification	Results / Targets
	Proportion of relevant State and non-State authorities trained to develop procedures and national referral systems that take into account child protection considerations	Training reports; pre-and post evaluations Participant lists and agendas Training content and curricula	State and non-State actors willing to participate in joint training. Low staff turnover facilitates skill retention. Nominated participants are appropriately qualified or positioned to participate in trainings. Staff, consultants and others who deliver training have human rights, gender and child-protection expertise.
	Number of procedures in place to protect and assist children who have been trafficked or smuggled, that explicitly uphold best practices in child-protection including non-detention of children	Procedures in place Reports and consultations with state and non-state actors Assessment and mission reports Evaluations and questionnaires	Specific protections in place for trafficked (or smuggled) children do not reduce their access to other child protection frameworks.
	Number of persons (male / female) registered / accredited to serve as guardians for children, per number of unaccompanied or separated minors / as an overall proportion of social workers	Lists of registered / accredited persons (male / female)	Registration / accreditation requires sufficient screening, qualification, training

Expected result	Human rights and gender INDICATOR	Source of information and Means of verification	Results / Targets
	<p>Number of procedures in place to protect and assist children who have been accused or convicted of trafficking or smuggling offences, that explicitly uphold the United Nations Standard Minimum Rules for the Administration of Juvenile Justice</p>	<p>Procedures in place Reports and consultations with state and non-state actors Assessment and mission reports Evaluations and questionnaires</p>	<p>Juvenile offenders protected in accordance with their rights.</p>

## **Annex 1: Human Rights and Gender in the Trafficking Protocol**

The following are references to human rights and gender in the Trafficking in Persons Protocol

- In the preamble to the Trafficking in Persons Protocol, to protect the victims of such trafficking, including by protecting their internationally recognized human rights.
- In article 2(b) one of the purposes of the Protocol is to “To protect and assist the victims of such trafficking, with full respect for their human rights”.
- Article 6(2) Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases: (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.
- Article 6(3) Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of: (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand.
- Article 6(4) Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.
- Included Article 10(2) on training to be delivered to law enforcement, immigration and other officials, training should address “protecting the rights of victims”, and “take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with nongovernmental organizations, other relevant organizations and other elements of civil society”.
- Savings clause Article 14(1) 1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.

## **Annex 2: Human Rights in the Smuggling Protocol**

The following are references to human rights in the Smuggling of Migrants Protocol. The term 'gender' is not used in the Protocol.

- In the preamble to the Smuggling of Migrants Protocol, States parties note that they are “convinced of the need to provide migrants with humane treatment and full protection of their rights”.
- In article 2, the purpose of the Protocol is given: “to prevent and combat the smuggling of migrants, as well as to promote cooperation among States Parties to that end, while protecting the rights of smuggled migrants”.
- Article 4 notes that the Protocol shall apply “to the prevention, investigation and prosecution [of migrant smuggling] ... as well as to the protection of the rights of persons who have been the object of such offences”.
- In article 8(3)(a), measures taken against smuggling of migrants by sea, shall not interfere with “The rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea”
- Article 14(1), notes that training should be delivered in preventing migrant smuggling and in “the humane treatment of migrants who have been the object of such conduct, while respecting their rights as set forth in this Protocol.”
- Article 14(2), explicitly notes that cooperation among competent international organizations, non-governmental organizations, other relevant organizations and civil society actors should be undertaken in the delivery of such training, which shall include training on “the humane treatment of migrants and the protection of their rights as set forth in this Protocol”.
- Article 16, states that “each State Party shall take, consistent with its obligations under international law, all appropriate measures, including legislation if necessary, to preserve and protect the rights of persons who have been the object of conduct set forth in article 6 of this Protocol as accorded under applicable international law, in particular the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment”.
- The savings clause of the Protocol, in article 19, paragraph 1, notes the following: “Nothing in this Protocol shall affect the other rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein”.

## **Annex 3: Charter-Based Human Rights Bodies**

The [Human Rights Council](#) (which replaced the Commission on Human Rights) is an intergovernmental body that meets in Geneva for 10 weeks each year. It is composed of 47 elected UN Member states, who serve for an initial period of three years, and cannot be elected for more than two consecutive terms. Through a mechanism of Special Procedures of individual experts, rapporteurs or working groups, the Human Rights Council addresses situations in specific countries, or thematic issues worldwide. The Special Procedures can report on human rights issues in all parts of the world without the requirement that States have to have ratified a particular human rights instrument.

There are currently 39 thematic mandates, some of which are of specific relevance to human trafficking and smuggling of migrants, including:

- Special Rapporteur on trafficking in persons, especially women and children
- Special Rapporteur on the human rights of migrants
- Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material
- Special Rapporteur on contemporary forms of slavery, including its causes and consequences

There are currently 14 country specific mandates, two of which are GLO.ACT countries. A Special Rapporteur on the situation of human rights in Belarus was appointed in 2012, and an Independent expert on the situation of human rights in Mali was mandated in 2013.

Also, of relevance are the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict (OSRSG-SVC) and the Victim's Rights Advocate for the United Nations.

**Universal Periodic Review:** The [Universal Period Review](#) (UPR) is a State-led process under the Human Rights Council, to review the human rights records of all UN Member States. Reviews occur in four and a half year cycles, the third of which started on 1 May 2017. Reviews are conducted by the UPR Working Group that is comprised of 47 members of the Human Rights Council. Each State review is assisted by three States ("troikas") serving as rapporteurs, who are selected by drawing of lots following elections for the Council membership in the General Assembly. Reviews are based on information provided by the State under review, information provided by independent human rights experts and groups, Special Procedures, human rights treaty bodies and other UN entities and information provided by other stakeholders such as human rights institutions and NGOs. The reviews consist of an interactive 3.5 hour discussion between the review State and the troika, resulting in an outcome that the State under review is primarily responsible to implement.

Four GLO.ACT countries are included for review in the Third Cycle (2017-2021), with [Colombia](#), [Mali](#), [Ukraine](#) and [Pakistan](#) who all address counter-trafficking in National Reports, with relevant recommendations offered in Working Group Reports. Smuggling of Migrants receives less attention.

## **Annex 4: Treaty-Based Human Rights Bodies**

The following ten human rights treaty bodies monitor implementation of the core international human rights treaties:

- Committee on the Elimination of Racial Discrimination (CERD)
- Committee on Economic, Social and Cultural Rights (CESCR)
- Human Rights Committee (CCPR)
- Committee on the Elimination of Discrimination against Women (CEDAW)
- Committee against Torture (CAT)
- Committee on the Rights of the Child (CRC)
- Committee on Migrant Workers (CMW)
- Subcommittee on Prevention of Torture (SPT)
- Committee on the Rights of Persons with Disabilities (CRPD)
- Committee on Enforced Disappearances (CED)

### **Key online human rights resources**

You can check for country-specific information from these Committees, by selecting the relevant country in the drop down box under 'Human Rights by Country' at:

<https://www.ohchr.org/EN/Pages/Home.aspx>

Here you will find:

- Universal Periodic Review Documents (leading to matrices of Recommendations, some of which are relevant to human trafficking, though migrant smuggling has so far received less attention)
- Recent reports of Special Procedures (including Reports of Special Rapporteurs), and
- Concluding Observations of Committees

Also search the Universal Human Rights Index Database for country-specific insight:

<https://www.ohchr.org/EN/HRBodies/Pages/UniversalHumanRightsIndexDatabase.aspx>



# Resources

Association of Southeast Asian Nations (ASEAN) Secretariat

2016 Gender Sensitive Guideline for Handling Women Victims of Trafficking in Persons

Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (Bali Process)

2014 Policy Guide on Criminalization of Trafficking in Persons

2014 Policy Guide on Criminalization of Smuggling of Migrants

2015 Policy Guide on Identifying Victims of Trafficking

2015 Policy Guide on Protecting Victims of Trafficking

Council of Europe

2019 Gender mainstreaming Toolkit for Co-operation projects

Enhancing Africa's Response to transnational organized crime (ENACT)

2019 Trafficking in persons in conflict contexts: What is a realistic response from Africa?

Global Alliance against Trafficking in Women (GAATW)

2019 Anti-Trafficking Review: Special Issue - Sex Work. Issue 12, April 2019, Bangkok.

2018 Sex Workers Organising for Change: Self-representation, community mobilisation, and working conditions. Bangkok.

2017 Anti-Trafficking Review: Special Issue - Where's the Evidence. Issue 8, April 2017, Bangkok.

2016 Anti-Trafficking Review: Special Issue - Prosecuting Human Trafficking. Issue 6, May 2016.

2007 Collateral Damage: The Impact of anti-trafficking measures on human rights around the world. Bangkok.

Haider, Huma

2014 Conflict Sensitivity: Topic Guide. Birmingham, UK: GSDRC, University of Birmingham

Human Rights Committee

2014 General Comment 35, Article 9 (Liberty and Security of Person), UN Doc. CCPR/C/GC/35 (16 December 2014)

2007 General Comment 32, Article 14 (Right to equality before courts and tribunals and to a fair trial) UN Doc. CCPR/C/GC/32 (23 August 2007)

Inter-Agency Coordination Group against Trafficking in Persons (ICAT)

2016 A Toolkit for guidance in designing and evaluating counter-trafficking programmes: Harnessing accumulated knowledge to respond to trafficking in persons

2016 Basic Principles and Guidelines on the Right to a Remedy and Reparation Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power: Providing Effective Remedies for Victims of Trafficking in Persons

2016 Providing effective remedies for victims of trafficking

2017 Trafficking in Persons and Refugee Status, ICAT Issue Brief No. 3, 09/2017

2017 The Gender Dimension of Human Trafficking, ICAT Issue Brief No. 4, 09/2017

Inter-Parliamentary Union, the International Labour Organization and the United Nations Office of the High Commissioner for Human Rights (IPU, ILO, OHCHR)

2015 Migration, Human Rights and Governance. Handbook for Parliamentarians

International Organization for Migration (IOM)

2015 Rights-based approach to programming. IOM, Geneva

2016 Guidelines to protect migrants in countries experiences conflict or natural disasters.

Migrants in Countries of Crises Initiative (MICIC)

2017 Protection of the Human Rights and Fundamental Freedoms of Migrants and the Specific Needs of Migrants in Vulnerable Situations. IOM, Geneva

2007 Handbook on Direct Assistance for Victims of Trafficking. IOM, Geneva.

2018 A Framework for Assisted Voluntary Return and Reintegration

2019 Handbook for Migrants Vulnerable to Violence, Exploitation and Abuse. IOM, Geneva

McAdam, Marika

2020 Continuing to pay the price for freedom: the ongoing detention of victims after their trafficking experience. (ASEAN-Australia Counter-Trafficking)

NEXUS Institute

2017 R Surtees, Supporting the reintegration of trafficked persons: A Guidebook for the Greater-Mekong Sub-region, Washington DC.

2019 McAdam, M., R Surtees, and L. S Johnston, Legal and Ethical Issues in Trafficking in Persons Data Collection. NEXUS Institute, Washington, D.C

Organization for Security and Cooperation in Europe (OSCE)

2004 National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook. OSCE Office for Democratic Institutions and Human Rights, Warsaw

2017 From Reception to Recognition: Identifying and Protecting Human Trafficking Victims in Mixed Migration Flows. OSCE Office of the Special Representative and Co-Ordinator for Combating Trafficking in Human Beings, Vienna

2018 Child Trafficking and Child Protection: Ensuring that Child Protection Mechanisms Protect the Rights and Meet the Needs of Child Victims of Human Trafficking. OSCE Office of the Special Representative and Co-Ordinator for Combating Trafficking in Human Beings, Vienna

2018 The Critical Role of Civil Society in Combating Human Beings. OSCE Office of the Special Representative and Co-Ordinator for Combating Trafficking in Human Beings, Vienna

Pacific Judicial Strengthening Initiative (PJSI)

2017 Human Rights Toolkit, New Zealand Foreign Affairs and Trade and Federal Court of Australia

UNICEF

2006 Guidelines on the Protection of Child Victims of Trafficking

United Nations Department of Operational Support

2019 United Nations Procurement Manual, Department of Operational Support, Office of Supply Chain Management Procurement Division (30 September 2019)

#### United Nations Development Programme

- 2005 Programming for Justice: Access for All. A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice
- 2013 Gender mainstreaming made easy: Handbook for Programme Staff

#### United Nations Evaluation Group (UNEG)

- 2011 Integrating Human Rights and Gender Equality in Evaluation - Towards UNEG Guidance (UNEG/G(2011)2)
- 2014 Integrating Human Rights and Gender Equality in Evaluations

#### United Nations High Commissioner for Refugees (UNHCR)

- 2006 Guidelines on International Protection: the application of Article 1A(2) of the 1951 Convention and / or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked

#### United Nations Office of the High Commissioner for Human Rights (OHCHR)

- 2001 Training Manual on Human Rights Monitoring. OHCHR, Geneva
- 2006 Frequently asked questions on a human rights-based approach to development cooperation,

#### OHCHR, Geneva.

- 2010 Recommended Principles and Guidelines on Human Trafficking and Human Rights. OHCHR, Geneva
- 2010 Commentary on the Recommended Principles and Guidelines on Human Trafficking and Human Rights. OHCHR, Geneva
- 2011 Guiding Principles on Business and Human Rights. OHCHR, Geneva
- 2011 Draft basic principles on the right to an effective remedy for trafficked persons, Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo" UN Doc. A/HRC/17/35, annex I.
- 2011 Manual on Human Rights Monitoring. OHCHR, Geneva
- 2012 Human Rights Indicators: A Guide to Measurement and Implementation. OHCHR, New York and Geneva.
- 2013 Human Rights Due Diligence Policy on UN support to non-UN security forces
- 2014 Recommended Principles and Guidelines on Human Rights at International Borders. OHCHR, Geneva
- 2014 Human Rights and Human Trafficking: Fact Sheet No. 36. OHCHR, Geneva and New York
- 2014 Draft Basic Principles on the Right to an Effective Remedy for Victims of Trafficking in Persons
- 2018 Principles and guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations
- 2018 A Human Rights-Based Approach to Data. OHCHR, Geneva.
- 2018 Making a Difference: An Introduction to Human Rights
- 2019 Trafficking in Persons, especially women and children, Report of the Special Rapporteur on trafficking in persons, especially women and children, UN. Doc. A/HRC/41/46 (23 April 2019)

## United Nations Office on Drugs and Crime (UNODC)

- 2008 Toolkit to Combat Trafficking in Persons. UNODC, Vienna
- 2008 Handbook for Prison Managers and Policymakers on Women and Imprisonment
- 2010 Toolkit to Combat Smuggling of Migrants. UNODC, Vienna
- 2011 International Framework for Action to implement the Migrant Smuggling Protocol. UNODC, Vienna
- 2011 Guidance note for UNODC staff on the promotion and protection of human rights
- 2011 The Bangkok Rules: United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offending with their community
- 2012 Information sheet for UNODC staff on the Death Penalty
- 2012 UNODC and the promotion and protection of human rights position paper
- 2013 Mainstreaming Human Rights and Gender Equality
- 2013 Guidance Note for UNODC Staff: Gender mainstreaming in the work of UNODC
- 2014 Handbook on Women and Imprisonment (2nd Edition). UNODC, Vienna.
- 2017 UNODC Evaluation Handbook
- 2018 Thematic Paper on Countering Trafficking in Persons in Conflict Situations. UNODC, Vienna
- 2018 Strategy for Gender Equality and the Empowerment of Women (2018-2021), UNOV-UNODC, Vienna.
- 2019 Handbook on Gender Dimensions of Criminal Justice Response to Terrorism. UNODC, Vienna.
- 2020 Gender brief for UNODC staff: Mainstreaming gender in Organized Crime & Illicit Trafficking projects. UNODC, Vienna.
- 2020 Gender brief for UNODC staff: Mainstreaming gender in Justice projects. UNODC, Vienna.

## UN Women

- 2014 Guidance Note: Gender Mainstreaming in Development Programming. Geneva.
- 2015 How to Manage Gender-Responsive Evaluation: Evaluation Handbook. UN Women Independent Evaluation Office. Geneva.
- 2019 UN-SWAP 2.0. Accountability Framework for Mainstreaming Gender Equality and the Empowerment of Women in United Nations Entities. Framework and Technical Guidance. Geneva.
- 2019 Equality in Law for Women and Girls by 2030: A multistakeholder strategy for accelerated action. Geneva.
- 2020 A Synthesis of Evidence on the Collection and use of Administrative Data on Violence against Women. Geneva.

## Working Group on Arbitrary Detention

- 2018 Revised Deliberation No. 5 on deprivation of liberty of migrants, 7 February 2018

An abstract painting featuring a dominant yellow color with visible brushstrokes. The bottom portion of the image transitions into dark, textured areas of brown, black, and red. A semi-transparent blue rectangular box is overlaid on the bottom left, containing contact information.

## Contacts

Human Trafficking and Migrant Smuggling Section  
Vienna International Centre, PO Box 500, 1400 Vienna, Austria

Website: [https://www.unodc.org/unodc/glo\\_act/](https://www.unodc.org/unodc/glo_act/) | <https://www.iom.int/gloact>  
Twitter: @glo\_act | @htmss\_unodc