

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.⁸³

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.



⁸³ 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 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.

Country Name:	
Capital	
Population	
Sex ratio	
Literacy rate	
Ethnic groups	
Languages spoken	
Religions	
Age Structure	
Median age	
POLITICAL CONTEXT	
Recent conflicts / unrest	
Political parties / system	
Recent transitions / changes	
Bilateral / Regional relationships	
Memberships of regional alliances / processes	
ECONOMIC PROFILE	
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: https://www.transparency.org/en/cpi/)	
DEVELOPMENT PROFILE	
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	
MOVEMENT PROFILE	
Source: IOM; UNHCR	
Net migration rate, disaggregated by sex	
Refugees, IDPs, and stateless disaggregated by sex	
HUMAN RIGHTS AND GENDER EQUALITY PROFILE	
Source: UN Human Rights Index; UNDP Human Development Index	
Human rights concerns in the areas of justice	
Gender equality concerns in the area of justice	
Human rights concerns in the area of trafficking in persons	
Gender equality concerns in the area of trafficking in persons	
Human rights concerns in the area of smuggling of migrants	
Gender equality concerns in the area of smuggling of migrants	
Human rights concerns in the area of migration	
Gender equality concerns in the area of migration	
CRISES AND CONFLICT	
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 or at ohchr.org

Ratification status of the eight fundamental ILO Conventions listed below can be found at: 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

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?
TRANSNATIONAL CRIME INSTRUMENTS		
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		
HUMAN RIGHTS INSTRUMENTS		
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		
INTERNATIONAL REFUGEE LAW		
The Convention relating to the Status of Refugees, (1951 Refugee Convention)		
1967 Protocol to the 1951 Convention relating to the Status of Refugees		
INTERNATIONAL LABOUR LAW		
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"> ▪ Exploitation of the prostitution of others or other forms of exploitation ▪ Forced labour or services ▪ Slavery or practices similar to slavery ▪ Servitude ▪ Removal of organs ▪ Other forms of exploitation 		
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)		

Non-criminalization		If yes, where/which provision? If no, provide further information:
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?		
Human rights and gender equality		If yes, where/which provision? If no, provide further information:
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 safeguards¹ in place in the Constitution, a bill of rights or other domestic legislation, e.g.</p> <ul style="list-style-type: none"> ▪ Trafficking in Persons legislation ▪ Smuggling of Migrants legislation ▪ Labour legislation ▪ Criminal legislation ▪ Family legislation ▪ Immigration legislation ▪ Child protection legislation ▪ Other legislation? 		
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?		

¹ 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)?		
Non-refoulement		If yes, where/which provision? If no, provide further information:
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 most relevant State stakeholders 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 understanding 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	High Stakeholder explicitly and directly addresses human rights in its work and independently active in promoting rights	Medium Stakeholder indirectly addresses human rights in its work / open to promoting rights	Low Stakeholder does not address human rights in its work, but receptive to improvement	None 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 understanding 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	High Stakeholder explicitly and directly pursues gender equality in its work and independently promotes gender equality	Medium Stakeholder indirectly addresses gender equality in its work / open to strengthening gender equality	Low Stakeholder does not address gender equality in its work, but receptive to improvement	None 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 resources 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	More than adequate	Adequate	Inadequate	None
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	More than adequate There are women employed in senior management roles	Adequate There are some women working in programmatic / operational roles	Inadequate There are women employees, but not at senior levels of institution	None 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 trafficking in persons ?				
To be completed on the basis of the user's judgment / experience and updated as user learns more from further engagement / research	High Stakeholder strongly committed to human rights based approach in addressing human trafficking in persons	Medium Stakeholder open to increasing human rights-based approach in addressing trafficking in persons	Low Stakeholder does not take human rights based approaches in addressing trafficking but receptive to improvement	None 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 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	High Stakeholder strongly committed to human rights based approach in addressing smuggling of migrants	Medium Stakeholder open to increasing human rights-based approach in addressing smuggling of migrants	Low Stakeholder does not take human rights based approaches in addressing smuggling but open to doing so	None 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 barriers 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

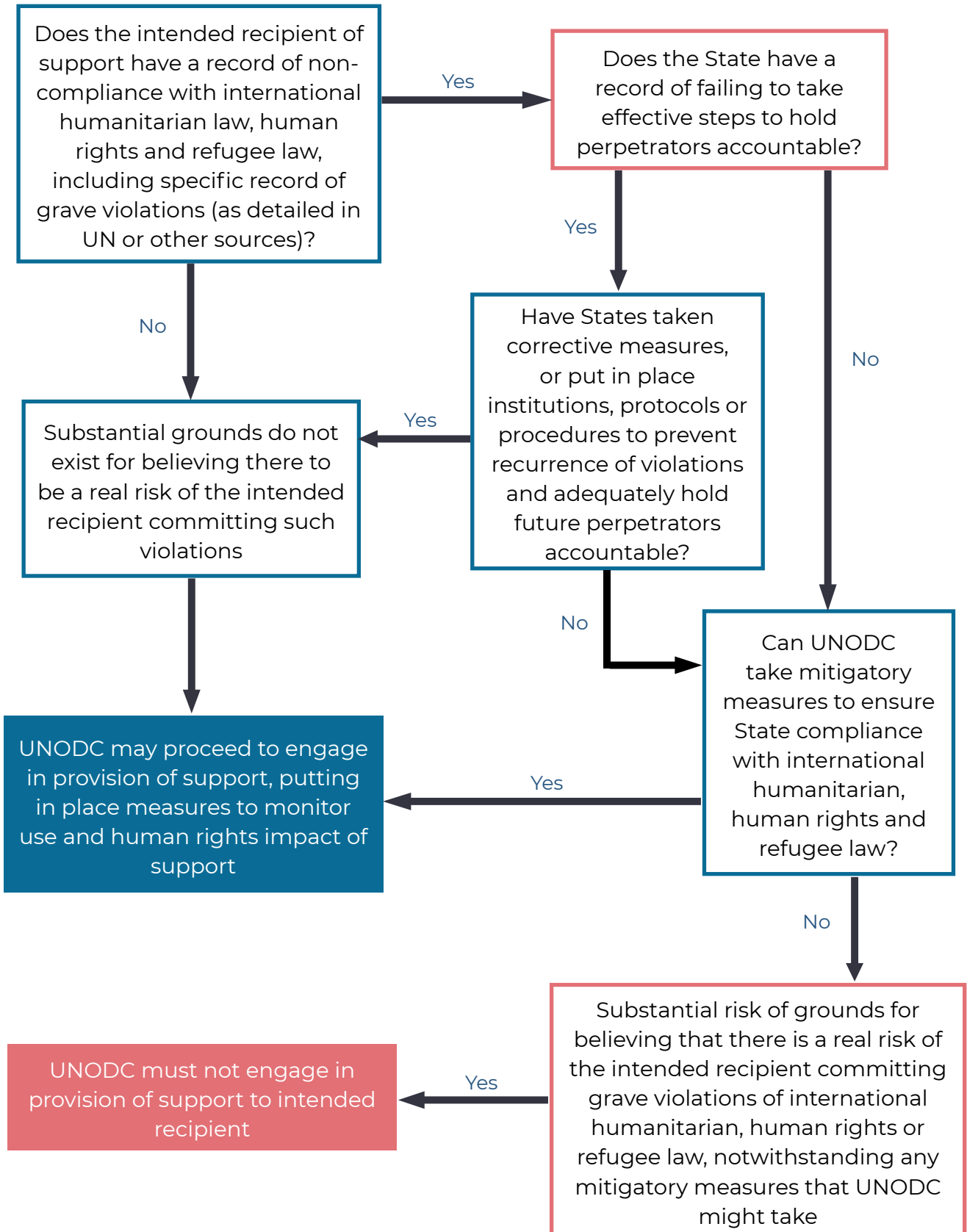
for believing that there is a real risk of entities committing grave violations of international humanitarian, human rights or refugee law and where authorities fail to take the necessary corrective or mitigating measures. This HRDDP applies to:

- 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 relevant rights-holders 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 awareness and understanding 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 provided with information about their rights by the State?				
	Always	Sometimes	Rarely	Never
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 access to justice (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 access to legal representation 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: