

# 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 &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, 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?
Budgeting and procurement				
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?				
Programmatic integration				
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?				
Sustainable capacity building				
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 included 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>			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. 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.
14. Convictions of human traffickers and migrant smugglers, directly or indirectly, contribute to rights-detrimental conditions and treatment. <a href="#">1.5</a>			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).

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 1.2	
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 and 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:
<b>3. Criminal justice and other data <a href="#">1.3</a></b>	
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:
<b>4. Prosecution and defence <a href="#">1.4</a></b>	
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.

<p>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</p>	<p>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.</p>
<p>User to complete:</p>	<p>User to complete:</p>
<p>User to complete:</p>	<p>User to complete:</p>
<p>5. Sentencing <a href="#">1.5</a></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>
<p>User to complete:</p>	<p>User to complete:</p>
<p>User to complete:</p>	<p>User to complete:</p>
<p>6. Identification and referral <a href="#">1.6</a></p>	
<p>Men and boys who are victims of trafficking are not identified</p>	<p>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</p>

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.
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:
<b>8. Return and reintegration <a href="#">1.8</a></b>	
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:
<b>9. Prevention <a href="#">1.9</a></b>	
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?	