



Trafficking in Persons Needs Assessment and Gap Analysis Framework



OVERVIEW

This tool serves as a starting point for organizations to conduct rapid assessments of the trafficking-in-persons (TIP) landscape in countries where programming to address gaps in law enforcement is being considered.

This framework identifies implementation gaps and areas of need at the local level, with the goal of informing effective community-based approaches to preventing and countering TIP.¹ Given the constraints experienced by most organizations working on TIP programming, this framework is designed to be rapid, lightweight, and practically applicable even with limited resources.

The framework recognizes that human trafficking takes place locally, despite its global reach. However, in general, limited resources are dedicated to assessing sub-national responses to human trafficking. To help address this data gap, the framework prioritizes the experience of stakeholders at the local level. It equips organizations to think and work politically as they identify specific factors that drive implementation gaps in communities. The framework aligns with international best practice and includes an assessment of the key aspects of relevant national and international regulations, agreements, and laws.

In this way, the framework allows organizations to compare the formal legal landscape with the day-to-day implementation of relevant laws, policies, and procedures in communities.² With this information, organizations can then conduct a simple, practical gap analysis that identifies what drives implementation gaps, what specific needs exist at the local level to improve implementation, and potential programming approaches to address those needs.

PURPOSE:

This assessment framework is intended to:

evaluate
what gaps exist
between law and
policy, and how these
gaps affect victims and
institutions at the local
level.

assess
levels of protection
and enforcement in
practice locally within
a country's effort to
counter TIP, while also
identifying unmet
needs that must be
addressed.

support
the design of
strategic law-related
programming to more
effectively identify
victims of human
trafficking and facilitate
effective pathways to
justice.

- 1 Local communities face the realities and consequences of modern slavery, including weakened rule of law, strained public health systems and decreased economic development. *Trafficking in Persons Report* (June 2018).
- 2 Organizations looking at the national level, and with sufficient resources, can draw on toolkits such as the UNODC Needs Assessment Toolkit on the Criminal Justice Responses to Human Trafficking to conduct their assessments.

GATHERING DATA:

This framework is meant to be deployed using a combination of desk research and field work. The assessment cannot be conducted with desk research alone, as the approach prioritizes the experience of stakeholders at the local level.

1. **Desk research** should consist of a review of regulations and agreements on paper. This review should assess the extent to which the formal legal system aligns with international standards, as well as the key challenges identified on a national level. At a minimum, reviewers should evaluate:
 - a. National laws, policies, and regulations on human trafficking, forced labor, and child labor
 - b. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol)
 - c. UNODC Model Law Against Trafficking in Persons
 - d. UNODC Global Report on Trafficking in Persons
 - e. US Department of State Trafficking in Persons Report
 - f. US Department of Labor Findings on the Worst Forms of Child Labor

2. **Field Work** should include interviews with those who have first-hand experience encountering trafficking victims and the legal system they must face. Key Informants should include:
 - a. Representatives from relevant government agencies mandated by law to respond to trafficking. These could include ministries of justice and internal affairs.
 - b. Law enforcement authorities, including local-level station police, and any specialized units that have been established to enforce anti-trafficking laws.
 - c. Service providers, including representatives from both government- and CSO-managed support services such as shelters, reintegration programs and health clinics.
 - d. Prosecutors, judges, and other members of the judiciary who have experience with TIP cases;
 - e. Legal aid providers;
 - f. Civil society, including non-governmental organizations that support victims from the community, or provide information to migrants and potential migrants;
 - g. International organizations administering anti-trafficking projects;
 - h. Victims of human trafficking.³

3 To the extent reasonable, as subject-matter experts, victims should be included in the discussion and implementation of anti-trafficking policies or protocols. They should not, however, be asked to relate—and thereby re-live—the exploitation they experienced. (U.S. Advisory Council on Human Trafficking)



ASSESSMENT CHECKLIST

The questions contained in this document represent the key areas to investigate in order to develop responsive programming. Organizations can use this Assessment Checklist to design questionnaires and interview guides for their field work.

- Questions related to the state’s legal framework are concerned with national laws, policies, protocols, and procedures to combat trafficking in persons.
- Questions divided among the “4Ps” (i.e., protection, prosecution, prevention, and partnerships) are concerned with community-level efforts to implement and adapt national laws, policies, protocols, and procedures to the local context.

Assessing the latter in light of the former will determine critical areas of need, which in turn will inform programming to strengthen local responses to human trafficking -- thus helping to close the gap between theory and practice. The Key Questions are organized in five sections:



<p>LEGAL FRAMEWORK</p>  <p>These questions can be used to 1) determine the extent to which the country’s national legal framework complies with international law and 2) identify existing protocols and procedures to aid in effective implementation of national laws and policies. These questions can be answered through a combination of desk and field research.</p>	<div style="text-align: center;">  <p>Formal legal instruments</p> </div> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Has the State ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol)? <input checked="" type="checkbox"/> Does the legal framework address all elements of the crime of trafficking in persons as set forth in the Palermo Protocol (act, means, and purpose) and provide for penalties in accordance with international and/or regional standards? <input checked="" type="checkbox"/> Does the legal framework provide for non-liability/non-punishment of victims of human trafficking? <input checked="" type="checkbox"/> Are there any bilateral or multilateral agreements providing for cooperation on human trafficking? If so, with which countries? What do these agreements provide for? <input checked="" type="checkbox"/> How long have human trafficking laws been in place? What plans are in place for revisions or new legislation? <input checked="" type="checkbox"/> Is there a mechanism at the national level for coordinating, monitoring, and evaluating an overall anti-human trafficking strategy?
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Definitions

- ☑ Is there coherence between laws on human trafficking, forced labor, debt bondage? For example, is forced labor a form of human trafficking under the law? Is debt bondage identified as a form of forced labor?
- ☑ Does the legal framework criminalize trafficking in persons for the purpose of all forms of exploitation, including the prostitution of others and other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, and the removal of organs?
- ☑ Does the legal framework criminalize trafficking in women, men, and children? If so, is it criminalized when committed both domestically and across borders?



Procedures

- ☑ Do standard operating procedures exist for identifying persons presumed to have been trafficked (e.g., guidelines on victim identification, standardized checklists to facilitate the identification of trafficked persons)?
- ☑ Is there an institutionalized cooperation and referral mechanism in place (e.g. National Referral Mechanism)? If so, what does this look like?
- ☑ What if human trafficking occurs abroad? Are country consulates and law enforcement officials equipped to assist citizens with claims involving human trafficking? What happens to stateless individuals?
- ☑ Are there mechanisms in place to protect the privacy and identity of victims and to ensure that they receive information on relevant court proceedings and have an opportunity to have their views presented and considered?
- ☑ Are complaint mechanisms available to assist with ensuring the transparency and accountability of court proceedings?



Actors

- ☑ Are justice sector actors, including law enforcement, mandated to respond to crimes that may involve human trafficking?
- ☑ Are there specialized law enforcement units, prosecutors' offices, and other judicial representatives that deal solely with trafficking in persons?
- ☑ Do specialized units have national-level responsibility? If not, do they provide advisory services for investigations carried out by non-specialized law enforcement officials?
- ☑ Are clear roles and responsibilities in place for all relevant government agencies or ministries to effectively respond to human trafficking, including inter-ministerial coordination of anti-trafficking policies?
- ☑ Who is responsible for training justice sector actors, including law enforcement, on identifying and responding to potential cases of human trafficking? Who participates in this training? How often does the training take place?
- ☑ Are there mechanisms in place to encourage cooperation between law enforcement officers, prosecutors, and judges involved in cases of trafficking in persons?



Remedies

- ☑ What are the penalties relating to human trafficking and forced labor?
- ☑ Are the formal legal penalties for human trafficking commensurate with other serious crimes, like sexual violence and kidnapping?
- ☑ Is the right to victim compensation built into the law, (e.g. mandatory criminal restitution, victim compensation funds, civil private right of action?)



Informal Legal System

- ☑ What is the place of customary or religious law? Is it recognized as part of the country's laws, or is its status unclear?
- ☑ Do substantial portions of the population conduct activities outside of the formal legal system? For example, is there a substantial amount of economic activity that is unregulated by the legal system?
- ☑ What are all of the options that exist at the community level to resolve a dispute?
- ☑ Where are these dispute resolution options located? Who can access this location?
- ☑ Do women and men use the same mechanisms to resolve disputes? Where do women usually go when they have a legal problem? What are women's perceptions of these mechanisms?
- ☑ How do communities resolve disputes involving children?
- ☑ Do human trafficking victims seek redress through informal justice mechanisms?
- ☑ Why do they pursue justice through informal justice mechanisms (e.g. do they carry out these actions because adequate legal remedies are not provided in the law itself in such cases, or because formal cases are too difficult or onerous to pursue?)
- ☑ What are the available remedies for human trafficking via the informal justice system?
- ☑ Do informal justice remedies conflict with laws which are part of the formally adopted legal system in relation to human trafficking? If they do conflict with the official framework of laws, do individuals still feel that justice has been served?



Linkages between formal and informal systems

- ☑ How do these two systems interact, overlap and/or diverge in the community?
- ☑ How does the government relate to informal justice systems?
- ☑ Do cases move between the two? How? Why?
- ☑ What do human trafficking victims see as needed in either or both systems to enable access to justice?
- ☑ What is the difference in how formal and informal mechanisms resolve human trafficking cases?

VICTIM IDENTIFICATION AND PROTECTION



These questions can be used to assess community-level efforts to implement and adapt national laws, policies, protocols, and procedures (in alignment with international standards) as they relate to victim identification and protection. Because of the focus on local-level implementation, answers to these questions will require field research.

Institutional process

- Who in the government is tasked with identifying potential trafficking cases in the community?
- Are there standard operating procedures that have been adapted for the local context?
- When a human trafficking case is submitted (formal and informal), who is involved? Who initiates the process?
- Are police required to investigate reports of human trafficking?
- Does the legal framework provide persons presumed to have been trafficked with the right to receive assistance and support irrespective of whether they cooperate with criminal justice authorities?
- Are local government and non-government stakeholders aware of identification measures? Do they apply them in their work?
- Do police receive training - either one-off or ongoing - on identification procedures? What kind and how often?
- Are there formal or informal cooperation agreements between law enforcement agencies and non-governmental service providers enabling persons presumed to have been trafficked to access protection and support structures?
- Are there any government efforts to improve victim identification and protection? How are these efforts managed and funded?

Victim experience

- What barriers/challenges do victims face when accessing support and protection structures?
- Is there informed consent if the case moves forward? Is there any opportunity to decline involvement in a legal proceeding?
- Do victims ever self-identify and/or report? If so, to whom? Are victims encouraged to report? If so, how?
- Do victims face potential negative consequences associated with reporting? Is there a problem with criminalization of victims (i.e., a sex trafficked victim being punished for prostitution; law enforcement penalizing/deporting victims for immigration violations rather than focusing on forced labor)?
- How do human trafficking victims define "justice?"
- What protection and support structures are available to victims?
- Are there any taboos or social stigma in relation to men or women accessing legal assistance?

EFFORTS TO INVESTIGATE AND PROSECUTE



These questions can be used to assess community-level efforts to implement and adapt national laws, policies, protocols, and procedures (in alignment with international standards) as they relate to investigating and prosecuting trafficking cases. Because of the focus on local-level implementation, answers to these questions will likely require field research.



Trafficking cases at the local level

- How are investigations initiated and who initiates them?
- Are police mandated to respond to crimes that may involve human trafficking?
- Is the government able to effectively investigate and prosecute trafficking crimes both at home and those that occur abroad?
- Do justice sector actors, including law enforcement, prosecutors' offices, and other judicial entities, possess a clear understanding of the crime of trafficking?
- Are there clear guidelines on communication between front-line officers and specialist anti-trafficking law enforcement units?
- Are officers assigned to TIP cases specially trained and/or do they have access to specialized guidelines or specialist assistance re: investigative techniques, information and evidence gathering, interviewing techniques, special treatment for children, preparing for charge and trial, etc.?
- Are there prosecutors, judges, and other judicial officers that focus solely on trafficking in persons? If not, are there mechanisms in place to provide prosecutors, judges and judicial officers who only come across cases of trafficking in persons occasionally with access to relevant expertise?
- Are there mechanisms in place to encourage cooperation between law enforcement officers, prosecutors, and judges involved in trafficking cases?
- Are there established procedures that meet the specific needs of victims testifying in court proceedings while ensuring a fair trial for the defendant?
- Is there an equal application of the law, including for poor and marginalized groups? Equal application of law to citizen versus immigrant? Sex versus labor trafficking victims? To different ethnic groups?
- Do victims participate in the investigation and prosecution of their traffickers? If not, why (e.g., lack of procedures to facilitate victim-centered participation, lack of trust, fear of criminalization, fear of stigma)?
- Is there any sign of "elite capture" of the justice system or institutions resulting in impunity and favorable treatment for elites, or others?
- What is the typical timeline of a trafficking case, from initial report to verdict?
- Are there any government efforts to improve TIP investigations and prosecutions? How are these efforts managed and funded?
- What is civil society (including non-governmental organizations) doing to improve TIP investigations and prosecutions?



Informal support to victims

- ☑ Is legal assistance available to human trafficking victims? If so, in what forms?
- ☑ Do local civil society organizations (CSOs) provide legal assistance to human trafficking victims? What kind of legal assistance are they providing? Victim representation in criminal proceedings? Compensation claims? Civil claims?
- ☑ What is the capacity of CSOs to provide legal assistance and/or support?
- ☑ How willing or able are human trafficking victims to approach a CSO or other possible provider of legal assistance?
- ☑ What are the test cases that CSOs would like to bring and what are the barriers to bringing those cases?
- ☑ What are the main challenges that CSOs face in legal representation? (E.g., Police not filing complaints? Prosecutors and judges not understanding legal definitions in relation to human trafficking and forced labor? Lack of trauma-informed care and representation?)

SUPPORT FOR PREVENTION



These questions can be used to assess community-level efforts to implement and adapt national laws, policies, protocols, and procedures (in alignment with international standards) as they relate to preventing instances of human trafficking. Because of the focus on local-level implementation, answers to these questions will likely require field research.



Drivers of migration and trafficking

- ☑ What factors make people vulnerable to trafficking in your community?
- ☑ Are there particular groups that are more vulnerable to trafficking than others?
- ☑ What factors may drive a person to become a trafficker in your community?



Formal programs

- ☑ Are criminal justice agencies involved in specialized prevention programs?
- ☑ Are there social and economic programs in place to address root causes that contribute to someone being trafficked and/or becoming a trafficker?
- ☑ Are there policies, programs, or action plans to prevent and reduce human trafficking and related exploitation that stem from or reach the community level? Who administers them and how long have they been operating?
- ☑ What measures are in place to protect victims from being trafficked again and from other forms of revictimization?



Information landscape

- ☑ What measures are in place to promote safe migration?
- ☑ Are potential migrants informed about the risks of migration (e.g., exploitation, debt bondage, health and security issues, etc.) as well as avenues available for legal, non-exploitative migration?
- ☑ Have specialized awareness-raising campaigns been carried out? If so, who have they targeted and what has been the message of the campaign?
- ☑ What is the extent of public understanding about or awareness of the issue of trafficking? Is it reported in the news? Social media?

BUILDING PARTNERSHIPS AND CREATING COOPERATION



These questions can be used to assess community-level efforts to implement and adapt national laws, policies, protocols, and procedures -- always aligned with international standards -- as they relate to building partnerships and creating coordination to prevent and combat human trafficking. Because of the focus on local-level implementation, answers to these questions will likely require field research.

- Are there mechanisms in place to ensure coordination between national and sub-national/local government (vertical coordination)?
- Are there mechanisms in place to encourage cooperation between law enforcement, service providers, and other key actors within and across communities (horizontal coordination)?
- Are there formal or informal cooperation agreements between law enforcement agencies and non-governmental service providers enabling persons presumed to have been trafficked to access protection and support structures?
- Do key stakeholders meet on a regular basis to share information and coordinate activities?
- What efforts exist to strengthen partnerships and cooperation on TIP? Who is administering and funding these efforts?

GAP ANALYSIS:

A gap analysis can be used to organize the results and findings of the needs assessment, identify critical gaps between current and desired performance, and chart a way forward.

For our purposes, the gap analysis will:

1. establish the current state of local responses to human trafficking;
2. define the desired state of local responses to human trafficking;
3. identify gaps between the current state and the desired state;
4. understand what is driving these gaps; and
5. develop proposed solutions for closing these gaps.

When using the gap analysis tool, users can choose to focus on one area at a time (resulting in multiple charts) or multiple areas at once. Users can also use the gap analysis framework to assess country compliance with international standards. This is particularly useful for the design of national-level programming and law reform activities. The table below provides an example gap analysis chart, generated from needs assessment data gathered in 2018.

GAP ANALYSIS				
Area Under Consideration:	Community-level efforts to implement and adapt national laws, policies, protocols, and procedures (in alignment with international standards) as they relate to: [victim identification and protection / efforts to investigate and prosecute / support for prevention / building partnerships and creating cooperation.]			
Current State	Desired State	Gap	What is driving the gap?	How can we help close the gap?
Front-line officers are not identifying potential victims of trafficking	Front-line officers proactively identify and respond to victims and their needs	Front-line officers have a limited understanding of trafficking and roles / responsibilities re: victim identification	Front-line officers do not receive training or guidance on trafficking and victim identification	Train front-line officers on TIP; develop/adapt standard operating procedures (SOPs) for victim identification; socialize use of SOPs among front-line officers
Local police are not equipped to handle TIP investigations	Local police have basic competencies and work hand-in-hand with specialized anti-TIP units	Local police lack clear lines of communication with specialized anti-TIP units and skills re: investigative techniques and evidence collection	Devolution of anti-TIP responsibilities to local police w/o measures to ensure skills transfer and coordination with specialized anti-TIP units	Facilitate increased coordination between local police and specialized anti-TIP units through skills-building workshops and SOPs
Victims of trafficking rarely seek justice for the crimes they have endured	Victims of trafficking seek justice and have access to effective remedies	Victims are unaware of their rights and how to access resources available to them	Law enforcement responses to human trafficking are not victim-centered	Support awareness- raising campaigns on victims' rights and access to justice; train law enforcement on victim-centered responses to human trafficking; develop / improve victim referral mechanisms

