

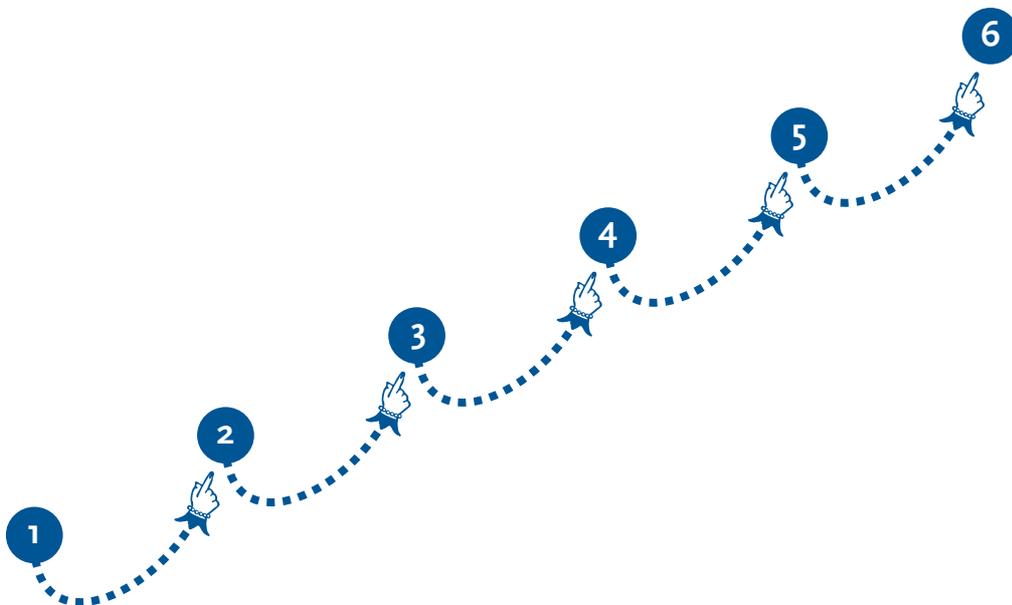
Health Rights of Women Assessment Instrument

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Health Rights of Women Assessment instrument

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P.O. Box 114

3500 AC Utrecht

TEL #(0)30 2334027

FAX #(0)30 23 67 104

EMAIL hom@hom.nl

www.hom.nl

TEXT Saskia Bakker en Hansje Plagman, hom

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*November 2005
Saskia Bakker and Hansje Plagman
Humanist Committee on Human Rights*

1 About HeRWAI

WHAT IS HERWAI?

The Health Rights of Women Assessment Instrument (HeRWAI) is a strategic tool to enhance lobbying activities for better implementation of women's health rights. A HeRWAI analysis links what actually happens with what should happen according to the human rights obligations of a country. It examines local, national and international influences. The HeRWAI analysis consists of six steps, which analyse a policy that influences women's health rights. Each step consists of information and questions to guide the analysis. Explanations, examples and checklists facilitate the answering of the questions. The analysis produces a set of recommendations to improve the impact of the policy, as well as an action plan to lobby for adoption of the recommendations and to raise awareness about the findings of the analysis.

The HeRWAI analysis takes a human-rights approach. The text is based on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which outlines the human rights of women, and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which provides comprehensive information about health rights. A human-rights approach has a lot to offer concerning advocacy for policy reforms. Human rights are universal; they do not belong to any particular region or political group. Most governments have binding human rights commitments, created by ratifying human rights treaties such as CEDAW and ICESCR. You can hold your government accountable and request that they do all they can to realize women's rights. A human-rights approach is not dependent on statistics; any infringement of human rights is a violation, irrespective of the number of people affected. HeRWAI focuses on women's health rights, but a similar approach can be useful for other human rights as well.

WHO CAN USE HERWAI AND FOR WHAT PURPOSE?

HeRWAI is designed for NGOs, in particular women's organizations, health organizations and human rights organizations. In this document these organizations will be jointly referred to as women's organizations and NGOs.

The purpose of the HeRWAI impact assessment is to produce arguments which can be used to lobby for policies that improve the implementation of women's health rights. Using HeRWAI to analyse a policy should help to:

- make a direct link between the policy and relevant human rights issues;
- gain a better understanding of the current situation;
- make an assessment of the human rights impact of the policy, both now and in the future;
- form a conclusion about what the government should do and what your organization will do to press the government into action.

The outcomes of a HeRWAI analysis may also be used to lobby international institutions such as the World Bank, WTO and UN agencies (UNFP(A), UNDP, etc.), or at international political meetings and committees (World Conferences, Commission on the Status of Women, the UN Assembly, meetings concerning the Millennium Development Goals, etc.). These can be direct lobbying activities or via governments. The results of a HeRWAI analysis also provide information that can be used for **shadow reports**¹ submitted to the Committees that monitor the implementation of CEDAW and ICESCR.

WHICH ISSUES OR POLICIES CAN BE ANALYSED USING HERWAI?

HeRWAI can be used as a tool to analyse a wide range of **policies**. These can be health policies, but also include policies which do not directly address health issues, but do have an impact on health. HeRWAI is particularly relevant in cases where policy-makers may overlook women's health rights. You can use the instrument to analyse an existing policy, as well as to review the expected impact of a policy which is still being developed. If a government does nothing to address a problem, you can use HeRWAI to analyse what happens because no policy is put in place. It is also possible to analyse foreign policies using HeRWAI, especially those concerning international cooperation.

The HeRWAI analysis focuses on policies, rather than problems. This is because policies (and their funding) are the main tool used by governments to make changes, and civil society can hold governments accountable for what they do or fail to do. In cases where the first concern is a specific problem, HeRWAI will ask you to consider which government policies can or should have influence on the problem. Consequently, the policy with the best potential for change should be selected: the policy with the best chance of success in addressing the problem. This will be the policy on which to focus the HeRWAI analysis.

FOCUS ON GOVERNMENT RESPONSIBILITY

HeRWAI primarily focuses on **governments**, because national governments have the primary responsibility for the implementation of human rights. The term 'government' in HeRWAI applies to governments in the South as well as the North. Usually your focus will be on a specific part of the government: a ministry or department, or the local authorities responsible for the development or implementation of a policy. Government responsibility also means that it should direct or stimulate other actors which are involved in implementing health rights. Examples of such actors are pharmaceutical industries, private clinics and individuals.

¹ words that are **highlighted** are defined in the glossery

THE STRUCTURE OF HeRWAI

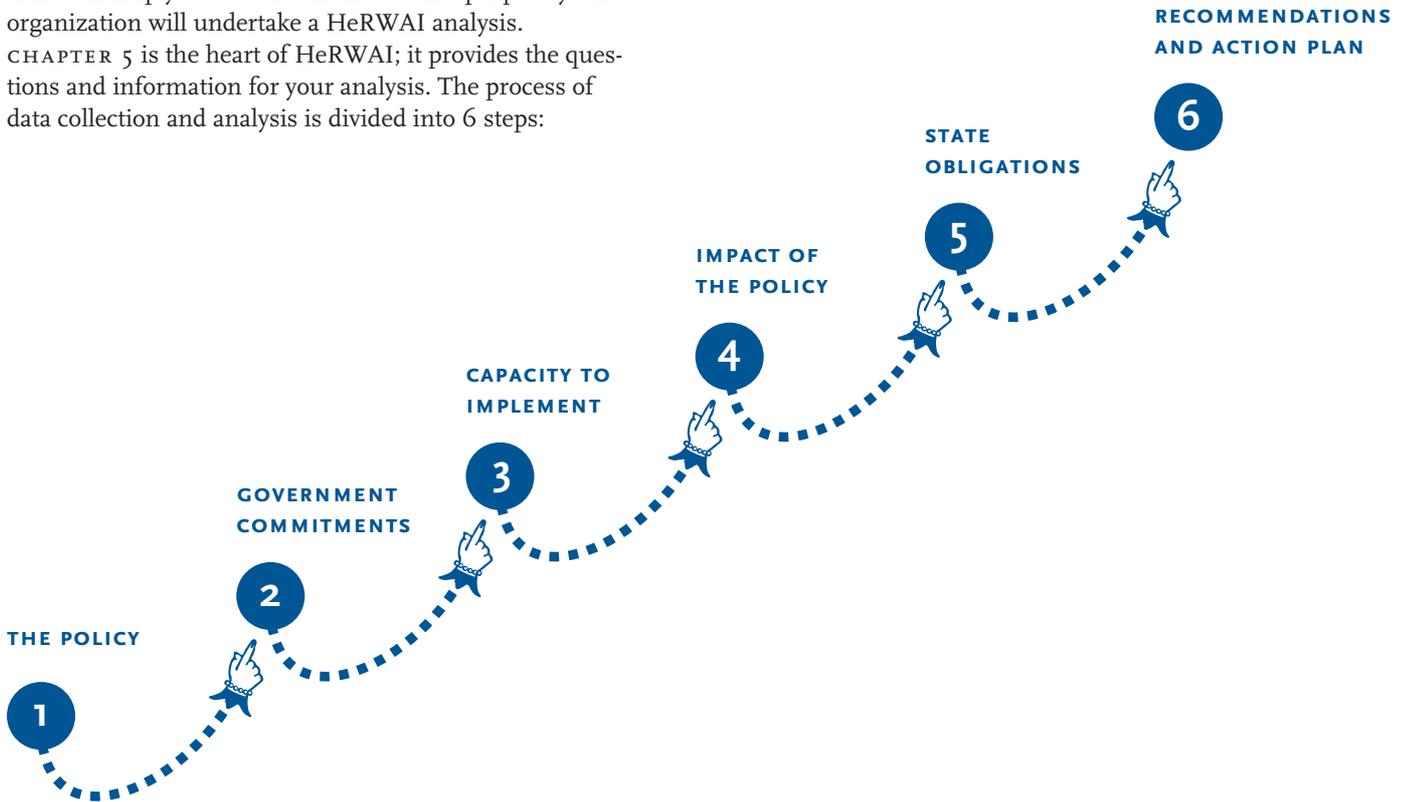
HeRWAI is structured as follows:

CHAPTERS 1 AND 2 give insight into the aim and structure of HeRWAI and the main concepts on which it is based.

CHAPTER 3 introduces principal human rights issues to those who are not yet familiar with a human-rights approach. If you have ample expertise in human rights issues, you may skip this chapter.

Reading CHAPTER 4 and answering the Quick Scan questions will help you to decide if and to what purpose your organization will undertake a HeRWAI analysis.

CHAPTER 5 is the heart of HeRWAI; it provides the questions and information for your analysis. The process of data collection and analysis is divided into 6 steps:



We strongly recommend that you read the instructions: ‘Before you start’, at the beginning of chapter 5, before answering the questions.

CHAPTER 6 encourages you to inform HOM about your experiences with HeRWAI and the effect of your activities. Your experiences may be of value in improving the instrument or inspiring others to lobby for women’s health rights.

The annexes provide additional useful information.

ABBREVIATIONS and GLOSSARY explain the abbreviations and words **highlighted** in the HeRWAI text. WORKPLAN provides suggestions for planning a HeRWAI analysis and FACTSHEETS provide formats for compiling your findings. SOURCES and REFERENCES list websites and documents containing data on women’s health rights.

HOW MUCH TIME DOES A HeRWAI ANALYSIS TAKE?

A full HeRWAI analysis may take one to three months and provides comprehensive human rights lobbying arguments. The data collection is the most time-consuming part of the process. Sound lobbying arguments need to be based on facts and not all required information will be readily available. The depth and detail of information needed varies from situation to situation. You can limit your time investment by selecting the questions which are most relevant to your situation. Instead of a full HeRWAI analysis, you can use the *HeRWAI Discussion Guide*, provided in Annex VII, to make a quick analysis of the impact of a particular women’s health rights policy. This will take you one half day to two days and gives an impression of the principal human rights issues involved.

2 Concepts and definitions

INTRODUCTION

This chapter discusses a number of concepts that form the basis of the HeRWAI analysis. It explains the choices on which the development of the instrument was based.

WHY FOCUS ON WOMEN (ONLY)?

Despite years of advocacy for equal opportunities for women, extensive discrimination against women continues to exist. Persistent discrimination against women was the reason the United Nations developed the Women's Convention (CEDAW). Discrimination against women influences health, and ill health may reinforce discrimination. The United Nations Special Rapporteur on Health states: 'Systematic discrimination based on gender impedes women's access to health and hampers their ability to respond to the consequences of ill health for themselves and their family'¹. Discrimination adds to the impact of marginalization due to poverty, age, ethnic background, religion, etcetera. Even though these factors also affect men, women face additional barriers in accessing their right to health.

WHAT IS THE RIGHT TO HEALTH?

HeRWAI focuses on women's health, and more specifically, the right of all women to enjoy the highest attainable standard of health. HeRWAI uses the following broad interpretation of the right to health:

HEALTH

Health is a state of complete physical, mental and social well being and not merely the absence of disease or infirmity. It is not confined to health care, but includes socio-economic factors and extends to the underlying determinants of health, such as resource distribution, gender, food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions and a healthy environment².

The right to health includes the availability, accessibility, acceptability and quality of health care and health determinants. Health is a fundamental right, which influences all aspects of life. It is therefore closely related to other human rights. People who are ill cannot fully enjoy their right to education or participation, whereas the lack of food and housing, for example, make it difficult to live in good health. It is important, therefore, to look at health in a broad way.

Although HeRWAI focuses on health rights this does not mean that these rights are considered more important than others. Health is an approach; all rights are equally important. Ideally, HeRWAI could serve as a model to develop instruments to measure the impact of policy on other rights, such as education or work.

WOMEN'S HEALTH IS MORE THAN REPRODUCTIVE HEALTH

Women have specific health needs related to their sexual and reproductive functions. Their reproductive systems can cause health problems, even before they start to function (girls) and when they cease to function (older women). In addition, women suffer from the same diseases of other body systems that affect men. However, women's disease patterns often differ because of their genetic constitution, the influence of hormones and gender-based role patterns. Last but not least, gender roles make women more vulnerable to certain conditions that affect health: for example, domestic violence and female genital mutilation³. In that respect, the freedom to control one's body is an important element of women's right to health. It also shows that to improve women's health rights it is necessary to reduce gender inequality.

THE PRINCIPLE OF NON-DISCRIMINATION

The principle of non-discrimination is a cornerstone of human rights principles. Discrimination based on sex is one of the prohibited grounds of discrimination⁴. In HeRWAI, discrimination is an important element of the focus on women's health rights.

DISCRIMINATION

Discrimination means 'any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.'⁵

Women and men should have equal access to health care. However, this does not just mean treating everyone the same. Such an approach ignores biological and social differences between women and men and the disadvantages women face as a result of past discrimination. Therefore, the right to non-discrimination also requires treating

¹ Hunt, P., 2003, page 16

² Adapted from ICESCR general recommendation 14, paragraph 4 and 20

³ Cook, 2003

⁴ Universal Declaration of Human Rights, article 2; CEDAW article 1 and 2; ICESCR article 2 and 3, general comment 16

⁵ CEDAW article 1

significantly different concerns in ways that adequately respect those differences. Women may require different treatment from men due to biological factors (e.g. women's menstrual cycle and menopause), socio-economic factors (e.g. girls who are vulnerable to sexual abuse) and psychosocial factors (e.g. depression and eating disorders such as anorexia and bulimia).⁶

States have important obligations with regard to discrimination:

- to eliminate not only their own discriminatory practices, but also those of individuals.
- to address direct as well as indirect discrimination. An example of direct discrimination is a law that requires married women to have spousal consent to get medical treatment, but does not require the same of men. An example of an indirect discriminatory law is one which requires everyone to pay the same amount for health care, even though the cost is unaffordable for people without paid work, such as elderly widows.
- to implement temporary special measures (where necessary) to reverse the effects of past discrimination on particular groups. An example would be a training and recruitment programme especially for female medical staff, to ensure a more equal gender balance at the management level of the health sector.
- to take measures to ensure that women and men can and do participate in society on an equal basis, amongst others by removing barriers which women face to gain access to their rights.

BARRIERS

Barriers which women face in gaining access to health facilities include high fees for health-care services, long distances to health facilities and the absence of convenient and affordable public transport.⁷

Culture and religion can also create barriers to women's health rights, for example, in the case of female genital mutilation or customs which require women to eat last. CEDAW and ICESCR stress the importance of cultural and social rights, but do not allow these to be used to violate women's rights. States which have ratified these treaties have the obligation to protect and fulfil the rights of women, including when these are restricted or denied by discriminatory cultural or social attitudes and practices.

PARTICIPATION

Another important human rights principle is that of participation.

PARTICIPATION

Participation is the process through which stakeholders (individuals and organizations) influence and share control over priority-setting, policy-making, resource allocation and access to public good and services.⁸

The participation of the population in all health-related decision-making at the community, national and international levels is an important aspect in shaping the right to health. Individuals and groups should be involved in making decisions regarding policies with the aim of achieving better health.⁹ They should also have an opportunity to make complaints about the negative effects of laws and policies. There are numerous ways through which individuals and organizations can participate: by voting in elections and referenda, through consultation in the development and evaluation stages of policy, in committees that monitor the implementation of services, etc. Because of traditional gender roles, women tend to participate less than men in political and public life.¹⁰ Involving women in decision-making therefore requires specific attention by the government.

POLICY AND ITS STAGES

POLICY

A policy is a purposive course of action followed by an actor or set of actors in dealing with a problem or a matter of concern.¹¹

Policies may vary considerably in scope. The term 'policy' can refer to a nationwide five-year health strategy or to decisions of a more limited scope, such as a reduction of funding to maternity wards in a certain district. Actors can be local or national governments, organizations, enterprises or individuals. HeRWAI mostly concentrates on the government as actor. Government policy process follows a number of stages (at least in theory):

- *Agenda-setting*: the process by which problems come to the attention of government,
- *Policy formulation*: the process by which policy options are formulated by the government,
- *Decision-making*: the process by which the government adopts a certain course of action (or non-action),
- *Policy implementation*: the process by which the government puts the policy into effect,
- *Policy evaluation*: the process by which the results of policies are monitored both by the government and by civil society and which may lead to a new set of stages.

6 ICESCR general comment 24, paragraph 12

7 ICESCR general comment 14, paragraphs 21 and 22; CEDAW general recommendation 24, paragraph 21.

8 World Bank at <http://lnweb18.worldbank.org/ESSD/sdvext.nsf/66ByDocName/ParticipationatProjectProgramPolicyLevel>

9 ICESCR general comment 14, paragraph 54, see also paragraph 11 and 17.

10 CEDAW general recommendation 19, paragraph 11.

11 James Anderson in Howlet and Ramesh, 1995, page 6.

A HeRWAI analysis can play a role in each of these stages. However, the possibility for women's organizations and NGOs to influence the process varies. During agenda-setting, policy formulation and evaluation, women's organizations and NGOs may have a particularly strong role. In other stages this may be more difficult. It is important to realize that the different stages in the policy cycle may sometimes overlap or be skipped altogether.

HEALTH REFORMS, PRSPs, MDGs AND OTHER INFLUENCES ON HEALTH POLICIES

Many countries throughout the world have introduced health sector reforms to control the costs of health services. These reforms may have serious implications for the right to health. A much-debated trend is the privatization of health related services, whereby the government allows and often stimulates the private sector to take over the provision of certain services (e.g. in private health clinics) or goods (e.g. the distribution of contraceptives). In some countries, health sector reforms are the result of **Poverty Reduction Strategy Plans** (PRSP)¹², which governments write to be eligible for soft loans from the IMF, the World Bank and donor funding. PRSPs determine the direction of sectoral policies and their budgets, including those of the health sector. The **Millennium Development Goals** (MDGs) may also have a considerable influence on health rights. This influence may be positive because the MDGs prompt governments to take action on many health related issues. But the MDGs may also have a negative effect if attention and resources are drawn away from sexual and reproductive rights, which do not have a prominent place in the MDGs. Similar discussions are taking place concerning the effects of the General Agreement on Trade in Services (**GATS**) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (**TRIPS**), which influence the price of health services and drugs. A HeRWAI analysis can show what the implications are for the health rights of certain groups of women. On the other hand, the progress reports which countries make for the PRSPs, the MDGs, etc. provide useful information for a HeRWAI analysis.

GLOBALIZATION AND THE INTERNATIONAL RESPONSIBILITIES FOR THE RIGHT TO HEALTH

Governments' first responsibility regarding the right to health is at the national level. But in a globalized world, governments have a growing responsibility at the international level. First of all, a country's actions often have impacts beyond the borders of the country. Air and water pollution are clear examples of such influence. Secondly, governments help each other on a bilateral basis, amongst other things through development cooperation. According to human rights treaties, governments have the obligation to support each other in implementing health rights. A third way in which governments have international influence is through multilateral institutions. Influential international institutions such as the World Bank are owned by

the governments of member nations, which have ultimate decision-making power within the organization on all matters. Last but not least, governments monitor each other through international agreements. These may be bilateral or multilateral, legally binding, such as CEDAW and other human rights treaties, or morally binding, such as the Millennium Development Goals. It is clear that in a globalized world, decisions at the local, national and international levels influence each other. HeRWAI aims to help its users examine these linkages.

3 Introducing Human rights

INTRODUCTION

HeRWAI is based on a human-rights approach. This chapter explains the basic notions of human rights and what a human-rights approach entails. It is meant to give some insight to those not familiar with human rights. It also explains why it is useful to apply a human-rights approach when analysing and promoting women's health rights.¹

WHAT ARE HUMAN RIGHTS?

Human rights are the rights possessed by all persons, by virtue of their common humanity, to live a life of freedom and dignity. The first and most influential document reflecting human rights is the **Universal Declaration of Human Rights** of 1948. It is the predecessor of the major human rights treaties. The declaration recognizes the *inherent dignity and equality of all human beings*, a notion that lies at the heart of all human rights. Some other features of human rights are listed below:

- Human rights are fundamental, because individuals need them to survive, to develop and to contribute to society. They are the primary means for every person to develop their full potential.
- Human rights are not granted by governments or by international law. Every individual has human rights and is entitled to all of his or her human rights by virtue of being human.
- Human rights are inalienable. They cannot be taken away from a person or fully denied to a person by the State, whatever the condition or circumstances may be.
- Human rights are universal. This means that every human being is entitled to human rights, regardless of gender, race, age, ethnicity, citizenship, religion, disability and other status.
- Human rights are **indivisible**; they are closely connected. The realization of the right to health, for example, is closely connected to the realization of other human rights, such as the right to education, food and an adequate standard of living.

Article 1 of the Universal Declaration of Human Rights states:
'All human beings are born free and equal in dignity and rights'.

WOMEN'S RIGHTS ARE HUMAN RIGHTS

Even though all general human rights treaties, such as the **ICCPR** and the **ICESCR**, include a provision on the equality of men and women, this has not proved sufficient to elimi-

nate discrimination against women. Despite the adoption of **ICCPR** and **ICESCR** in the mid-1960s, grave forms of discrimination against women still continued to exist worldwide. Therefore, **CEDAW** was developed, to focus on the elimination of discrimination of women in a broad sense. By adopting this treaty in 1979, States recognized that special attention needed to be given to women's human rights. CEDAW clearly defines what discrimination against women means and what States should do to prevent discrimination of women. Even though today – more than 25 years after its adoption – there is still a gap between respect for women's rights on paper and in practice, CEDAW provides a good basis to claim justice and equality for women throughout the world.

WHY A HUMAN-RIGHTS APPROACH?

Human rights treaties are the foundation of a **human-rights based approach**. States have the obligation to **respect, protect and fulfil** the human rights laid down in the treaties they have signed and **ratified**. When applying this to women's right to health, this means that governments are not allowed to interfere with or to limit the health rights of women (obligation to respect) and that they should restrain others – companies for example – from interfering with the health rights of women (obligation to protect). Moreover, the government should do all it can to make sure that women achieve *the highest attainable standard of health* (obligation to fulfil). In other words, when speaking of human rights we do not speak of mere aspirations by States or the needs of those claiming their rights, but of obligations for governments. Keeping this in mind, it can be said that:

- A human-rights based approach is based on the idea that every human being has human rights. States are responsible for the realization of these human rights. This means that citizens can hold the State accountable for its obligations to respect, protect and fulfil human rights.
- The basis of a human-rights approach is that a human rights violation needs to be addressed, even when the number of people involved is small or not precisely known. In other words, each human rights violation stands on its own and should be taken seriously. A decrease in numbers of a certain type of human rights violation is a positive development, but does not excuse other violations still taking place.
- A human-rights approach to women's health means monitoring the way women enjoy, exercise and claim their health rights and to what extent those rights are recognized by others.

¹ This chapter is based on input from María Herminia Graterol and 'Building Capacity for Change: A Training Manual on the UN Convention on the Elimination of All Forms of Discrimination Against Women', IWRAW-Asia Pacific, 2004.

WHY USE INTERNATIONAL HUMAN RIGHTS TREATIES?

A human rights **treaty** (or **covenant** or **convention**) is a written document binding States under international law. All countries that have agreed to be bound by international human rights treaties through **ratification** or **accession** have a legal obligation to implement these rights and principles at the national level.²

The main international human rights treaties are:

- CEDAW – Convention on the Elimination of All Forms of Discrimination against Women
- ICESCR – International Covenant on Economic, Social and Cultural Rights;
- ICCPR – International Covenant on Civil and Political Rights;
- CERD – Convention on the Elimination of Racial Discrimination;
- CAT – Convention Against Torture;
- CRC – Convention on the Rights of the Child;
- CMW – Convention on the Protection of the Rights of Migrant Workers and Members of their Families.

Human rights treaties lay down important principles. CEDAW, for example, states that women and men must have equal rights with regard to health care and – at the same time – that governments examine the specific health needs of women. Committees of independent experts (**treaty-monitoring bodies**) monitor the implementation of a certain treaty. They study reports on the implementation of the treaty that States have to submit regularly. Women's organizations and NGOs can provide important input to this process via so-called **shadow reports**. Some treaties offer the possibility for individuals to submit complaints to a treaty-monitoring body. In the case of CEDAW, this is done through an **Optional Protocol**, which States must ratify separately. Annex V Sources provides links to the most relevant international and regional treaties.

HUMAN RIGHTS AND INTERNATIONAL RESPONSIBILITIES

Human rights are generally associated with national obligations and policies. However, it is important to realize that human rights also include international obligations and that many international decisions by States impact on human rights. For example:

- Being party to a *human rights treaty* not only means that governments must take action within their own borders, but also that they should assist other governments in the full realization of the human rights laid down in the treaty. Development cooperation, both financial and technical, is an important way of providing such assistance.

- As a general rule, governments have to make sure that no *international agreement* they sign or policy they make has a negative impact on human rights. This also includes trade agreements.
- States can also consent to *political agreements*. These are not legally, but morally binding and may have an important international status. The Millennium Development Goals are an important example of such agreements.
- *National action* can also have an effect beyond the borders of a country. Setting standards for air and water pollution are clear examples of such influence.
- Decisions by *influential international institutions*, such as the World Bank, can have an important impact on human rights. It is important to realize that these same institutions are owned by the governments of member nations, and that those governments generally have the ultimate decision-making power within the organization on all matters.

From the above it is clear that in a globalized world decisions at the local, national and international level influence each other. HeRWAI aims to help its users examine these linkages.

² This is the main difference with consensus documents, such as the outcome documents of world conferences and the UN General Assembly resolutions, which entail a moral, but not legal, duty to implementation.

4 The Quick scan

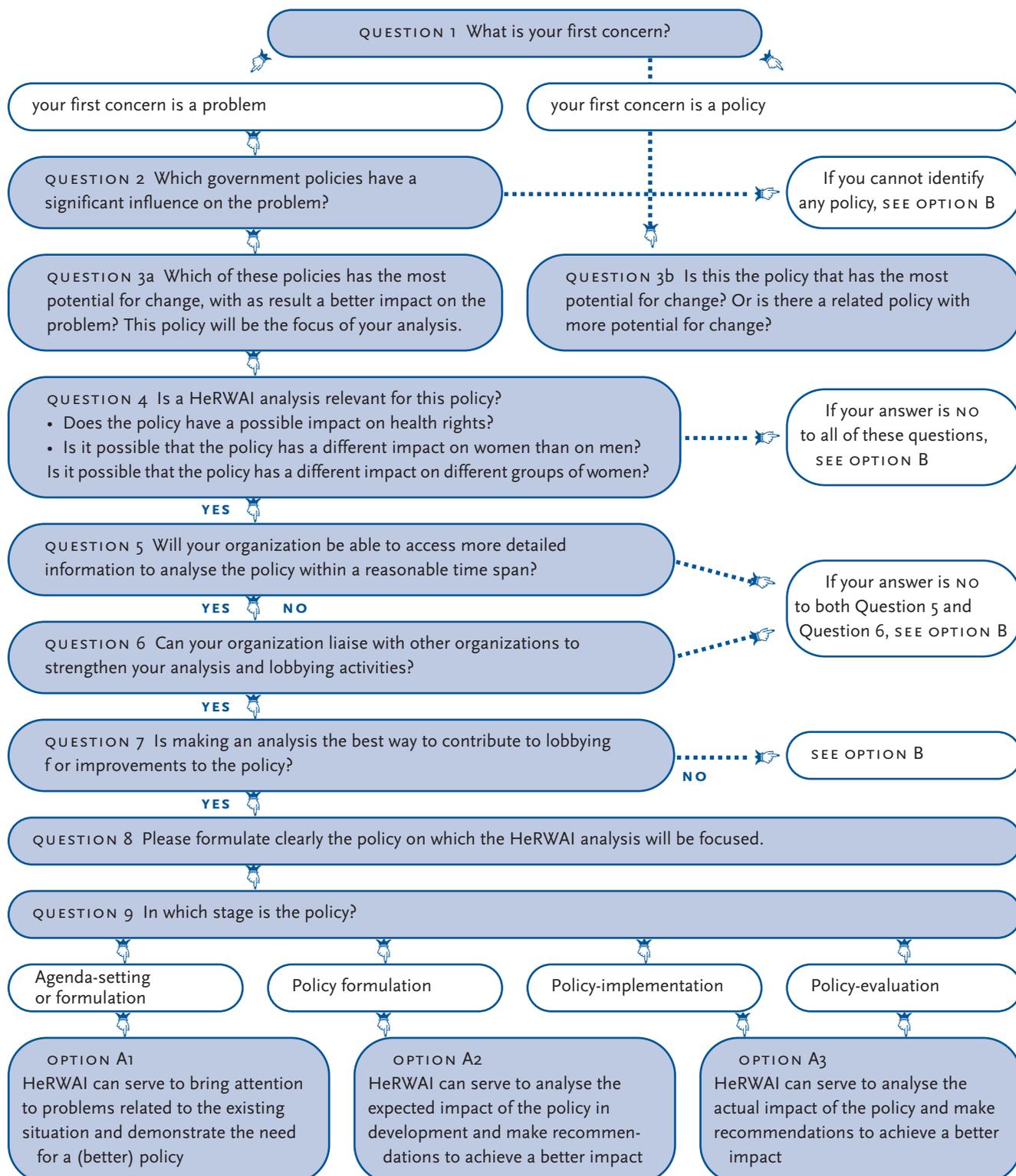
PURPOSE

The purpose of the quick scan is threefold:

- To link problem to policy;
- To select a policy;
- To find out if it is relevant to use HeRWAI for assessing this policy.

The quick scan provides a format to achieve the above purposes. You can discuss the questions on the basis of readily available data and your own experience. Some of the questions of the quick scan will reappear in the analysis, at which point they will require more detailed data.

Please consider contacting HOM to see whether we can be of assistance in selecting a policy, carrying out the quick scan or in the starting phase of the analysis: www.hom.nl or s.bakker@hom.nl.



OPTION B

Even though HeRWAI was not designed for your particular situation, you can still use parts of the instrument to analyse your problem or policy. Below are some suggestions for doing this:

- **IF QUICK ACTION IS NEEDED**

In this case the 'Discussion Guide' (see Annex VII), may help you to do a quick analysis of the human rights issues at stake.

- **IF THERE IS NO POLICY TO ADDRESS**

In some situations, there is no policy at all to address the problem. You can use HeRWAI to analyse the impact of the lack of policy. However, this does mean that you will need to interpret/ adapt some of the questions. For example, you will have to read 'lack of policy' when the questions state 'the policy'.

- **IF YOU ARE CONCERNED ABOUT POLICIES OF OTHER ACTORS**

The focus of HeRWAI is on government policies. However, you may be confronted with the policy of another actor, such as non-governmental organizations or companies. In this case you can decide via questions 2 and 3a which policy the government should use to influence the actions of the other actor. The end product of the HeRWAI analysis will

be recommendations to the government to ensure a better impact of its actions on the other actor. Alternatively, you may decide to analyse the policy of the other actor. In this case some of the HeRWAI questions will not apply, as the focus is on the responsibilities of the government.

- **OTHER RIGHTS**

HeRWAI is based on the right to health; however, you could apply the logic of HeRWAI (the six steps) to analyse the impact of government policy on other rights.

- **IF THE POLICY IS NOT EXPECTED TO HAVE A DIFFERENT IMPACT ON WOMEN THAN FOR MEN**

HeRWAI is strongly based on the principle of non-discrimination of women. Therefore, HeRWAI may not be the best instrument to analyse the policy if the policy has an equal impact on women and men. However, it may still serve to analyse a policy which you expect to have a discriminatory impact on another group of people, such as a specific ethnic or religious group, people with a handicap, or people with diseases such as HIV AIDS.

ABOUT THE QUICK SCAN

Quick scan question 1:

Is your first concern a problem or a policy?

EXPLANATION You may be alarmed either by a problem your organization has signalled or by a **policy** of the government. When you are concerned about a certain *problem* it is important to consider the following: governments cannot be blamed for each individual health problem. After all, the right to health does not mean that people have the right to be healthy. However, you can hold a government accountable for what it does to prevent or reduce health problems. This is why, in cases where the first concern is a specific problem, HeRWAI asks you to link it to related government policies. An example of a problem as a starting point is high maternal mortality in Bangladesh, about which women's organizations are concerned.

As regards *policy*, it is important to note that HeRWAI uses the term policy to refer to any kind of government measure. Policy can take the form of laws, a national health strategy, a decision to allocate resources, etc. Examples of a policy as a first concern are the Bangladesh National Strategy for Maternal Health or the decision of the Dutch government to take the most popular contraceptive, the pill, out of public health insurance coverage. If you are confronted with policies of other actors we refer you to option B.

Quick scan question 2:

Which government policies have a significant influence on the problem?

EXPLANATION Policies (and their funding) are the main tool of governments to address problems. In cases where the first concern is a problem, you need to consider which government policies can or should influence the problem. Usually a combination of policies influences a problem. As it will not be possible to address all policies at once, you will need to select a policy. This policy will be the focus of your analysis. The relationship between policy and problem may be negative (the policy causes or reinforces the problem), neutral (no effect) or positive (it reduces the problem). Analysing a 'neutral' or 'positive' policy is relevant if you expect that changes to the policy could result in a better impact on the problem. In the above example of Bangladesh, various policies influence the problem of maternal mortality: the training curriculum of birth attendants, the bonus system which encourages health workers to focus on contraception rather than on safe deliveries, the referral system which should ensure that women with complications reach specialized health facilities in a timely manner, etc.

Quick scan question 3a:

Which of these policies has the most potential for change, with as result a better impact on the problem?

EXPLANATION Please note, 3a is only to be answered when your first concern is a problem and then you do not need to answer question 3b. You need to select the policy

with the most potential for change, and which is most likely to succeed in addressing the problem. This will be the policy on which to focus the HeRWAI analysis. In the Bangladesh example, a women's organization may choose the bonus system for the HeRWAI analysis, because it has observed that bonuses are very motivating for low-paid health workers and because the system is going to be revised in the coming period. While recognizing that a more favourable bonus system alone would not be enough to eliminate the problem of preventable maternal deaths, it could play a role in reducing the problem.

Quick Scan question 3b:

**Is this the policy that has the most potential for change?
Or is there a related policy with more potential for change?**

EXPLANATION Please note, 3b is only to be answered when your first concern is a policy and then you do not need to answer question 3a. Government policies are connected with other policies, and thus, the policy you are concerned about is also connected to other policies. It is important to consider which other policies are closely connected to this policy and to assess whether the policy you are concerned about has the most potential for change or whether you should shift your focus to another policy.

Quick scan question 4:

Is a HeRWAI analysis relevant for this policy?

- Does the policy have a possible impact on health rights?

EXPLANATION The policy you select should have an impact on women's health rights. HeRWAI can help to analyse health policies as well as non-health policies that have an impact on women's health. For example, a lack of pregnancy leave in the employment laws of a country can have a great impact on the health of women.

- Is it possible that the policy has a different impact on women than on men?

EXPLANATION As HeRWAI is designed to examine the impact of policy on women's health, HeRWAI is most suitable if you expect a different impact on women than on men.

- Is it possible that the policy has a different impact on different groups of women?

EXPLANATION If it seems that the impact of the policy is similar on men and women, it is still important to consider whether a specific – vulnerable – group of women is more affected by the policy than others. And, if a different impact on women is determined it is necessary to take into account whether certain groups of women are more affected by the policy. The impact may be different on various groups of women, such as women with different backgrounds or in different stages of a **woman's life cycle**. For example, poor women, rural women, elderly women or women with certain ethnic backgrounds may be more affected by the policy than young, rich, urban women.

Quick scan question 5:

Will your organization be able to access more detailed information to analyse the policy within a reasonable time span?

EXPLANATION 'Reasonable' depends both on the time which your organization has to spend and on deadlines that need to be met to be able to influence the government.

Quick scan question 6:

Can your organization liaise with other organizations for this purpose?

EXPLANATION A liaison with another organization or organizations may help to collect the necessary information, as well as to strengthen your lobbying and advocacy activities. A liaison between women's organizations, health and human rights organizations may be particularly fruitful.

Quick Scan question 7:

Is making an analysis the best way to lobby for improvements to the policy?

EXPLANATION A HeRWAI analysis will help you to formulate strong arguments which you can use in lobbying for improvement of the policy, directed at the government or other actors. You can also use the outcome of the HeRWAI analysis for other purposes, for example, to publish in a report or to integrate into a shadow report for the CEDAW Committee. However, in some cases a HeRWAI analysis may not be the best strategy. For example, in Kenya it was decided not to select the Sexual Offence Bill for analysis, because the issue was already very sensitive and the government was about to adopt a law. In this case, the analysis may have been counterproductive and arguments for improvement of the text may have resulted in non-adoption of the law.

Quick scan question 8:

Please formulate clearly the policy on which you will focus the HeRWAI analysis.

EXPLANATION It is important to clearly formulate the policy, so it is obvious to everyone what the focus of the analysis is. Where possible, you may use the formulation which the government itself uses to describe the policy. If you do not have that information at hand it is sufficient to state the name and selected elements of an existing policy, or to describe the policy in key words. It is also important to consider whether you should narrow down your focus, so you can come up with concrete recommendations to your government at the end of the analysis. For example, the Johannes Wier Society in the Netherlands first wanted to analyse street prostitution in the Netherlands. When they realized that each municipality has its own policy they decided to narrow down the focus of the analysis to two large municipalities. You may also decide to limit your focus within the frame of a broader policy. In Bangladesh, for example, Naripokkho decided to analyse only those parts of the maternal health policy that related to Eclampsia.

Quick scan question 9:

In which stage is the policy?

EXPLANATION The policy process in governments follows (at least in theory) a number of stages:

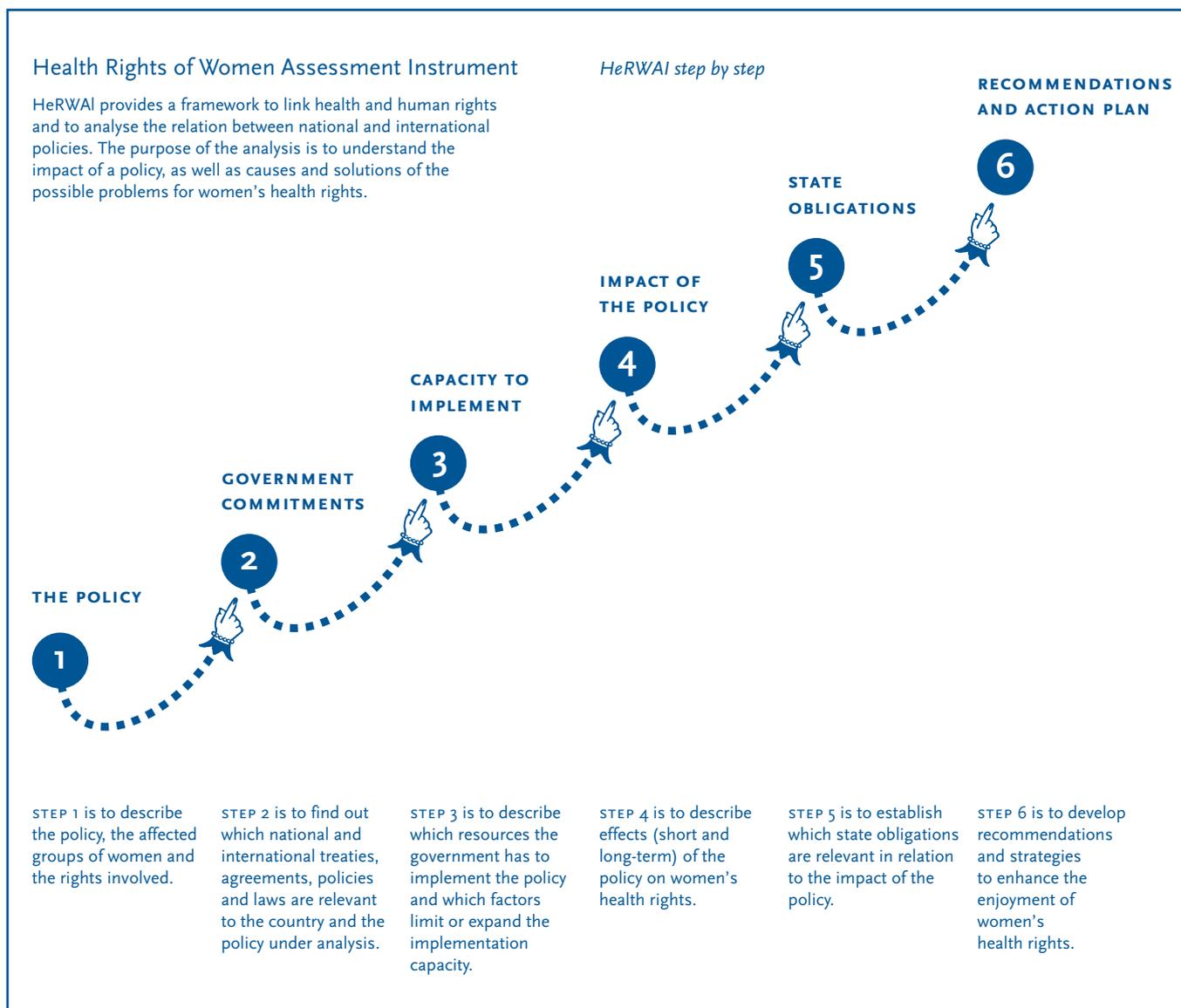
- Agenda-setting; the process by which problems come to the attention of government,
- Policy formulation; the process by which policy options are formulated by the government,
- Decision-making; the process by which the government adopts a certain course of action (or non-action),
- Policy implementation; the process by which the government puts the policy into effect,
- Policy evaluation; the process by which the results of policies are monitored, both by the government and by civil society, and which may lead to a new round of stages.

In each of these stages a HeRWAI analysis can play a role. However, the possibility for women's organizations and NGOs to influence the process varies. During agenda-setting, policy formulation and evaluation, women's organizations and NGOs may have a particularly strong role. In other stages it may be more difficult. It is important to realize that in practice different stages in the policy cycle may overlap or be skipped altogether.

5 HeRWAI the analysis in 6 steps

INTRODUCTION

Chapter 5 is the heart of HeRWAI as it provides the questions and information that will guide your analysis. The process of data collection and analysis is divided into 6 steps.



Each of these steps consists of a brief explanation of the main human rights issues related to the step concerned, followed by a number of questions to guide the data collection and analysis. The questions are closely related to the texts of the international treaties. Explanations, examples and checklists help you to answer the questions. Each step ends with a conclusion, in which you summarize the most important findings for that step.

HOW TO GO ABOUT IT

The steps provide a structure for the HeRWAI analysis. Steps 1 to 5 guide you in the data collection and analysis. In the sixth and last step you will compile the information in such a way that it can be used to lobby for improvements in the policy and prepare your action plan. As you work, you may go back and forth between the steps. Where possible, collect quantitative and qualitative data demonstrating the impact of the policy. Reliable qualitative and quantitative data support your arguments. Please be aware though that quantity does not decide whether or not human rights are violated. If discrimination takes place, this is a violation of human rights, regardless of the number of people who are discriminated against.

BEFORE YOU START

Please keep the following in mind while making the HeRWAI analysis:

FOCUS The collection of data is an important but time-consuming aspect of the analysis. We therefore recommend that you focus on data that have relevance for the policy.

SELECTIVENESS You need to answer only those questions which you find relevant for the policy you are analysing. Questions that have little or no relevance to your situation may be skipped. You can also be selective in the level of detail. Only go into detail if you expect this information to be necessary for your analysis or lobbying. At some points you may want to add questions that are specific to your situation.

MAKING A WORK PLAN We recommend that you read through the steps before answering the questions, to get an idea of which information you will need to collect. You will need to involve people from within and outside your organization for data collection and to discuss findings. Making a work plan will help to plan this process. *Annex III Work plan* gives suggestions for such a work plan.

Identifying the policy

PURPOSE

In this step you will define the focus of your analysis. You can do this by describing the problem and the policy that you have decided to analyse, the affected groups of women and the rights that are involved. Some of the questions have already been discussed while making the Quick scan. Here you note the answers in a way that forms the basis for further analysis. You can also use this information to clarify for others what is included in the analysis and what is not.

HUMAN RIGHTS ASPECTS OF GOVERNMENT POLICIES

On the basis of human rights treaties, governments have the responsibility to do everything in their power to ensure the realization of the right to health. They must take deliberate, concrete and targeted steps to ensure that all individuals can enjoy the highest attainable standard of health. Governments also have to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise and to ensure the full development and advancement of women. This means that policies should not have a discriminatory impact on women's health rights.¹

THE MOST AFFECTED GROUPS.

When outlining the policy, it is important to describe who will be affected by it. The groups that are most affected by the policy are the groups on which you should focus in the following steps. The affected groups may be the same or may differ from the groups which the government policy is intended to reach. It is also important to consider whether specific subgroups of women may be more affected than others. Certain groups of women are particularly vulnerable in relation to their health rights, such as girl children, rural women and women living with HIV/AIDS. The 'most affected groups' also refers to women in various life stages ([life-cycle approach](#)). In addition, you need to examine whether certain groups of women are excluded from the beneficial effects a policy may have. For example, it often happens that contraceptive methods are not made available to unmarried women. If different groups may be affected by the policy, the data to be gathered in the rest of the assessment process should be disaggregated according to these groups (e.g. rural/urban, minority women, girls and elderly women).

RIGHTS AFFECTED

The HerWAI analysis focuses on health rights. But within or related to health rights, a number of more specific rights may be affected and these may influence the type of information you need for the following steps. For example, the lack of maternity leave for pregnant women in the private sector in Kenya affects not only women's right to health but also their right to work. In step 1, you make a first rough assessment of the rights involved in the policy. The issue of rights affected will be worked out further in step 4 and at that point, you may want to add on or change the rights you first listed.

THE KEY QUESTIONS

Which (problem and related) policy will be analysed? (page 20)

Which groups are affected by the policy? (page 21)

Which rights are affected by the policy? (page 22)

WHERE TO FIND THE INFORMATION

You may find relevant information to answer the following questions in:

- Government policy documents/websites,
- Websites of human rights organizations (see Annex V Sources),
- Articles and studies describing the policy,
- Interviews with women affected by the policy,
- Government reports and NGO reports to UN bodies,
- National Human Rights Institutes/ Commissions, National Ombudsmen.

¹ ICESCR general comment 14, paragraph 30; CEDAW article 2, 3 and 4.

QUESTIONS AND EXPLANATION

WHICH (PROBLEM AND RELATED) POLICY WILL BE ANALYSED?

S1/Q1 (If the starting point is a problem) describe the problem in maximum 1 page

EXPLANATION: You can skip this question if your starting point is a policy.

S1/Q2 Which 'main' policy will be the focus in the HeRWAI analysis? Why has this policy been selected?

EXPLANATION: If you decided to focus on one specific policy (chosen from various policies), you need to explain why you made this choice. Describe only the chosen policy in depth, while briefly referring to the others.

S1/Q3 Who is the main actor implementing the policy?

EXPLANATION: The main actor for implementing the policy should not be confused with who is responsible for developing or supervising the policy. For example, while the government may be responsible for the development and official approval of a training curriculum for health workers, the training institutes are the main actors implementing it. If the policy does not clearly identify the actors responsible for the implementation of the policy, this is already a conclusion in itself. However, you could still contact the responsible ministry, to see whether they can provide you with this information.

Checklist of actors (non-exhaustive)

- **Government** (which ministry, department, district or governmental institution such as government hospitals; local, regional or national),
- Private sector; e.g. clinics, pharmaceutical industry,
- Non-governmental organizations,
- Health professional associations,
- Training institutes,
- Research institutes,
- International actors, such as
 - Government of neighbouring or other country,
 - Multinational or transnational corporations,
 - International non-governmental organizations,
 - Funding agencies,
 - International financial institutions,
- Other relevant actors.

S1/Q4 What does the government aim to achieve with this policy?

EXPLANATION: this refers to the officially stated aim (e.g. improving the health of women by providing contraceptives), which may differ from what the government actually wants to achieve (e.g. control of population growth).

S1/Q5 What is the actual effect of the policy on women's health?

EXPLANATION: There may be a difference between what the government wants to achieve or states it wants to achieve and the effect a policy has in practice. It is possible that a policy will have a different effect than foreseen or no effect at all. For example, a maternal health policy can have the ambition to ensure safe pregnancy and delivery to all pregnant women, but may fail to do so due to the lack of human resources or physical facilities. In answering the question you can limit yourself to general observations. You will make a more in-depth analysis of the impact of the policy on women's health in Step 4.

S1/Q6 Are there special programmes to implement the policy? Who is responsible for these programmes?

EXPLANATION: Often special programmes 'flesh out' a policy; they specify in detail how the policy should be implemented and which human and financial resources are to be used.

S1/Q7 Are there protocols and regulations to guide the implementation of the policy? Do they include a description of the exceptions?

EXPLANATION: For example, if a protocol regarding safe methods of abortion states that the maximum duration of a pregnancy is ten weeks, does it allow exceptions in cases of rape or when the life of the pregnant woman is in danger?

WHICH GROUPS ARE AFFECTED BY THE POLICY?

S1/Q8 Which groups does the government (or other main actor) intend to reach with the policy?

EXPLANATION: Generally a policy has a specific target group. For example, in the case of the safe motherhood policy of Bangladesh the government intends to reach all women of child-bearing age and pregnant women.

S1/Q9 Which groups does the policy actually affect (positively or negatively)?

- Identify and describe subgroups of women or stages in women’s life for which the policy has a different impact than for others.

- Do these groups correspond with the intended target groups in question 8?

EXPLANATION: The groups affected by the policy may be the same or different to the intended target groups which were mentioned in question 8. It is also important to consider the impact on different groups of women, as the same policy may affect some groups of women in a different way than others. Also consider the impact for so-called *vulnerable or marginalized groups*, who are more likely to face negative effects or to be excluded from positive effects. They also have fewer opportunities to claim their rights. For example, centralization of services can be beneficial to those living in towns, while negatively affecting women living in rural areas where services have been closed down. It is also good to be aware of intentional or unintentional exclusion, such as awarding attention only to women of reproductive age and not to elderly women or girls.

Please note: The effects themselves will be described in step 4.

Checklist of vulnerable or marginalized groups:

- Girl children and adolescent women;
- Unmarried sexually active women;
- Women in violent relationships;
- Female sex workers;
- Women of post-child bearing age;
- Rural women;
- Refugees;
- Ethnic minorities and indigenous populations;
- Women with physical or mental disabilities;
- Women living with HIV/AIDS;
- Other relevant groups.

BASED ON: CEDAW General Comment 24, paragraph 6.

S1/Q10 What are the perceptions of the affected groups regarding the problem and related policy?

EXPLANATION: Rather than just talking about people, it is a good idea to talk with them if possible and find out their views. Have the affected groups received adequate information about the policy? Are they aware of the possible impacts on their health rights? Which effects do they consider most problematic? What do they expect from the government with respect to their health rights? If you do not have the time or resources to contact the groups affected you could consider contacting grassroots organizations that are in direct contact with the affected groups for information. Or you could interview 1 or 2 persons affected and use this as a case or example in your report.

QUESTIONS AND EXPLANATION

WHICH RIGHTS ARE AFFECTED BY THE POLICY?

S1/Q11 Which human rights may be affected?

EXPLANATION: The right to health is closely related to and dependent upon the realization of other human rights. These rights and freedoms address integral components of the right to health. In Pakistan, for example, the World Population Foundation looked at the possibility to include life skills training in the school curriculum. Life skills training addresses issues related to sexuality and reproductive rights through education. In other words, the right to education is closely related to the right to health, especially as regards access to health care and information about health and health rights.

Checklist of other rights affected:

- right to food,
- right to housing,
- right to work,
- right to education,
- right to human dignity,
- right to life,
- right to non-discrimination,
- right to equality,
- the prohibition of torture,
- right to privacy,
- right to access to information,
- freedoms of association, assembly and movement,
- right to bodily integrity,
- other relevant rights.

BASED ON: ICESCR General Comment 14, paragraphs 3 and 8.

CONCLUSION

To sum up, what is the focus of your analysis?

A brief formulation of the focus of your analysis will help you to keep your focus during the next steps. You can base this on your answers to the above questions. You could use the Fact sheet in Annex IV to create an overview of your conclusions in this and the following steps.

Exploring the government's commitments

PURPOSE

The main question to be answered in step 2 is: which commitments has the government made? You will explore which national and international agreements, policies and laws are relevant to the country and the policy under analysis. This includes both legally binding agreements such as human rights treaties and consensus documents such as the Beijing Platform for Action. You will also look at the procedures by which civil society can participate in decision-making (the formal participation mechanisms). The focus in step 2 will be on what is on paper, the so-called 'de jure' situation. You will use this information for a comparison with what is actually happening, the so-called 'de facto' situation, in step 3 and 4.

The purpose of analysing government commitments is to find out which standards you can use to hold the government accountable for the possible negative impact – or the lack of positive impact – of the policy. You look for the most specific commitments, because these make it easier to formulate your claims to the government. If your country has not ratified the relevant human rights treaties, it will be more difficult to make such claims. This may mean that you need to shift the focus of your lobbying from a specific policy to lobbying for ratification of the relevant treaties.

HUMAN RIGHTS ASPECTS OF GOVERNMENT COMMITMENTS

Many of the commitments that countries make by ratifying human rights treaties require changes on the national level. States must recognize the right to health in their political and legal system.¹ They have to abandon any laws or measures that have a discriminatory impact. Inclusion of the provisions of a treaty in national legislation may make it easier for people to claim their rights. States should also adopt a national health policy with a detailed plan for realizing the right to health. In international relations, such as trade relations or development cooperation, countries have to respect the human rights of people living in other countries and they should influence each other through legal and political means to encourage compliance with human rights².

TREATIES

Practically all countries are bound by a number of international agreements to exercise women's rights and the right to health. Besides **CEDAW** and **ICESCR**, which form the basis of HeRWAI, a number of other international or regional human rights treaties may be relevant. If a State has **ratified** a treaty, it is legally bound to implement it. Below you will consider the **treaties** your country has ratified.

CONSENSUS DOCUMENTS

Consensus documents are documents which have been adopted by declaration. Though they are not legally binding, these documents are important because governments have a moral obligation to abide by them, as they are based on political agreement. Famous examples of consensus documents are the Beijing Platform for Action and the Millennium Development Goals.

Please note: You can easily get lost in the piles of treaties and consensus documents that exist. We therefore advise you to limit your analysis to those treaties and consensus documents that contain the rights and clauses that are most relevant in relation to your policy.

THE KEY QUESTIONS

Which treaties and consensus documents are relevant? (Page 24)

What does the national legislation say about women's right to health? (Page 26)

Does the government have a national health strategy and/or other relevant policies? (Page 26)

How is the participation of civil society organized? (Page 28)

WHERE TO FIND THE INFORMATION

You may find information to answer the above questions in:

- Websites with information on international treaties and ratification:
www.ohchr.org/english/law/index.htm (UNHCHR),
www1.umn.edu/humanrts/treaties.htm (Human Rights Library of the University of Minnesota);
- Annex V Sources for websites of regional organizations;
- Annex V Sources for direct links to websites with the text of the treaties and consensus documents mentioned in question 1-3;
- Civil code and related legal documents;
- National plans (such as five-year plans);
- National budget;
- National and international policy documents and reports;
- Websites of local, regional and national government

¹ ICESCR General Comment 14, paragraphs 34-36 and 60.

² ICESCR article. 2 (1); ICESCR General Comment, paragraphs 39 and 63-65.

QUESTIONS AND EXPLANATION

WHICH TREATIES AND CONSENSUS DOCUMENTS ARE RELEVANT?

S2/Q1 Which international treaties has your country ratified? Were any reservations or limitations made?

EXPLANATION: It is important to check whether the State has made any **reservations** (sometimes disguised as **declarations**) as these may limit the scope of application of the human rights concerned. However, reservations are only permitted under certain conditions. We therefore advise you to check whether a reservation or limitation made by your government is valid or not. For example, Egypt has made a general reservation with regard to article 2 of CEDAW, stating that 'the Arab Republic of Egypt is willing to comply with the content of this article, provided that such compliance does not run counter to the Islamic Sharia.' The CEDAW Committee has requested Egypt to withdraw its reservation, because it is not in line with the *object and purpose* of the convention. Please refer to the glossary for more information about reservations, declarations and limitations.

The checklist below lists treaties and articles that may be relevant in relation to women's health. However, you could still review these and other treaties to see whether they contain *other* relevant rights and clauses in relation to your policy.

Checklist of international treaties relevant to women's health rights:

- *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*: Article 12 on health, General Recommendation No. 14 on female circumcision; General Recommendation No. 19 on violence against women; General Recommendation No. 24 on health; see also articles 5 (b), 10, 11 on (family) education and employment; and 1, 2 and 3 on discrimination in general.
- *International Covenant on Economic, Social and Cultural Rights (ICESCR)*: Article 12; General Comment No. 14 on health; General Comment 16 on the equal right of men and women to the enjoyment of all economic, social and cultural rights; General Comment 5 on persons with disabilities; General Comment No. 6 on older persons.
- *Other international treaties*, such as: the ILO conventions that are related to occupational safety and health; the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), Art. 5; Convention on the Rights of the Child (CRC), articles 24 and 25; the Convention on Migrant Workers (CMW), Art. 7.

S2/Q2 Which relevant regional treaties has your country ratified?

EXPLANATION: Regional treaties can play an important role in the implementation of women's health rights. Most regional treaties are monitored by a regional commission and/or court which can make legally binding decisions. Below you will find a checklist of treaties that are relevant to women's health rights. However, you may decide to include other regional treaties, articles or instruments that are relevant to your policy and regional context. Annex V Sources lists the names of relevant regional organizations in Africa, Latin America and Europe.

Checklist of regional treaties relevant to women's health rights (non-exhaustive):

AFRICA:

- African Charter on Human and Peoples' Rights (1981), Art. 16.
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003), article 14 on health and reproductive rights.

ASIA:

- No relevant regional instruments to date.

EUROPE:

- European Convention on Human Rights (1950). No specific article on health, but article 14 (non-discrimination) could be relevant in relation to any of the rights included in the treaty, for example: article 8 on family life, Art. 5 on the right to liberty and security of persons or article 4 on slavery and forced labour.
- European Social Charter (1961), article 11.

THE AMERICAS:

- American Convention on Human Rights (1969). No specific article on health, but the following articles could be relevant: article 24 (equal protection before the law) and article 1 (non-discrimination) in relation to any of the rights included in the treaty, such as article 4, right to life; Art. 5, right to physical, mental and moral integrity; article 6, prohibition of slavery or involuntary servitude.
- Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988), article 10.
- Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, 'Convention of Belem do Para' (1994).

s2/Q3 Which consensus documents does your government support?

EXPLANATION: The checklist presents a selection of consensus documents that are most relevant to women's right to health. In order to see whether your government supports a consensus document you can check whether the government is a member of an international organization or organ that has adopted it (for example, most probably your government is a member of the UN, and if this is the case, it is also a party to the resolutions adopted by the UN General Assembly); or whether your government has committed itself in another way to the consensus document (for example, by expressing its commitment to it in the press).

Checklist of consensus documents:

- Beijing Platform for Action, paragraph 89-105, Strategic objective C1-C5.
- United Nations Millennium Declaration, paragraph 25 (2000).
- **Millennium Development Goals (MDGs)**: Goal 3: Promote gender equality and empower women, Goal 5: Improve maternal health, Goal 4: Reduce child mortality, Goal 6: Combat HIV/AIDS, malaria and other diseases, Goal 1: Eradicate extreme poverty and hunger, Goal 7: Ensure environmental sustainability. See also the targets and indicators mentioned in the MDGs.
- ICPD Programme of Action (or: Cairo Programme of Action), Report of the International Conference on Population and Development (ICPD) (1994).
- Declaration of Alma Ata, adopted on the International Conference on Primary Health Care (1978).
- Declaration on the Elimination of Violence against Women (1993).
- Declaration of Commitment on HIV/AIDS, 'Global Crisis-Global Action' (2001).
- Declaration on the Right to Development (Vienna Declaration and Programme of Action) (1993), Article 41 on women's health.
- Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (1991).
- Declaration on the Rights of Disabled Persons General Assembly Resolution 3447 (xxx) (1975), Article 5 (e) (iv).
- Other relevant instruments, such as regional agreements or agreements on a specific subject, such as trafficking.

s2/Q4 Is the government bound to other bilateral or multilateral agreements which may influence the policy? Which ones?

EXPLANATION: The influence of international agreements on the policy can be positive and negative. An example of positive influence is when countries have agreed to work together to address a certain problem. An example of negative influence is the system of patenting medicines, which makes it difficult to put cheaper, locally produced medicines on the market.

Checklist of other international agreements:

- free trade agreements allowing international companies to compete with local industry,
- agreements with/of the World Trade Organization,
- agreements (conditions) attached to loans by IMF, the World Bank or other funding institutions, including PRSPs or structural adjustment programmes,

QUESTIONS AND EXPLANATION

- international environmental policies, etc.,
- regional agreements, for example, with the European Union or the OSCE,
- other relevant agreements.

WHAT DOES NATIONAL LEGISLATION SAY ABOUT WOMEN'S RIGHT TO HEALTH?

S2/Q5 What does the constitution or other national laws say about the right to health?

EXPLANATION: Does the national system, for example, explicitly recognize the human right to health as universal?

Checklist of laws:

Laws:

- assuring access to health care,
- on family planning,
- assuring adequate health-related information,
- providing protection against environmental hazards and harmful traditional practices,
- concerning the working conditions of pregnant women and maternity leave,
- other relevant laws.

S2/Q6 Does the country have a law prohibiting the discrimination of women?

EXPLANATION: An example of such a law would be a general prohibition of discrimination on the basis of sex in the constitution, or a specific law on the equality of men and women.

S2/Q7 What does the constitution or other national laws say about other rights which are relevant to the policy?

EXPLANATION: Other rights that may be relevant to the policy include: sexual rights, reproductive rights, the right to informed decision, rights of people with disabilities, rights of mentally ill people, the right to gender equality, the right to non-discrimination, the right to water, food, housing.

This question may be of particular importance if your policy is not a health policy. You may want to rephrase the question as: what does the constitution or other laws say about (fill in the issue on which your policy focuses).

S2/Q8 Does the country have laws that criminalize medical procedures only needed by women and/or that punish women who undergo those procedures?

EXPLANATION: Only answer this question if it is relevant to your analysis. An example of such a law is the prohibition of abortion.

BASED ON CEDAW General Recommendation 24, paragraph 14.

S2/Q9 Do local, customary or religious laws influence the health rights of women in relation to your policy?

EXPLANATION: These may include written and unwritten laws. Even if these 'laws' are not officially recognized by the national government, they may have considerable influence.

DOES THE GOVERNMENT HAVE A NATIONAL HEALTH STRATEGY AND OTHER RELEVANT POLICIES?

S2/Q10 Does the government have a national health strategy?

- If so, does it have a clear gender perspective?

EXPLANATION: A comprehensive national strategy should include interventions aimed at both the prevention and treatment of diseases and conditions affecting women. It should also respond to violence against women, and ensure universal access for all women to a full range of high-quality and affordable health care, including sexual and reproductive health services. If you are examining a non-health policy you could examine those parts of the national strategy that are related to or are relevant for your policy. For example, in Pakistan WPF mainly focused on education in schools on life skills (a broad term that encompasses sexuality and reproductive rights). In the case of WPF both the national strategy on education and those parts of the national health strategy that address education, access to information and sexual and reproductive rights were relevant.

BASED ON: CEDAW General Recommendation 24 paragraph 29.

S2/Q11 Has the government developed indicators and benchmarks to measure its progress?

- Does the government collect and disseminate data disaggregated by sex about the aims, implementation and impact of the national health strategy?
- Has it reported on its achievements so far?

EXPLANATION: Indicators and benchmarks make it easier to monitor achievements in implementing the policy. If the government has reported on its achievements (and if these data are reliable), this can be useful information to answer questions in steps 3 and 4. Examples of benchmarks are:

- Reducing maternal mortality by at least 50 per cent from the 1990 levels by the year 2000 and a further one half by the year 2015,
- A reduction in iron deficiency anaemia in girls and women by one third from the 1990 levels by the year 2000

(Both from Beijing Platform for Action Women and Health, <http://www.un.org/women-watch/daw/beijing/platform/health.htm#object1>).

BASED ON: ICESCR General Comment 14, paragraph 57 and 58.

S2/Q12 Which other national policies are relevant to the policy under analysis?

EXPLANATION: These can be health policies as well as other types of policies. It may well be that you have already answered this question while discussing question 2 and or 3 of the Quick scan. If this is the case, you can check whether you still agree with your answer given at that point.

Checklist of other policies:

- non-discrimination policy,
- temporary special measures to increase women's involvement,
- decentralization policy,
- governmental employment policy,
- privatization policy,
- financial policies that affect health.

QUESTIONS AND EXPLANATION

HOW IS THE PARTICIPATION OF CIVIL SOCIETY ORGANIZED?

S2/Q13 **What are the official ways by which individuals, NGOs and other civil society groups can influence policy-making and legislation (mechanisms for civil society participation)?**

Checklist of participation:

- village/community committees,
- voting in elections and referenda (local, regional and national),
- patients' associations and volunteer organizations,
- government-NGO platforms,
- consultation in the development and evaluation stages of policy,
- committees that monitor the implementation of services,
- oral and written reports to international organizations,
- national and international conferences,
- other ways of civil society participation.

S2/Q14 **Where can people go to make a complaint (mechanisms for redress)?**

Are these mechanisms being used?

Do these mechanisms effectively redress problems?

EXPLANATION:

Checklist of mechanisms for redress

- ombudsmen,
- patients' rights associations,
- national human rights commissions,
- complaints procedures (at hospitals, ministries, administrative courts, etc.),
- sanctions on health care professionals guilty of sexual abuse of women patients,
- other procedures.

BASED ON: CEDAW General Recommendation 24 paragraph 15-c and ICESCR General Comment 14, paragraph 59.

CONCLUSION:

What are the most relevant commitments the government has made in relation to your policy?

Please formulate – briefly – the answer to this question on the basis of your answers to the above questions. Step 2 has provided an impression of the commitments which the government has made with regard to women's health rights. Some of these commitments may be quite different from the reality in daily life. The following steps serve to find out if the government is in a position to do more to close the gap between commitment and reality.

Describing the capacity for implementing the policy

PURPOSE

Step 3 looks at the capacity of the government to implement the selected **policy**. You will look for information on human and financial resources which are available for the implementation. Government resources fluctuate, so also consider factors that can reduce or expand the government's implementation capacity. These include cultural, religious and social factors. Last but not least, look at the influence of donors and other international relations. This information provides a context to understand the impact of the policy in step 4. It will also help to formulate realistic recommendations and demands in step 6.

HUMAN RIGHTS ASPECTS OF A GOVERNMENT'S IMPLEMENTATION CAPACITY

A country needs a national health strategy and action plans for the implementation of its health policy. While the general health policy should be based on a sound gender analysis, in many cases it is also useful to have a specific strategy for women's health throughout their **life cycle**.¹ The government should allocate sufficient budget and human resources for the implementation of the health strategy and action plans. Health and socio-economic data disaggregated according to sex are an essential basis for the formulation of such strategies and plans. These data should particularly provide information about conditions which affect women differently from men.² Lack of capacity in itself is no justification for bad or non-existent health policies. The government can take many measures that do not require extensive resources, such as the dissemination of information. Even in times of severe resource constraints, the government has to protect vulnerable groups through targeted programmes.³ Lack of resources is sometimes the result of lack of priority, when governments spend large amounts on issues other than health, such as military expenditures.

Governments can expand their capacity by seeking international assistance.⁴ This international assistance can take the shape of financial support from donor countries or international agencies, as well as technical support from experts and information exchange. There are also factors which limit the implementation capacity of governments, such as socio/ cultural factors (e.g. traditions which attach low value to women's lives), religious factors (e.g. the role of the Catholic church in policies on reproductive rights) and environmental aspects (e.g. floods and air pollution). Limiting factors are important to take into account, though they should not be used as an excuse. If, for example, local tradition attaches little value to women's lives, the government should undertake awareness-raising activities to change these ideas. Political will is an important factor, and can either expand or limit the use a government

makes of its capacities. A government may want to make an issue a priority on the basis of the political situation of the moment, for example, because of upcoming elections or international pressure.

THE KEY QUESTIONS

Which financial resources are available for the implementation of the policy? (page 30)

Which human resources are available for the implementation of the policy? (page 30)

Which factors limit or expand the implementation capacity? (page 31)

WHERE TO FIND THE INFORMATION

You may find information to answer the above questions in:

- National budget,
- National plans (such as five-year plans),
- Poverty Reduction Strategy Papers (<http://www.imf.org/external/np/prsp/prsp.asp>),
- UN Common Country Assessments,
- IMF, World Bank, WTO and other multilateral or bilateral agreements,
- Progress reports, local government reports.

¹ ICESCR General Comment 14, paragraph 21.

² CEDAW General Recommendation 24, paragraph 9 and 10; ICESCR General Comment 14, paragraph 20.

³ ICESCR General Comment 14, paragraph 18.

⁴ ICESCR article 2 and General Comment 14, paragraph 38.

QUESTIONS AND EXPLANATION

WHICH FINANCIAL RESOURCES ARE AVAILABLE FOR THE IMPLEMENTATION OF THE POLICY?

S3/Q1 What is the budget for the implementation of the policy?

EXPLANATION: It may be useful to make a comparison with the expenditures of other States with the same level of development. To give an indication about minimum per capita expenditures, the World Health Organization estimated that \$60 per person per year was needed for reasonable health care (in 2000).⁵

S3/Q2 Is the budget for the implementation of the policy decreasing or increasing?

EXPLANATION: An increase or decrease in budget for the policy, caused by a shift in allocations within the total budget indicates a change in priority. A decrease in the overall government budget makes it more difficult to improve health rights. However, it does not relieve the government of its responsibility to at least protect the 'vulnerable' members of society.

S3/Q3 Do allocations to specific areas of health indicate where the government sets its priorities?

EXPLANATION: Consider the allocations to health problems which mostly affect women and the division of budget between **primary, secondary and tertiary health care**. Inappropriate health resource allocation can lead to discrimination. An example is a health budget with the emphasis on expensive curative health services which are accessible only to a small, privileged fraction of the population, rather than on primary and preventive health care which reaches large, poorer sections of the population.

BASED ON: ICESCR General Comment 14 paragraph 19.

S3/Q4 Are the public health and health-care facilities, goods, services and programmes functioning properly?

EXPLANATION: It is difficult to implement a health-related programme if the basic health facilities are severely inadequate. For example, programmes to distribute anti-retroviral drugs to HIV/AIDS patients are hampered by the lack of functioning health centres in rural areas.

WHICH HUMAN RESOURCES ARE AVAILABLE FOR THE IMPLEMENTATION OF THE POLICY?

S3/Q5 Which staff is involved in implementing the policy or related programmes?

EXPLANATION: Implementing a policy requires sufficient staff that is well trained, gender sensitive and motivated. An example of a motivation system that affects women's health rights is the reward system in Bangladesh. Health workers remuneration is based on their achievements in reducing the number of pregnancies, not on the number of safe deliveries.

S3/Q6 How is the staff distributed in terms of location, level, background?

EXPLANATION: The distribution indicates where and for whom the policy can be implemented. Checklist of distribution of staff:

- Differences in the availability of staff in different regions (particularly indigenous areas),
- Differences between rural and urban areas,
- Number and quality of staff available for different sections of the health system, e.g. the private sector or foreign-funded reproductive health programmes,
- Balance between female and male staff, especially in decision-making positions,
- Representation of different ethnic, religious and cultural backgrounds amongst staff,
- Other relevant aspects of distribution of staff.

⁵ World Health Report 2000, WHO

S3/Q7 Which level of government is directly responsible for the implementation of the policy?

EXPLANATION: Local authorities may have considerable decision-making powers. Nevertheless, the national government holds the final responsibility for the impact on health rights. In the Netherlands, for example, each municipality develops and implements its own policy regarding prostitution. The national government only sets general standards.

WHICH FACTORS LIMIT OR EXPAND THE IMPLEMENTATION CAPACITY?

S3/Q8 Which cultural, religious, social, environmental and other factors influence the implementation of the policy?

EXPLANATION: Consider positive as well as negative influences, but include only those which are relevant for the implementation of the policy. Rather than using these factors as an excuse for failing policies (like some governments do), governments should take these factors into account when developing and implementing a policy. For example, a HeRWAI analysis of maternal mortality in Bangladesh showed how socio-cultural factors influence the implementation of a policy. For various reasons, women find it difficult to go to a health facility. Women prefer training and care at home, but the government policy focuses on care for pregnant women in health facilities. As a result, many women reach health facilities too late or not at all.

Checklist of cultural, religious, social, environmental and other factors:

- Cultural norms which attach low value to women's lives,
- Nutritional traditions,
- Religious or cultural practices that do not allow women to participate in public life,
- Social rejection of people with a mental or physical disability,
- Low social status of divorced, elderly or minority women,
- Role models who break taboos or impart information,
- Social acceptance of violence against women,
- Floods, droughts and other environmental disasters,
- Other positive or negative factors.

S3/Q9 Is the State in a process of reform, structural adjustment or crisis which influences the implementation of the policy?

EXPLANATION: A process of health sector reform or structural adjustment has an impact on all health-related policies. This may make it necessary to put the analysis of the policy in the context of the major changes which have taken place in – for example – the last decade. A crisis situation makes it more difficult to implement any policy. However, it may not be used as an excuse to remain inactive or to limit people's health rights.

S3/Q10 Describe conflicting interests or lack of consistency related to the implementation of the policy.

EXPLANATION: An example of possible conflicting interests came up during a HeRWAI analysis of labour laws regarding maternity leave in Kenya. The government is not only responsible for a labour law which respects women's health rights, it is also an employer. Improving facilities for maternity leave could be costly for the government.

S3/Q11 Does the government show political will to implement the policy?

EXPLANATION: An indication of political will is, for example, if a high-level, capable official is made responsible for the implementation of the policy. Another example is when government statements consistently refer to a problem and propose solutions.

QUESTIONS AND EXPLANATION

S3/Q12 **To what extent do other governments, international donors and agencies such as the World Bank, IMF, WTO, UNDP, EU, WHO, ILO, UNICEF, UNFP (A), expand or limit the implementation capacity of the government?**

EXPLANATION: Think of positive influence through technical and financial assistance as well as negative influence, e.g. in the form of restrictions. Which are the relevant conditions/priorities attached to international cooperation? For example, donor countries are usually more willing to fund activities which correspond with their own priorities. Thus, a recipient government may be stimulated to develop a health policy with a focus on rural areas, because it is easier to obtain support for such a policy. An example of restriction is that the US government decided in January 2001 that it would no longer fund any organizations which perform, lobby or provide information about abortions. This so-called gag rule has brought many projects and programmes into financial trouble.

BASED ON ICESCR General Comment 14, paragraph 41 and 63 to 65

S3/Q13 **Which other international actors influence the government? What are their priorities and interests relating to the policy under analysis?**

EXPLANATION: Think of the private sector (transnational and multinational corporations), trade partners, neighbouring countries, etc. For example, in the case of the labour laws in Kenya, companies operating in the export processing zone may put pressure on the government not to improve regulations on maternity leave. They may threaten that the increased costs of such improvements will make them move the factories to another, cheaper country.

CONCLUSION:

What is the capacity of the government to implement the policy? And what are the main factors influencing the implementation capacity?

In step 3 you described what the government has or lacks to implement the policy. In step 4 and 5 you will look at how the capacity is being used in practice and if the government is making sufficient efforts to maximize its capacity and to achieve a positive impact of the policy.

The impact on human rights

PURPOSE

Step 4 will look at the human rights impact of the policy. This step assesses what actually happens and whether the effects of the policy result in a violation of women's health rights. States which have ratified the human rights treaties mentioned in step 2 have to comply with all elements of women's health rights (described below). However, not all elements may be relevant for the policy you are analysing. The questions in step 4 help you to distinguish which elements are relevant and how the policy affects these aspects of women's health rights. If the policy has a negative impact on women's health rights, States are in **violation** of their obligations under those treaties. If there is no impact, it is important to ask: has the State missed an opportunity to improve women's health rights? The two main questions in step 4 are:

- What is the impact of the policy on women's health, in human rights terms?
- Does the policy have a discriminatory impact?

HUMAN RIGHTS ASPECTS OF THE IMPACT OF THE POLICY

This paragraph explains four important elements of the right to health which may be relevant to the policy you are analysing. Four criteria follow: availability, accessibility, acceptability and quality, which can give more specific insight into the impact of the policy. These criteria are also explained below. An overarching concept throughout the questions is non-discrimination. As explained in Chapter 2, non-discrimination is a very important principle in human rights and forms the basis of CEDAW. Throughout step 4, you will need to consider whether the impact affects women and men differently or has a different effect on specific groups of women. At the end of step 4, you will determine whether the impact results in discrimination and why. At the end of the step, you will also determine whether the impact of the policy leads to violations of women's rights. Violation is a strong word which some may prefer to avoid in their lobbying activities directed at the government. However, it is a broad concept, which clarifies the various ways in which the government and other actors may fail to address people's rights. Violations can occur through an action, or through failure to act.¹ An example of a violation through an action is when police harass women in custody. An example of violation through failure to act is when police refuse to take women seriously when they report domestic violence.

FOUR IMPORTANT ASPECTS OF WOMEN'S RIGHT TO HEALTH ARE:

- timely and appropriate health care,
- determinants of health,
- participation,
- violence against women.

1 Based on ICESCR General Comment 14, paragraphs 48-49, and Maastricht guidelines on violations of ESC Rights, paragraphs 14 and 15.

2 ICESCR General Comment 14, paragraph 11; CEDAW General Recommendation 19.

3 ICESCR General Comment 14, paragraph 4 and 11.

4 CEDAW General Recommendation 19

Questions 1 to 6 below serve to explore which of the above aspects are relevant to the policy that you are analysing. This indicates in which areas changes to the policy are needed to achieve a more positive impact on women's health rights.² The relevant aspects should be considered when answering the questions from 7 onward.

TIMELY AND APPROPRIATE HEALTH CARE

Timely and appropriate health care refers to a whole range of goods, services and facilities, such as medicines and contraceptive methods, well-trained and respectful health workers, health clinics and vaccination programmes.

DETERMINANTS OF HEALTH

Determinants of health are conditions that make it possible to live in health, such as access to safe water, adequate food and housing, safe and healthy working conditions. Resource distribution, gender differences and the access to health-related education and information (including information on sexual and reproductive health) are also health determinants.³ Determinants are not necessarily directly related to health care. However, their analysis helps to make clear where barriers to claiming health rights lie.

PARTICIPATION

Participation refers to the involvement of the population in all health-related decision-making, in the development, implementation and evaluation of policies (see also Chapter 2). In step 2 you have explored the formal participation mechanisms. In step 4 you will look at the actual situation: are women really involved in decision-making, and if so, which groups of women?

VIOLENCE AGAINST WOMEN

Violence against women, or gender-based violence, is violence directed against a woman because she is a woman or violence that affects women disproportionately. It refers to acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion or other deprivations of liberty. This includes domestic violence and traditional practices that are harmful to the health of women and children, such as dietary restrictions for pregnant women, preference for male children and female circumcision or genital mutilation. The CEDAW Committee considers gender-based violence as a form of discrimination. States have the obligation to prevent violence against women and to investigate and punish acts of violence, because they impair women's enjoyment of physical and mental health rights and put women's lives at risk.⁴

AVAILABILITY, ACCESSIBILITY, ACCEPTABILITY AND QUALITY

To analyse the impact of policy on health rights, it is useful to distinguish between the availability, accessibility, acceptability and quality of health-related goods, services and facilities. These are four essential elements for assessing the implementation of health-related policy. They indicate on a practical level where problems arise in the implementation of the policy. Availability, accessibility, acceptability and quality are interrelated and complement each other. The texts below explain the requirements for each.

AVAILABILITY REQUIREMENT:

Functioning public health and health-care facilities, goods and services, as well as programmes, must be available in sufficient quantity within the country.⁵

ACCESSIBILITY REQUIREMENT:

Health facilities, goods and services must be accessible to everyone without discrimination, within the jurisdiction of the State party.⁶ When looking at accessibility it is of particular importance to consider the (removal of) barriers faced by vulnerable and marginalized groups of women. Accessibility includes:

- Physical accessibility: facilities within safe physical reach,
- Economic accessibility (affordability): affordable for all, including disadvantaged groups,
- Information accessibility: the right to seek, receive and impart information and ideas concerning health issues. Accessibility of information should not impair the right to have personal health data treated with confidentiality.⁷

ACCEPTABILITY REQUIREMENT:

All health facilities, goods and services must be respectful of medical ethics and culturally appropriate, i.e. respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements, as well as designed to respect confidentiality and improve the health status of those concerned.⁸

Important note: Acceptability may not be used as an excuse for practices that exclude (e.g. when reproductive health services and information are denied to adolescent girls 'to protect their honour'). Another limitation of the term acceptability is where traditional practices harm women's health rights (e.g. in the case of female genital mutilation). Such practices are considered discriminatory.

QUALITY REQUIREMENT:

Health facilities, goods and services must be scientifically as well as medically appropriate and of good quality. This requires, amongst others, skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water and adequate sanitation.⁹

KEY QUESTIONS

Is timely and appropriate health care a relevant issue? (page 35)

Are the underlying determinants of health a relevant issue? (page 35)

Is participation a relevant issue? (page 35)

Is violence against women a relevant issue? (page 35)

What is the impact on the availability of services, goods and facilities? (page 36)

What is the impact on the accessibility of services, goods and facilities? (page 36)

What is the impact on the acceptability of services, goods and facilities? (page 37)

What is the impact on the quality of services, goods and facilities? (page 37)

Does the policy have discriminatory effects? (page 38)

WHERE TO FIND THE INFORMATION

Information to answer the above questions may be found in:

- Health statistics, preferably disaggregated for sex, ethnicity, age and or other relevant factors,
- Health reports of government or health service providers as well as independent studies,
- ICDP+5 for benchmarks on reproductive health: www.unfpa.org/icpd5/icpd5.htm
- Progress reports for the Millennium Development Goals: <http://www.undg.org/content.cfm?cid=79>

⁵ ICESCR General Comment 14, paragraph 12

⁶ ICESCR General Comment 14, paragraph 12 b.

⁷ See step 1 question 9 for a checklist on vulnerable and marginalized groups.

⁸ ICESCR General Comment 14, paragraph 12 c.

⁹ ICESCR General Comment 14, paragraph 12 d.

IS TIMELY AND APPROPRIATE HEALTH CARE A RELEVANT ISSUE?

S4/Q1 **Is timely and appropriate health care a relevant issue for the policy? If yes, explain why and how.**

EXPLANATION: A policy may fail if there is no appropriate health care system to implement it. On the other hand, the policy itself may have an influence on the availability of timely and appropriate health care. For example, the closure of street prostitution zones in the Netherlands has had a negative influence on prostitutes' access to timely and appropriate health care. Special facilities existed in these zones where the women received medical check-ups, information and counselling by specialized staff. Regular health facilities are less appropriate to their situation.

ARE UNDERLYING DETERMINANTS OF HEALTH A RELEVANT ISSUE?

S4/Q2 **Are underlying determinants of health a relevant issue for the policy? If yes, explain why and how.**

EXPLANATION: Health-related determinants may influence the policy. For example, in the case of regulations for maternity leave in Kenya, there was concern about the chemicals used in some of the industries, which are dangerous for women who are pregnant or lactating. This illustrates how occupational and environmental conditions are an underlying determinant when looking at maternity regulations.

Determinants of health checklist:

- Access to safe and potable water and adequate sanitation,
- Adequate supply of safe food, nutrition and housing,
- Healthy occupational and environmental conditions,
- Access to education (in general, to enhance access to health care),
- Resource distribution,
- Freedom to control one's health and body, including sexual and reproductive freedom,
- Gender equity; women's lower social position puts them at higher risk of being poor, having poorer nutrition, having less opportunity to use health services,
- Other determinants, specifically relevant to the selected policy.

BASED ON ICESCR General Comment 14 paragraph 11 on determinants; ICESCR General Comments 4 and 7 on housing, 12 on food and 15 on water.

IS PARTICIPATION A RELEVANT ISSUE?

S4/Q3 **Is participation a relevant issue? If yes, explain why and how.**

EXPLANATION: Participation or the lack of it can influence the implementation of a policy. In the Netherlands, for example, street prostitutes were not involved in developing a policy to reduce nuisance around prostitution areas. The measures taken failed to achieve at least some of their objectives, because they were based on wrong assumptions regarding the street prostitutes.

S4/Q4 **Who participates or participated in the development and implementation of the policy?**

EXPLANATION: Did (do) the people affected participate in the development and implementation? You may want to know the composition of participation committees, in terms of gender, age and ethnicity. It may also be relevant to find out whether they represent the users or the providers of services.

IS VIOLENCE AGAINST WOMEN A RELEVANT ISSUE?

S4/Q5 **Is violence against women a factor in the policy? If yes, explain why and how.**

EXPLANATION: This question is particularly relevant if the policy does not explicitly mention its relationship to violence against women, even though violence is a relevant issue. For example, WPF in Pakistan found that violence was a relevant factor in their analysis of life skills education. Life skills education provides young women with the means to move out of abusive situations.

QUESTIONS AND EXPLANATION

S4/Q6 If violence is a relevant issue, is the government taking adequate measures to prevent and/or ban violence against women?

EXPLANATION:

Checklist of measures regarding violence against women:

- Appropriate protective and support services for victims,
- Adequate protection through laws,
- Effective measures:
 - To overcome attitudes, customs and practices that perpetuate violence against women,
 - To stop trafficking and sexual exploitation,
 - Complaint procedures and remedies, including compensation,
 - To prevent coercion in regard to fertility and reproduction, and to ensure that women are not forced to seek unsafe medical procedures,
 - To ensure that services for victims of violence are accessible to rural women,
 - Criminal penalties where necessary and civil remedies in cases of domestic violence,
 - Legislation to stop the use of ‘honour’ as a defence,
 - Services to ensure the safety and security of victims,
 - Rehabilitation programmes for perpetrators of domestic violence,
 - Support services for families where incest or sexual abuse has occurred,
 - Appropriate and effective measures to eradicate the practice of female circumcision,
 - Other measures, specifically relevant to the selected policy.

BASED ON: CEDAW General Recommendation 19, paragraph 24; CEDAW General Recommendation 14.

WHAT IS THE IMPACT OF THE POLICY ON THE AVAILABILITY OF SERVICES, GOODS AND FACILITIES?

S4/Q7 Does the policy affect the availability of the relevant services, goods and facilities for (certain groups of) women and how?

EXPLANATION: When answering this and the following questions, please consider the relevant elements which came forward in question 1-6. Think of short-term effects of the policy as well as long-term impact. Also consider any possible direct as well as indirect effects of the policy.

Checklist of indicators of availability:

- The functioning of the services, goods and facilities,
- The quantity in which they are available in various areas within the State party,
- The determinants (water, sanitation, buildings, personnel, drugs, workplace environment),
- The availability of appropriate mental health treatment and care,
- The availability of urgent medical care for accidents and disasters,
- The discouragement of the use of alcohol, tobacco, drugs and other harmful substances,
- Immunization programmes and other programmes to prevent disease and ill health,
- Other aspects of the availability of services, goods and facilities, specifically relevant to the selected policy.

BASED ON: ICESCR General Comment 14, paragraph 12.

WHAT IS THE IMPACT ON THE ACCESSIBILITY OF SERVICES, GOODS AND FACILITIES?

S4/Q8 Does the policy affect the accessibility of the relevant services, goods and facilities for (certain groups of) women and how?

- What is the impact of the policy on the *physical accessibility* of the facilities, goods and services?

EXPLANATION:

Checklist of indicators of physical accessibility:

- Accessibility (existence) of services at community level (distance or travel time to services),
- Adequate access to buildings for persons with disabilities,
- A safe and supportive environment for adolescents; youth-friendly healthcare,
- Barriers which women face to access health facilities, such as high fees for health care services, the need to get permission from husband or parent, absence of convenient and affordable public transport,
- Opening hours,

- Other aspects of physical accessibility, specifically relevant to the selected policy.

BASED ON ICESCR General Comment 14, paragraphs 12, 21- 25; CEDAW article 12; CEDAW General Recommendation 24, paragraph 21.

What is the impact of the policy on the *economic accessibility* of the facilities, goods and services?

Checklist of indicators of economic accessibility:

- Free services where necessary for safe pregnancies, childbirth and post-partum care,
- Resource allocation (are sufficient funds available to run the facilities?),
- Proportion of household income that needs to be spent on health,
- Health insurance and health care facilities for those who do not have sufficient means,
- Other aspects of economic accessibility, specifically relevant to the selected policy.

BASED ON: ICESCR General Comment 14 paragraph 12 and 19 and CEDAW General Recommendation 24, paragraph 27.

What is the impact of the policy on the information accessibility of the facilities, goods and services?

Checklist of indicators of information accessibility:

- Access to information about health, including sexual and reproductive health,
- The training and capacity of staff to impart information,
- Information about benefits and potential adverse effects of treatments,
- Information about available alternatives,
- Other aspects of information accessibility, specifically relevant to the selected policy.

BASED ON: CEDAW article 10 and CEDAW General Recommendation 24, paragraph 20; ICESCR General Comment 14, paragraph 12.

What is the government doing to remove barriers to the enjoyment of women's health rights?

EXPLANATION: See the introduction to this step for more information on barriers.

WHAT IS THE IMPACT ON THE ACCEPTABILITY OF SERVICES, GOODS AND FACILITIES?

S4/Q9 Does the policy affect the acceptability of these services, goods and facilities for women and how?

EXPLANATION: Acceptability has a medical component, such as whether to dispense drugs with a considerable risk of severe side effects. It also has a user-oriented component: do the services and goods correspond to the users' needs and expectations? An example is the maternal health policy in Bangladesh which concentrates on providing services to women in health centres. This does not correspond to the needs of especially the rural, poor or uneducated pregnant women, who for a variety of socio-economic reasons prefer checkups and delivery at home.

Checklist of indicators of acceptability:

- Women's informed consent (e.g. no forced sterilization, no mandatory testing for pregnancy as a requirement for employment),
- Respect for women's dignity,
- Respect for confidentiality,
- Sensitivity to women's needs and perspectives,
- Respect for the culture of individuals, minorities, peoples and communities,
- Other aspects of acceptability, specifically relevant to the selected policy.

BASED ON: CEDAW General Recommendation 24, paragraphs 12 and 22.

WHAT IS THE IMPACT ON THE QUALITY OF SERVICES, GOODS AND FACILITIES?

S4/Q10 Does the policy affect the quality of services, goods and facilities and if so, how?

Checklist of indicators of quality:

- the training of medical personnel,
- the quality of drugs, equipment, buildings, water and sanitation,
- services to prevent, detect and treat health problems that are specific to women,
- legal reproductive health services,
- mental health services,

QUESTIONS AND EXPLANATION

- other aspects of quality, specifically relevant to the selected policy.
BASÉD ON: ICESCR General Comment 14, paragraph 12 (d); CEDAW General Recommendation 24, paragraphs 29 and 31.

DOES THE POLICY HAVE DISCRIMINATORY EFFECTS?

S4/Q11 **Is the impact of the policy – as analysed in the previous questions – equally felt by all groups, or are some groups affected more than others?**

EXPLANATION: Think particularly of the impact for vulnerable or marginalized groups (see step 1 question 9).

S4/Q12 **What is the impact of the policy on stereotypical gender roles?**

EXPLANATION: A policy can reaffirm stereotypical gender roles, for example, when health information materials depict women only as naive patients. It can also challenge stereotypes, for example, if health information materials depict women as knowledgeable professionals and men as carers.

S4/Q13 **Considering the above, does the policy have discriminatory effects?**

- If so, on which basis are people discriminated against?
- Is it direct or indirect discrimination?

EXPLANATION: See Chapter 2 for more information about discrimination and particularly the difference between direct and indirect discrimination.

A policy violates the right to non-discrimination if its direct or indirect impact:

- negatively affects some groups but not others. An example is the closure of street prostitution zones in the Netherlands, which affects prostitutes more than the persons who caused the most nuisance in the area, namely drugs dealers and violent pimps.
- positively affects groups that were already advantaged (thereby widening the gap); for example, a focus on health centres that are mainly used by the middle and upper classes.
- affects all groups equally, without taking into account significant differences between those groups; for example, regulations for leave which fail to mention maternity leave.
- reaffirms stereotypes, which maintain (certain groups of) women in an inferior position.

A policy is considered *not* discriminatory if it has a positive effect on only disadvantaged groups, on the condition that it is a temporary special measure with the specific aim of reducing the gap between advantaged and disadvantaged groups.

Checklist of grounds for discrimination:

- sex and gender,
- marital status,
- age,
- race and ethnicity,
- health status/disability,
- sexual orientation,
- language,
- religion,
- political or other viewpoint,
- national or social origin,
- property, birth or other status,
- other grounds, specifically relevant for the selected policy.

BASÉD ON CEDAW article 1 and 2;
 ICCPR art. 26; ICESCR article 2.

CONCLUSION

What is the human rights impact of the policy on women's health rights? Distinguish between positive, negative and neutral effects. Can we speak of violations of women's health rights? Explain why/which.

This information provides important arguments for the need to develop alternative strategies (step 6). But before doing so, link the violations identified in step 5 to the obligations of the State. This will determine the effects for which the government (of your own or another country) can be held accountable.

State obligations

PURPOSE

Step 5 looks at the relevant **State obligations** in relation to the selected policy. In step 2 you explored which commitments the government has made. Below you will find the obligations that result from these commitments in relation to the right to health. You will select the obligations which are most relevant to the selected policy and explore the difference between what the government has promised to do (step 2) and what the government actually has achieved (step 4). This difference provides strong arguments to improve the policy. In addition you will connect the obligations of the government to the violations established in step 4. This helps to determine the violations for which you can hold your government accountable.

HUMAN RIGHTS ASPECTS OF STATE OBLIGATIONS

Government accountability

Governments are directly responsible for the measures they take to ensure human rights. To a certain extent, they are also responsible for the actions of other actors, such as private service providers, traditional health practitioners, non-governmental organizations or enterprises distributing health-related goods, if these negatively impact on health rights. If a government decides to privatize health services and facilities, it is responsible for the consequences of this decision (such as higher costs for patients) and for the way it regulates the work of these other actors. In determining whether you can hold your government accountable for not meeting its obligations, it is important to check whether the government is *unwilling* or *unable* to comply with its obligations. In the case of inability it will be difficult to hold your government accountable for a violation. An example is when health centres run out of supplies due to a serious earthquake.

Core obligations (meeting minimum standards)

All governments have to meet certain minimum standards in relation to the right to health (**core obligations**), even in countries with limited resources and/or many problems. If these minimum standards are not met, the government is in breach of its obligations. Once minimum standards have been met, the government must continue to improve standards (progressive realization). The most relevant core obligations for the right to health are listed in question 4 of this step.

Obligation of progressive realization (moving forward)

Governments have to do all they can to improve the situation regarding the right to health. They must take deliberate, concrete and targeted steps towards the full realization

of the right to health (obligation of **progressive realization**) and eliminate discrimination against women in the field of health care. This includes the removal of barriers which women face in the enjoyment of their health rights. The speed of progress depends on the specific situation of the State and may differ from country to country¹. If lack of resources (financial and technical) is the main cause of the lack of implementation of health rights, the government has the obligation to seek international assistance. Richer or more technically advanced States have the obligation to help other States to implement human rights².

Non-retrogression (not moving backwards)

Governments are not allowed to remain passive in a situation where health rights are deteriorating, nor can they take measures that reduce the enjoyment of rights (non-retrogression). If a government does take retrogressive measures, it has to prove that it had no other option, for example, due to a severe crisis. In such a situation the government also has to demonstrate that it has protected the rights of the most vulnerable groups.

Respect, protect, fulfil

The State has the obligation to respect, protect and fulfil women's right to health³. These obligations are closely related. The obligation to **respect** means that governments are not allowed to take any actions that limit or interfere (directly or indirectly) with women's ability to enjoy the right to health. Governments should not introduce policies or laws that are likely to result in bodily harm, unnecessary morbidity and preventable mortality. The obligation to **protect** means that governments should not allow State or non-State actors (including private clinics, transnational corporations and donor agencies, as well as individuals) to violate women's right to health. It also means that complaint mechanisms and remedies should be available to women whose rights are violated. The obligation to protect also means that States have to prevent violence against women (including harmful traditional practices) and prosecute violators⁴. The obligation to **fulfil** means that governments have to take positive measures to enable and assist people to enjoy their health rights. These measures include the development of a health policy, providing sexual and reproductive health care and measures to reduce infant and maternal mortality rates. Special measures need to be taken to prioritize the health needs of the poor and otherwise disadvantaged groups in society. Important aspects of the obligation to fulfil are the provision of information, so that people can make informed choices about their health, and efforts to eliminate stereotypes and customary norms that are harmful to women's ability to enjoy their right to health⁵.

1 ICESCR article 2 paragraph 1 and article 12 paragraph 2; ICESCR General Comment 14 paragraphs 30 and 31.

2 ICESCR General Comment 3; General Comment 14, paragraphs 32 and 38.
3 ICESCR General Comment 14, paragraphs 34-36 and General Comment 16, paragraphs 18-21.

4 CEDAW General Recommendation 24, paragraph 15.

5 Asher 2004, page 36.

THE KEY QUESTIONS

Who is responsible? (page 41)

For which effects can you hold your government accountable (page 41)

Which are the main obstacles to the government meeting its obligations? (page 43)

WHERE TO FIND THE INFORMATION

Information to answer the above questions may be found in:

- The answers in the previous steps, especially step 2 on government commitments and step 4 on the impact of the policy.

WHO IS RESPONSIBLE?

S5/Q1 Who are the main actors involved in the violations which were noted in step 4?

EXPLANATION: If the main actor is the government, please note at which level or in which sector of government things go wrong. Remember that different levels of government may have different roles and responsibilities. Local governments or even individual government officials may be the actual violators, for example, in cases of corruption or sexual abuse. See step 1, question 3 for a checklist of actors.

S5/2 If actors other than the government are involved, what is the relation between the violators and the government? Has the government taken any measures to regulate the activities of the violators? Are these measures adequate?

EXPLANATION: The national government has the responsibility to monitor correct implementation of health services, goods and facilities and take measures to prevent violations. Measures to regulate the activities of other actors include: control mechanisms, codes of conduct, licences, etc.

BASED ON: ICESCR General Comment 14, paragraphs 42, 47, 48 and 51.

S5/Q3 What is the role of governments of other countries or international actors in relation to the violations?

EXPLANATION: Inequalities in the health status of people, particularly between South and North are the common concern of all countries. Governments have the obligation to assist each other in implementing health rights. Where possible they must use political or legal means to prevent violations of these rights in other countries. States parties should refrain at all times from imposing embargoes or similar measures restricting the supply of adequate medicines and medical equipment to another State. You may want to refer to questions 12-13 of step 3 and to the last paragraph of Chapter 3.

Checklist on the influence of other governments:

- conditions connected to donor funds,
- trade embargos,
- pressure from outside to address certain issues, e.g. AIDS, violence against women or the use of pesticides,
- pressures of transnational or multinational corporations to promote goods or services, e.g. certain medicines or health insurance,
- 'brain drain' of medical staff to foreign countries or within countries from the public health sector to foreign-funded health programmes,
- other ways of influencing national government policy and implementation.

BASED ON: ICESCR article 2 (1), General Comment 3 and 14, paragraph 38-41.

FOR WHICH OF THE EFFECTS CAN YOU HOLD YOUR GOVERNMENT ACCOUNTABLE?

Please note: From this point onwards, you will analyse which government obligations have not been met in relation to the impact noted in step 4. Annex IV provides a fact sheet to facilitate the process. Before answering the following questions, please fill in the main effects of the policy which you

decided on in step 4 in the first column of Fact sheet B. Continue filling in the remaining columns from the answers to the following questions.

This will help you to decide which effects you can hold your government accountable for.

QUESTIONS AND EXPLANATION

s5/Q4 Which of the following core obligations is relevant for the policy and has not yet been achieved?

EXPLANATION: If a government fails to address a situation where minimum essential levels have not been met, it is failing to comply with its core obligations and is therefore in violation of the ICESCR treaty. Please skip this question if you feel that the core obligations have been met in your situation.

Core obligations for the right to health

To ensure, at the very least, minimum essential levels of:

- access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups,
- access to basic food,
- access to basic shelter, housing, water and sanitation,
- essential drugs,
- equitable distribution of all health facilities, goods and services,
- a national public health strategy and plan of action.

The following core obligations are of comparable priority:

- reproductive, maternal (prenatal as well as postnatal) and child health care,
- immunization against major infectious diseases,
- measures to prevent, treat and control epidemic and endemic diseases,
- education and access to information concerning health,
- training for health personnel, including education on health and human rights.

BASED ON: ICESCR General Comment 14, paragraph 43.

s5/Q5 Does the obligation of progressive realization apply?

EXPLANATION: The obligation of progressive realization requires governments to do whatever they can to improve women's health rights. Could your government achieve *more* progress towards women's health rights by changing this policy or by developing additional policy? Perhaps some effects of the policy are neutral, but could have been positive. For example, a government that has made basic health services available to all, should continue to strive for a more inclusive health care package.

BASED ON: ICESCR General Recommendation 14, paragraphs 30 and 31.

s5/Q6 Does non-retrogression apply?

EXPLANATION: Non-retrogression applies if (some of) the effects of the policy result in an avoidable deterioration of women's health rights. A government should do all it can to avoid such deterioration. A government can only be excused for deterioration of women's health rights (and non-retrogression therefore does not apply) if:

- the deterioration is unavoidable,
- the government has done all it can to prevent the deterioration,
- the government has asked for international assistance to address the problem and/or
- the government has protected vulnerable groups against the deterioration (see checklist of step 1 question 3).

For example, the decision to close street prostitution zones in Dutch cities meant deterioration of the health rights of street prostitutes, because they lost their health facilities, protection against violence and forced prostitution. The closure could have been prevented if measures against the persons who caused trouble (pimps, drug dealers, violent clients) had been more effective.

BASED ON: ICESCR General Recommendation 14, paragraph 32.

S5/Q7 Which of the effects of the impact is a result of the government's failure to meet its obligations to respect, protect and fulfil health rights?

EXPLANATION: The explanation at the beginning of this chapter helps you to consider which effects of the policy you noted in the first column of Fact sheet B (Annex IV) apply to the obligations to respect, protect or fulfil. Note these in the second column of Fact sheet B, where appropriate. It is not always possible to neatly distinguish between the failure to respect, protect or fulfil, because they are closely related. For example, the labour law in Kenya does not provide adequate regulations regarding maternity leave for women working in export processing zones (failure to fulfil). As a result, pregnant women working in these zones risk losing their job (failure to protect).

BASED ON: ICESCR General Recommendation 14, paragraphs 33-37.

S5/Q8 Has the government done enough to prevent discrimination in the implementation of the policy itself or in the impact of the policy?

EXPLANATION: On the basis of your answers to step 4, question 14-16, you can conclude whether the government has been effective in preventing **discrimination** in relation to the policy, or whether it should do more.

S5/Q9 Does the policy include effective measures to ensure influence and participation by women?

EXPLANATION: Like non-discrimination, the right to participation is an important human rights obligation. Mechanisms to ensure that individuals and groups participate in decision-making processes which may affect their development must be an integral component of any policy. Please look at step 2 questions 13 and 14 and step 4 questions 3 and 4 to conclude whether the government has done enough to ensure real participation of the groups affected by the policy.

BASED ON: ICESCR General Comment 14, paragraph 54.

S5/Q10 Which government commitments are linked to the effects of the policy?

EXPLANATION: The commitments listed in step 2 form the basis for answering this question. Please fill in the commitments that are linked to these effects in the third column of the Fact sheet B. Try to be as precise as possible, referring to an article rather than to a whole treaty. You may not be able to find a commitment that covers the obligation or the violation, particularly if the government has not ratified CEDAW, ICESCR or other important treaties. In such a case, it will be difficult to hold the government accountable. You may need to shift your attention to lobbying for ratification of a relevant human rights convention.

WHICH ARE THE MAIN OBSTACLES TO THE GOVERNMENT MEETING ITS OBLIGATIONS?

S5/Q11 Is lack of resources (rather than, for example, lack of political will) a major cause of the weaknesses of the policy and its implementation?

EXPLANATION: Resources refer to finances, staff, equipment, infrastructure, etcetera. In step 3 you looked at which resources are available. The government needs to ensure the availability of sufficient resources to properly implement the policy.

S5/Q12 Did the government attempt to obtain international technical and financial assistance?

EXPLANATION: This question is only relevant if lack of resources is a major obstacle.

QUESTIONS AND EXPLANATION

S5/Q13 Did other (donor) governments or international institutions extend the necessary assistance?

EXPLANATION: This question is only relevant if lack of resources is a major obstacle. Governments have the obligation to help each other in the implementation of human rights. You may therefore consider extending your lobbying to other governments or international institutions which can support your government.

S5/Q14 Is the government likely to claim that other obstacles caused the weaknesses in the policy or its implementation?

EXPLANATION: Besides financial obstacles, the government may refer to limiting factors which you explored in step 3, such as cultural, religious, social, environmental factors, structural adjustment programmes, etcetera. It may be useful for your lobby to acknowledge that these factors make it more difficult for a government to successfully implement a policy. However, the government cannot use them as an excuse. It is the responsibility of the government to ensure that, *despite these obstacles*, its policies contribute to women's health rights.

CONCLUSION

For which effects of the policy can the government be held accountable?

Note the conclusion to this step in the last column of Fact sheet B. The above comparison of the actual situation with obligations following from the commitments of the State provides arguments and data. These show to what extent the government has failed to do what you can expect it to do. The comparison demonstrates if and why the impact of the policy is undesirable, not only by your standards, but also by the standards to which the government itself has agreed. This step marks the end of the data collection and analysis.

Recommendations and action plan

PURPOSE

Step 6 helps to use the results of the analysis for action. It serves to organize information and to make choices. In the previous steps, you have collected information about the policy, its impact and its relation to the obligations of the government. In step 6 you will summarize and present this information in such a way that it can be disseminated and used for lobbying activities to convince the government to change its policy. As the title indicates, this step consists of two parts. First, you will formulate recommendations or demands to the government. Where possible, suggest how the policy can be improved so that it will have a better impact on women's health rights. Secondly, this step serves to develop an action plan to make sure that the government takes the action you want it to take.

MAIN CONSIDERATIONS FOR THE RECOMMENDATIONS AND ACTION PLAN:

- **TARGET GROUP** Keep in mind to whom you are presenting the information (which level / department of government, international organizations, other governments, donors, private actors, etc.) and what these actors are most sensitive to (what is their mandate, agenda, role, power to influence others, etc.).
- **TYPE AND BASIS OF ARGUMENTS** Depending on who needs to be convinced, it may be strategic to use more legal, more medical or more political arguments. Depending on the interest within the government (or of another actor), links can be made to the Millennium Development Goals, the **Cairo** or the **Beijing** agenda, or other political documents.
- **LANGUAGE** Depending on who needs to be convinced and what they are sensitive to, it may be strategic to use more confronting or more facilitating language. You or other organizations in your country probably know best which language your government or other actors are most sensitive to.
- **INVOLVEMENT** If possible, involve the most affected groups and responsible policy-makers in finding solutions.
- **KNOWLEDGE OF HUMAN RIGHTS** Some governments or policy-makers are not aware of their obligations as regards human rights. This may mean that you need to explain to them what their obligations are in relation to women's health rights.
- **LINK UP WITH OTHERS** If you do not have a lot of experience with lobbying, it is a good idea to ask advice from more experienced organizations. You can also link up with other organizations to make sure that your recommendations are supported by a coalition or a platform.

THE KEY QUESTIONS

What will your recommendations or demands to the government and/or other actors be? (page 46)

What will your action plan to lobby for improvement of the policy be? (page 47)

Which awareness-raising activities are you planning? (page 48)

What does your organization need in order to implement the above plans? (page 48)

WHERE TO FIND THE INFORMATION

- Most of the information you need to answer the above questions comes from your own analysis.
- You may find it useful to consult strategic plans of the government and action plans of other organizations. If you have limited experience in lobbying or advocacy, consider asking for suggestions from more experienced organizations.
- Useful websites:
 - <http://www.etu.org.za/toolbox/docs/organise/weblobby.html>
Provides a short guide on lobbying. Website of the Education and Training Unit, South Africa.
 - <http://www.democracyctr.org/resources/lobbying.html>
Provides a short overview of the basics of lobbying. Website of the Democracy Center.
 - http://www.asiapacificalliance.org/SITE_Default/Resources_for_Advocacy_Default.asp
Has a good list of resources for advocacy. Website of the Asia-Pacific Alliance. Main focus on ICPD Agenda.
 - http://www.phrusa.org/campaigns/aids/uganda/toolkit/eightsteps_advocacy.php
Gives general tips on advocacy. Ugandan AIDS Advocacy network. Main focus HIV/AIDS.

QUESTIONS AND EXPLANATION

WHAT WILL YOUR RECOMMENDATIONS OR DEMANDS TO THE GOVERNMENT BE?

s6/Q1 Make a summary of the information collected in the previous steps.

EXPLANATION: You have probably collected more information than you will be able to present to the government or other actors. For successful lobbying, you need to decide which information to present and how.

Below are some considerations for the presentation of the information:

- **FORMAT:** the information can be presented in written, oral and/or visual form. A different format may be useful for lobbying the government than for advocacy purposes. In Annex IV you will find Fact sheets which you can use to compile your main findings. Depending on who you present the information to, you may want to highlight specific findings.
- **LENGTH:** Keep it as short as possible; include only the information that is needed to support your arguments and – where needed – examples and data to clarify them.

s6/Q2 For each of the violations and unwanted effects listed in step 5, try to formulate a recommendation to change the policy so that it has a better impact on women's rights.

EXPLANATION: What may help you to formulate recommendations is to write down the most positive impact of the policy possible (ideal situation) and then compare this to your main findings. How can the best possible impact be achieved?

Checklist of recommendations

- **POLICY STAGE:** Keep in mind which stage the policy is in, as this may determine the type of solution/ recommendation and who you want to approach.
- **REALISM:** Try to be as realistic as possible. In many cases no easy solution will be available. This does not release the government from its obligations. The recommendation might be to undertake further research into the causes of and possible solutions to the unwanted impact.
- **TYPE AND BASIS OF ARGUMENTS:** depending on who needs to be convinced, it may be strategic to use more legal, more medical or more political arguments.
- **GROUPS AFFECTED:** Try to find solutions that suit the groups most affected by the policy. If possible, involve the most affected groups in the development of recommendations. In Bangladesh, for example, Naripokkho recommended to the government: 'As the greater portion of women give birth at home and prefer it culturally, it is more important to ensure trained care at home than to motivate them to come to health facilities. The Government facilities cannot provide for all pregnant women anyway.'
- **OWNERSHIP:** You could involve the responsible policy-makers in the search for alternatives. This may increase their ownership of the suggestions and the chances for acceptance.
- **LIMITATIONS:** In step 5, questions 11-14 you analysed the main obstacles to the government meeting its obligations. The government will probably refer to those limitations when confronted with your findings. What will your arguments or suggestions be to overcome these limitations? Keep in mind that despite these obstacles, it is the responsibility of the government to ensure that its policies contribute to women's health rights. This includes asking for international assistance when needed.
- **INCLUDE BENCHMARKS:** **Benchmarks** make it easier to monitor achievements. For each of your recommendations you could try to formulate benchmarks to measure the improved impact of the policy. Preferably these benchmarks should be based on the benchmarks the government has formulated (see your answer to question 11 of step 2) or on benchmarks of the WHO or another international or local organization. If you are not able to formulate benchmarks yourself, you can also recommend the government live up to its own benchmarks, to adjust its benchmarks or to formulate new benchmarks.

s6/Q3 If a change in the policy is not the solution, what action should the government take?

EXPLANATION: Think of e.g. abolishment of the policy, a compensation mechanism for certain affected groups, regulations to control the actions of other parties.

s6/Q4 **To what extent is your organization willing and able to assist the government or other actors in the further development and implementation of the recommendations?**

EXPLANATION: The assistance can range from participating in a committee that develops alternative strategies to taking responsibility for parts of the implementation of the policy.

WHAT WILL YOUR ACTION PLAN BE IN LOBBYING FOR IMPROVEMENT OF THE POLICY?

s6/Q5 **Which national government department, person or procedure might be most helpful in achieving implementation of the recommendations and demands?**

EXPLANATION: To make sure that your recommendations are implemented, it is important to keep in mind to whom you are presenting the information, which person at which governmental level, and what their exact roles and competences are. Are they able to implement your recommendations or do they need authorization from a higher level? Have certain government responsibilities been delegated to the municipal or regional level? Which government departments or ministries should you aim at? Should you aim your lobbying at those developing the policy or at those implementing or evaluating the policy?

s6/Q6 **Which other governments, funding agencies or other actors do you want to approach, to point out how their funding or actions should/could contribute to the improved impact of the policy?**

EXPLANATION: See your answers in step 3 to questions 13 and 14 and in step 5 to question 3. These other actors may be able to put external pressure on governments or on private actors and may have an influence on the situation itself. When aiming your lobbying at these other actors keep in mind what their exact role/ mandate is and what they are most sensitive to.

s6/Q7 **What is the most suitable time to present the findings?**

EXPLANATION: This question requires some insight into the government agenda or the agenda of other actors you may want to approach. Which deadlines are involved in changing the policy? A conference, debate in parliament, visit of a high-level official, etc. can also provide the strategic timing to present the findings.

s6/Q8 **Which options are available to increase pressure on the government (if needed)?**

EXPLANATION: It is a good idea to make an assessment of your options -in addition to your planned lobbying activities- to make sure the government improves the impact of the policy. Think, for example, of public interest litigation, approaching the press, mobilizing the affected community or alerting the international community. Your organization could also join a coalition or a platform to advocate for the implementation of the recommendations, such as the People's Health Movement.

s6/Q9 **When and how will you know if the government has taken action corresponding to the recommendations?**

EXPLANATION: Similar to question 8, this requires some information about government agenda and procedures. Is it possible to be present in sessions where the recommendations will be discussed? How long can the decision-making process be expected to take? Will the government publicize a change in policy? Which other ways exist to find out whether the government has acted on the recommendations?

QUESTIONS AND EXPLANATION

S6/Q10 **When and how will you check whether the changes have really led to an improvement of women's enjoyment of their right to health?**

EXPLANATION: This check is necessary, because even if the government accepts the recommendations, this does not always mean that the desired results will be achieved. It is possible that the suggested changes were not adequate to improve women's health rights or that other factors hampered successful implementation. In such a case you may consider redoing all of part of the HeRWAI analysis, to understand why the desired improvements were not achieved.

WHICH AWARENESS-RAISING ACTIVITIES ARE YOU PLANNING?

S6/Q11 **How will the community be informed about the findings and recommendations?**

EXPLANATION: Health information is an important aspect of the right to health. Lobbying the government should therefore be accompanied by advocacy, to make people aware of their health rights and the violation of these. This can be done by use of various media, organizing a conference or workshop, producing and distributing a leaflet or video, etc. Disseminating the findings amongst other women's organizations and NGOs with an interest in women's health rights may also be a useful strategy.

WHAT DOES YOUR ORGANIZATION NEED TO IMPLEMENT THE ABOVE PLANS?

S6/Q12 **How much time and which resources (financial and in terms of skills) does your organization need to implement the action plan? Can these be made available?**

EXPLANATION: Developing a time frame and a budget will help to make a realistic action plan and may be useful if you need to ask for outside assistance.

CONCLUSION

You have now completed the analysis, as well as your action plan and recommendations. If all has gone well you will now have built up a solid argumentation about the impact of the policy on women's health rights and what you can expect from your government to improve this impact. You have also looked at the involvement of other actors at the national and international level. Your action plan should help to set up effective lobbying activities to convince your government and other actors to improve their implementation of women's health rights.

6 Concluding remarks

The authors sincerely hope that HeRWAI proves to be a useful tool to analyse policies and to lobby for a better impact of policies on women's health rights. We would very much appreciate your feedback about HeRWAI, particularly regarding the following:

- Have you used or do you plan to use HeRWAI? If so, for what purpose? Will/did you use the instrument as a whole, in part or the Discussion Guide?
- What are your main findings and recommendations?
- Did you use the HeRWAI analysis for a lobbying/ advocacy campaign? If so, what were the results?
- Do you have suggestions to improve HeRWAI?
- Can you suggest other organizations or networks which may be interested in HeRWAI?

Please send your comments to s.bakker@hom.nl. On the basis of the responses, HOM aims to further improve HeRWAI. We also hope to do a comparative study on the ways in which NGOs influence the implementation of women's health rights.

Annex I List of abbreviations

AIDS	Acquired Immune Deficiency Syndrome
CAT	Convention against Torture
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW/the Committee	Committee on the Elimination of Discrimination against Women
CERD	Convention on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child
FIDA- Kenya	Federation of Women's Lawyers Kenya
HeRWAI	Health Rights of Women Assessment Instrument
HIV	human immunodeficiency virus
HOM	Humanistisch Overleg Mensenrechten (Dutch abbreviation for Humanist Committee on Human Rights)
GATS	General Agreement on Trade in Services
ICPD	International Conference on Population and Development
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
IMF	International Monetary Fund
IWRAW-AP	International Women's Rights Action Watch - Asia Pacific
NGO	Non-governmental organization
PRSP	Poverty Reduction Strategy Paper
Si Mujer	Servicios Integrales para la Mujer
UN	United Nations
UNDP	United Nations Development Programme
UNFP(A)	United Nations Population Fund
UNHCHR	United Nations High Commissioner for Human Rights
UNICEF	United Nations Children's Fund
WGNRR	Women's Global Network on Reproductive Rights
WHO	World Health Organization
WPF	World Population Foundation
WTO	World Trade Organization

Annex II Glossary

INTRODUCTION

This glossary is meant to be a helping hand which can guide you through difficult terms you might find in HeRWAI. We have chosen the definitions which we thought explained the term most clearly in the context of HeRWAI. The list is not exhaustive.

Accession: is When a State becomes party to a treaty after it has already been negotiated and signed by other States (generally when the treaty has already entered into force). It has the same legal effect as ratification. The conditions under which accession may occur and the procedure involved depend on the provisions of the treaty.¹ Also see Ratification.

Advocacy: A process aimed at influencing decisions regarding policies and laws at national and international levels; actions designed to draw a community's attention to an issue and to direct policymakers to a solution.² Advocacy requires the existence of explicit mechanisms for the participation of organizations of civil society.

Availability, Acceptability, Accessibility and Quality of health services goods and facilities

Availability requirement: Functioning public health and health-care facilities, goods and services, as well as programmes, have to be available in sufficient quantity within the State party.³

Accessibility requirement: Health facilities, goods and services must be accessible to everyone without discrimination, within the jurisdiction of the State party.⁴ When looking at accessibility it is of particular importance to consider the removal of barriers faced by vulnerable and marginalized groups of women. Accessibility includes:

- Physical accessibility: facilities within safe physical reach for all sections of the population, especially vulnerable or marginalized groups.
- Economic accessibility (affordability): affordable for all, including socially disadvantaged groups. For example, poorer households should not be disproportionately burdened with health expenses as compared to richer households.
- Information accessibility: the right to seek, receive and impart information and ideas concerning health issues. Accessibility of information should not impair the right to have personal health data treated with confidentiality.

Acceptability requirement: All health facilities, goods and services must be respectful of medical ethics and culturally appropriate, i.e. respectful of the culture of individuals,

minorities, peoples and communities, sensitive to gender and life-cycle requirements, as well as designed to respect confidentiality and improve the health status of those concerned. They should be culturally appropriate, taking into account traditional preventive care, healing practices and medicines.⁵

Important note: Acceptability may not be used as an excuse for practices which exclude (e.g. when reproductive health services and information are denied to adolescent girls 'to protect their honour'). Another limitation of the term acceptability is where traditional practices harm women's health rights (e.g. in the case of female genital mutilation). Such practices are considered discriminatory.

Quality requirement: Health facilities, goods and services must be scientifically as well as medically appropriate and of good quality. This requires, amongst other things skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation.⁶

Beijing Platform for Action: Consensus document adopted by the 1995 Fourth World Conference on Women in Beijing, which reviews and reaffirms women's human rights in all aspects of life; signed by representatives at the Conference and morally but not legally binding. It was followed by the Beijing Plus 5 document and its progress was reviewed after 10 years, during the 49th session of the Commission on the Status of Women (2005).⁷

Benchmark: Self-set goals or targets to be reached at some future date. National and international benchmarks are the framework for measuring progress in implementing the right to health and are normally used for assessing the effectiveness of policies.⁸

Cairo Program of Action: Outcome document of the International Conference on Population and Development, adopted by the United Nations in September 1994, in Cairo, Egypt.

Civil and Political Rights: Classical rights and freedoms. Rights of citizens to liberty and equality. In principle citizens should be able to exercise these rights without interference from the government. Civil and political rights include the right to life, the right of fair trial, free choice of religion, to think and express oneself, to vote, to take part in political life and to have access to information.⁹

1 <http://untreaty.un.org/English/guide.asp#accession>

2 Women, Law and Development International, 1997, page 163.

3 ICESCR general comment 14, paragraph 12.

4 ICESCR general comment 14, paragraph 12.

5 ICESCR general comment 14, paragraph 12.

6 ICESCR general comment 14, paragraph 12.

7 <http://www.un.org/womenwatch/daw/csw/index.html>.

8 Asher, 2004, page 89.

9 Kooijmans, 2000, page 255.

Committee(s): Treaty-monitoring bodies created under various conventions to monitor the implementation of the treaty. Committees consist of independent experts. They examine State reports about the application of the treaty and deal with cases involving violations of rights. See also CEDAW, Human Rights Committee and ICESCR. The term ‘Human rights committee’ is meant to refer specifically to the treaty-monitoring body of the International Covenant on Civil and Political Rights (ICCPR).

Convention: See Treaty

Consensus documents: Documents which have been adopted by declaration. Though they are not legally binding, these documents are important because governments feel a moral obligation to abide by them, as they are based on political agreement. Therefore, they are also called political documents. One of the oldest and most influential consensus documents is the Universal Declaration for Human Rights. Other famous examples are the Beijing Platform for Action and the Millennium Development Goals.

Convention on the Elimination of All Forms of Discrimination against Women: CEDAW was adopted in 1979 and entered into force in 1981. It is the first legally binding international document prohibiting discrimination against women and obligating governments to take affirmative steps to advance the equality of women.¹⁰ Currently, 180 countries are party to CEDAW. In 1999, an optional protocol (see: Optional Protocol) to CEDAW was adopted, which entered into force in 2000. It established two new procedures: a procedure for individual complaints to the Committee and an enquiry procedure on the basis of which the Committee can start an investigation about an alarming situation in a specific country.

CEDAW (the Committee): Treaty body of the Convention on the Elimination of All Forms of Discrimination against Women. The Committee consists of a group of 23 independent experts who monitor the implementation of the Convention by State parties. The experts have been elected on the basis of their knowledge of relevant topics. They are nominated by governments of State parties, but operate independently from the governments.

Core obligations: Obligations that ensure the minimum core content of each right. See chapter 5, step 5 question 4 for a list of core obligations regarding the right to health.

Covenant: See Convention. See also International Covenant on Economic, Social and Cultural Rights (ICESCR) and International Covenant on Civil and Political Rights (ICCPR).

De facto: ‘In reality’ or ‘in fact’. Way of expressing a situation existing in fact, whether with lawful authority or not.¹¹ See also: de jure.

De jure: ‘By law’ or ‘by right’.¹² Way of expressing how a situation/something is, or should be, according to the law. In practice, the actual situation does not always conform with the law. For example, according to the law of a certain State (de jure), everyone may have equal access to health care, but in practice (de facto), due to local customs, women need their husband’s or father’s permission to see a doctor. See also: de facto.

Declaration (document): Document which contains agreed-upon standards but which is not legally binding. UN conferences, such as the 1993 UN Conference on Human Rights in Vienna and the 1995 World Conference for Women in Beijing, usually produce two sets of declarations: one written by government representatives and one by NGOs. The UN General Assembly often issues influential but legally non-binding declarations.¹³

Declaration (statement): Sometimes a State wants to make a general statement about a treaty, for example, the way it interprets a definition/word included in the treaty. This is done by way of a declaration. In cases where the treaty prohibits reservations, States sometimes (abusively) make use of declarations in order to limit the content of certain provisions or scope of application.¹⁴

Determinants of health: Conditions which make it possible to live in health, such as access to safe water, adequate food and housing, and safe and healthy working conditions. Resource distribution, gender differences and access to health-related education and information (including information on sexual and reproductive health) are also health determinants. Determinants are not necessarily directly related to health care. However, their analysis helps to make clear where barriers lie to claiming health rights.

Discrimination: Discrimination means ‘any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.’¹⁵

Economic, Social and Cultural Rights: Rights that give people social and economic security. These rights demand an active government policy. Examples are the right to food, education, shelter and health care and the right to preserve and develop one’s cultural identity.¹⁶

¹² <http://www.hyperdictionary.com/search.aspx?define=de+jure>

¹³ Shirman, D., Economic and Social Justice, a human rights perspective, a human rights glossary: <http://www1.umn.edu/humanrts/edumat/hreduseries/tb1b/Section3/hrfglossary.html>

¹⁴ Information ratifications, reservations and declarations to specific treaties can be found on the UNHCHR website: <http://www.ohchr.org/english/bodies/index.htm>

¹⁵ CEDAW article 1

¹⁶ Kooijmans, 2000, page 255.

¹⁰ <http://www.un.org/womenwatch/daw/cedaw/index>

¹¹ <http://www.hyperdictionary.com/search.aspx?define=de+facto>

GATS: General Agreement on Trade in Services, developed with the aim of creating a credible and reliable system of international trade rules; ensuring fair and equitable treatment of all participants (principle of non-discrimination); stimulating economic activity through guaranteed policy bindings; and promoting trade and development through progressive liberalization. Controversial for its limitations to the freedom of people and their governments to make democratic choices about the way their services are run and the effect it may have on the quality and availability of essential services across the world.¹⁷

Gender: While 'sex' refers to the biological differences between males and females, gender describes the socially-constructed roles, rights and responsibilities that communities and societies consider appropriate for men and women. We are born as males and females, but becoming girls, boys, women or men is something that we learn from our families and societies. It is this learned behaviour that forms gender identity and determines gender roles; these are not necessarily the same all over the world, or even within a country or region.¹⁸

General Recommendations/ General Comments: Documents explaining how a particular treaty should be interpreted and applied. These are written by the Committees which monitor the implementation of human rights treaties. Very relevant general recommendations in the context of HeRWAI are CEDAW General Recommendation 24 concerning women and health and ICESCR General Comments 14 on the right to the highest attainable standard of health.

Government: The word government in HeRWAI is used in a broad sense. It covers the law and policy-making forces, as well as the government institutions that are responsible for the implementation of policies. It also includes different levels: local, regional and national government. While local and regional authorities may have considerable responsibilities in developing and implementing policies, the national (central) government has the final responsibility to ensure that human rights are respected.

Grassroots organizations: Organizations set up by the local community and/or involving the community.

Health: Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. It is not confined to health care, but includes socio-economic factors and extends to the underlying determinants of health, such as resource distribution, gender, food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions and a healthy environment.¹⁹ See also **right to health and primary, secondary and tertiary health care.**

Human rights: The rights possessed by all persons, by virtue of their common humanity, to live a life of freedom and dignity. These rights and freedoms are irrespective of citizenship, nationality, race, ethnicity, language, gender, sexuality or abilities. They are universal and indivisible. Human rights become enforceable when they are codified as Conventions, Covenants or Treaties, or when they become recognized as Customary International Law.²⁰

Human rights approach: See rights-based approach.

Indicator: An indicator is a variable or measurement conveying information that may be qualitative or quantitative, but which is consistently measurable. Indicators related to women's health rights are, for example, maternal mortality rate, women suffering from epidemic diseases (both transmittable and non-transmittable), life expectancy of women, male-female ratio, nutritional level of women of all age groups, incidence of violence against women, female literacy rate, etc. Data regarding these indicators should be present in disaggregated form for all age groups and other socio-cultural and economic sub-groups.²¹

Indivisibility of rights: The indivisibility of human rights is the basic assumption of the human rights system, first formulated in 1948 in the Universal Declaration of Human Rights. It states that all human rights (civil and political as well as economic, social and cultural rights) are inter-related and cannot be separated. In order to ensure the realization of human rights, their implementation must therefore be comprehensive. It is impossible to fully realize civil and political rights if economic, social and cultural rights are being ignored.

International Covenant on Civil and Political Rights (ICCPR or CCPR): Adopted in 1966, and entered into force in 1976, the ICCPR declares that all people have a broad range of civil and political rights. It has currently (October 2005) been ratified by 114 countries. See also Civil and Political Rights.²²

International Covenant on Economic, Social and Cultural Rights (ICESCR): Adopted 1966, and entered into force 1976, the ICESCR declares that all people have a broad range of economic, social and cultural rights. By October 2005 the treaty has been signed and ratified by 115 countries. A group of 18 independent experts monitors the implementation of the International Covenant on Economic, Social and Cultural Rights. See also Economic, Social, Cultural Rights.²³

17 http://www.wto.org/english/tratop_e/serv_e/gatsqa_e.htm and <http://www.peopleandplanet.org/tradejustice/gats/>

18 http://www.unicef.org/gender/index_bigpicture.html

19 Adapted from ICESCR general recommendation 14, paragraphs 4 and 20.

20 Human Development Report 2000 Glossary:

<http://www.undp.org/hdr2000/english/presskit/glossary.pdf>

21 WHO, 25 questions on Health and Human Rights,

<http://www.who.int/hhr/activities/publications/en/index.html>

22 <http://www.unhchr.ch/tbs/doc.nsf>

23 http://www.un.org/Depts/Treaty/final/ts2/newfiles/part_boo/iv_boo/iv_3.html

Life-cycle approach: Health is a lifetime concern for both women and men, from infancy to old age. In many cultures, the discrimination against girls and women that begins in infancy can determine the course of their lives. Health policies therefore need to be tailored to the differing challenges people face at different times in life.²⁴

Limitation: A State may want to limit certain rights included in the ICESCR for several reasons; for example, issues of public health such as the spreading of a contagious disease. However, it only may do so if the limitation is primarily intended to protect the rights of individuals, determined by national law, compatible with the nature of the rights protected by the ICESCR and pursues legitimate aims (e.g. not using the limitation to increase the military budget). Moreover, the limitation must be aimed at the general welfare of society (e.g. not just the elite) and it must be proportional; the least restrictive alternative must be chosen.²⁵

Lobbying: Lobbying is the practice of seeking to influence the legislature or policy development. Lobbying can be conducted by an individual, a group, an organization or an association which actively tries to influence a governing body so that its point of view becomes reflected in the legislature or policy development.

Millennium Development Goals: The eight Millennium Development Goals (MDGs) – which range from halving extreme poverty to halting the spread of HIV/AIDS and providing universal primary education, all by the target date of 2015 – form a blueprint agreed to by all the world's countries and all the world's leading development institutions. In the UN Millennium Declaration the UN member states also stress values such as freedom, equality and solidarity.²⁶

Monitoring and reporting procedure: Treaties have a monitoring and reporting procedure to check the implementation of the treaty in each country. The reporting resembles a 'self-inspection'; governments report on their own compliance with human rights obligations. In other cases, a monitoring body (e.g. NGOs) initiates the report on government behaviour.

Non-governmental organizations (NGOs): Organizations formed by people outside the government. In the context of HeRWAI, this primarily refers to: women's organizations (working on women's rights), health organizations (working on health but not necessarily from a human rights perspective) and human rights organizations (working on human rights but not necessarily focusing on women's rights), jointly referred to as women's organizations and NGOs. They can operate on an international, national, regional or local scale on the basis of different mandates, agendas and priorities. Women's organizations and NGOs play a substantial role in influencing UN policy, for example, by writing shadow reports.

Non-retrogression: Governments are not allowed to remain passive in a situation where health rights deteriorate nor can they take measures that reduce the enjoyment of rights (non-retrogression). If a government takes retrogressive measures, it must prove that it had no other option, for example due to a severe crisis. In such a situation the government also has to demonstrate that it has protected the rights of the most vulnerable groups.²⁷

Optional protocol: A separate treaty associated with a parent treaty, under which state parties to the parent treaty may choose to undertake additional obligations.²⁸ The optional protocol to ICESCR grants individuals the right to send a complaint to the ICESCR Committee. The optional protocol to CEDAW also creates the possibility for the CEDAW Committee to review individual complaints ('communications') and, above that, enables the Committee to start an enquiry procedure.

Participation: The process through which stakeholders (individuals and organizations) influence and share control over priority setting, policy-making, resource allocation and access to public good and services.²⁹

Policy: A purposive course of action followed by an actor or set of actors in dealing with a problem or a matter of concern. Policies can vary considerably in scope. The term policy can refer to a nationwide 5-year health strategy as well as to decisions of a more limited scope, such as a reduction of the funding to the maternity wards in a certain district. The actors can be local or national governments, organizations, enterprises or individuals.³⁰

Poverty Reduction Strategy Papers (PRSP): One of the conditions a country may have to fulfil in order to receive help and debt relief is to make a PRSP. A PRSP describes the macroeconomic, structural and social policies and programmes that a country will pursue over several years to promote broad-based growth and reduce poverty.³¹

Primary, secondary and tertiary health care: Primary health care is provided at relatively low cost by health professionals and/or generally trained doctors working within the community and dealing with common and relatively minor illnesses. Secondary health care is provided at relatively higher cost by specialty-trained health professionals in centres, usually hospitals, and typically deals with relatively common minor or serious illnesses that cannot be managed at community level. Tertiary health care is provided in relatively few centres, typically deals with small numbers of minor or serious illnesses requiring specialty-trained health professionals, doctors and special equipment, and is often relatively expensive. Forms of primary, secondary and tertiary health care frequently overlap and often interact.³²

27 ICESCR General Comment 14, paragraph 32.

28 <http://www.un.org/womenwatch/daw/cedaw/protocol/whatis.htm>

29 World Bank at <http://lnweb18.worldbank.org/ESSD/sdvext.nsf/66B6ByDocName/ParticipationatProjectProgramPolicyLevel>

30 James Anderson in Howlet and Ramesh, 1995, page 6.

31 <http://www.imf.org/external/np/exr/facts/prsp.htm>

32 ICESCR general comment 14, paragraph 19.

24 <http://www.unfpa.org/rh/lifecycle.htm>

25 See ICESCR article 4 and paragraphs 28 and 29 of general comment 14.

26 <http://www.ohchr.org/english/issues/millennium-development/resources.htm>

Progressive realisation: Governments have to do all they can to improve the situation regarding the right to health. They must take deliberate, concrete and targeted steps towards the full realization of the right to health (obligation of progressive realization) and eliminate discrimination against women in the field of health care. The speed of the progress depends on the specific situation of the state and may differ from country to country³³.

Ratification/ ratified: Ratification of an international agreement represents the official promise of a state to uphold it and adhere to the legal norms that it specifies.³⁴

Reproductive rights: The rights that enable all women, without discrimination on the basis of nationality, class, ethnicity, race, age, religion, disability, sexuality or marital status, to decide whether or not to have children. This includes the right of access to safe, legal abortion. These rights are basic human rights.³⁵

Reservation: In cases where States object to one or several articles of a human rights treaty it is common to make use of a reservation. The reservation is a written statement which narrows down the provision (e.g. its content), limits its territorial application (for example, not in certain regions) or rejects the whole provision (e.g. the provision has no legal power in the State involved). The reservation is only valid when it is compatible with the object and purpose of the treaty, if the treaty does not prohibit reservations and if other States Parties do not object to the reservation.

Respect/ protect/ fulfil: States parties have the obligations to *respect, protect and fulfil* human rights. The obligation to respect requires States parties to refrain from interfering with the enjoyment of rights. The obligation to protect requires States parties to prevent rights abuses by third parties. The obligation to fulfil (in the meaning of facilitate) requires States parties to pro-actively engage in activities that strengthen access to and the utilization of resources and means to ensure the realization of rights. Fulfil (in the meaning of provide) requires States to take measures necessary to ensure that each person within its jurisdiction may obtain basic rights whenever they, for reasons beyond their control, are unable to realize these rights through the means at their disposal.³⁶

Rights-based approach: A human rights-based approach is based on the idea that every human being has human rights. States are responsible for the realization of these human rights. This means that citizens can hold the State accountable for its obligations to respect, protect and fulfil human rights. The basis of a human rights approach is that a human rights violation needs to be addressed, even when the number of people involved is small or not known exactly. In other words, each human rights violation stands on its own and should be taken seriously. A decrease in numbers of a certain type of

human rights violation is a positive development, but does not justify other violations still taking place.

Right to health: The right to health includes the availability, accessibility, acceptability and quality of health care and health determinants. Health is a fundamental right, which influences all aspects of life. It is therefore closely related to other human rights. People who are ill cannot fully enjoy their right to education or participation, whereas lack of food and housing, for example, make it difficult to live in good health. It is important therefore, to look at health as a whole. See also health and primary, secondary and tertiary health care.

Shadow report: Reports created by one or more NGOs that analyse the status of implementation of human rights obligations/commitments at the national level. In these reports, NGOs provide information that supplements government reports and thus assist the committees that monitor the treaties to address concerns that are omitted, neglected or misreported by the government.³⁷ Shadow reports are also referred to as alternative reports.

Special Rapporteur: An official appointed to compile information on a subject, usually for a limited period.

Special Rapporteur on Health: In April 2002, the commission on Human Rights appointed Paul Hunt as the Special Rapporteur. The Special Rapporteur's duties are to gather and exchange information on the right to health, discuss possible areas of cooperation with all relevant actors, including governments, relevant United Nations bodies, specialized agencies, NGOs and international financial institutions, report on the status of the right to health and make recommendations on appropriate measures that promote and protect the right to health.³⁸

State obligations: State party obligations describe what a state must do, and must not do, in order to ensure that the population of the country is able to enjoy the rights set out in the Convention. See Respect, protect, fulfill.

States Party(ies): Those countries that have ratified a covenant, convention or treaty and are thereby legally bound to conform to its provisions.³⁹ See also State obligations.

Treaty: A contract or other written instrument binding two or more states under international law; used synonymously with Convention and Covenant. All countries that have agreed to be bound by a treaty through ratification or accession have a legal obligation to implement these rights and principles at the national level.⁴⁰ See also Ratification and accession.

33 ICESCR article 2 and article 12; ICESCR General Comment 14 paragraphs 30 and 31.

34 <http://www.undp.org/hdr2000/english/presskit/glossary.pdf>

35 <http://www.wgnr.org/home.php?page=1&type=menu>

36 http://shr.aaas.org/pubs/rt_health/rt_health_manual.pdf

37 <http://swf.u2u.org/women2000.txt>

38 <http://www.unhchr.ch/Huridocda/Huridoca.nsf/o/9854302995c2c86fc1256ceco05a18d7?Opendocument>

39 Human Development Report 2000 Glossary On Human Rights and Development.

40 <http://untreaty.un.org/English/guide.asp#treaties>

TRIPS: WTO Agreement on Trade-Related Aspects of Intellectual Property Rights, obliging the 44 member countries of the WTO to protect the intellectual property rights on marketed products and production processes. Intellectual property rights such as copyrights and patents are intended to compensate the costs that manufacturers have invested in research and development.⁴¹

Universal Declaration of Human Rights (UDHR): Adopted by the General Assembly on 10 December 1948. Primary UN document establishing human rights standards and norms. All member states have agreed to uphold the UDHR. Although the declaration was intended to be non-binding, over time its various provisions have become so respected by States that it can now be said to be Customary International Law.⁴²

Violation of human rights: Breach of the commitments in the corresponding treaty (convention / covenant) or an action/omission which is incompatible with the treaty.

Annex III Work plan for HeRWAI analysis

The form below aims to help you plan your HeRWAI analysis. Good preparation will save you a lot of time later on. We therefore recommend that you:

- a READ through Chapter 5, without (at this point) answering the questions. MARK the questions for which you need to find extra information. CROSS out the questions that are not applicable to your situation. If needed, ADD questions.
- b On the basis of this, make a rough INVENTORY of the information you will need to collect and the most useful sources for finding it (See the boxes ‘Where to find the information’ and Annex V Sources and resources). You will probably also need to approach government officials

- and interview some others with relevant information. You may want to make a list of selected questions to take with you when you interview officials or other informants.
- c Fill in the WORK PLAN, taking into account which person is in the best position to deal with which set of questions. Consider involving people from other organizations if you need extra expertise in certain areas. The DATA COLLECTION takes place in step 1 to 4 of Chapter 5. Step 4 (the impact of the policy) and step 6 (recommendations and action plan) will benefit from a GROUP DISCUSSION, involving people from both within and outside your organization.

WORK PLAN FOR HERWAI ANALYSIS						
task	purpose	Main activities	duration ¹	start date	end date	Who to involve ²
Quick scan (Chapter 4)	To select a policy and determine the relevance of a HeRWAI analysis in your situation	group discussion	1 to 4 hours			
Preparation	To decide which organizations/persons to approach for which information	<ul style="list-style-type: none"> • Selecting relevant questions • Preparing interview lists 	2 days			
Step 1	Description of relevant issues regarding the policy	Answering selected questions	2 to 8 weeks			
Step 2	Data collection: the government's commitments	Answering selected questions				
Step 3	Data collection: the implementation capacity					
Step 4	Data collection: the impact of the policy	<ul style="list-style-type: none"> • Answering selected questions • Group discussion 				
Step 5	Analysis of State obligations and violations	Answering selected questions	1/2 – 3 days			
Step 6	Identify recommendations and decide on action plan (for lobbying)	<ul style="list-style-type: none"> • Analysis, • Group discussion, • Writing report and action plan 	1 – 5 days			
Lobby	Lobbying for the implementation of the recommendations	<ul style="list-style-type: none"> • Lobbying • Awareness-raising 	Depends on action plan			

¹ Rough estimate; the actual time investment may vary considerably, according to the specific context.

² This may include people from your own organization, other organizations, the government and/or the groups affected by the policy.

Annex IV Fact sheets

The following Fact sheets are meant to help you create an overview of your findings. Fact sheet A helps you to summarize your findings in step 1-3, which may be useful for step 6. Fact sheet B summarizes the findings in step 4 and will help you to answer the questions in step 5.

FACT SHEET A: THE POLICY

<p>STEP 1 The focus of the analysis</p>	<p>Policy in key words:</p> <p>Actors:</p> <p>Groups affected:</p> <p>Human rights affected:</p>
<p>STEP 2 The most relevant commitments the government has made in relation to your policy</p>	<p>Relevant commitments under international treaties:</p> <p>Relevant national legislation/ policies:</p>
<p>STEP 3 The capacity of the government to implement the policy</p>	<p>Financial resources:</p> <p>Human resources:</p> <p>Limitations:</p>

FACT SHEET B: IMPACT AND GOVERNMENT ACCOUNTABILITY

<p>The main effects of the policy on women’s health rights are:</p> <ul style="list-style-type: none"> list the effects found in the conclusion of step 4 mark with +, - or 0 whether you consider this as positive, negative or neutral for women’s rights 	<p>The following government obligations are linked to these effects:</p> <ul style="list-style-type: none"> see your answers to step 5, q4-q9. mention where appropriate: core obligations, non-retrogression, progressive realization, respect/protect/fulfill, non-discrimination, participation explain why 	<p>The government made the following commitments in relation to the negative (or lack of) effects:</p> <ul style="list-style-type: none"> see step 5 q10 	<p>For which effects can the government be held accountable?</p> <ul style="list-style-type: none"> see step 5 Conclusion
A	A	A	A
B	B	B	B
C	C	C	C
D (etc.)	D (etc.)	D (etc.)	D (etc.)

Annex V Sources and Resources

RESOURCES ON LOBBYING AND ADVOCACY

Short guide on lobbying. Website of the Education and Training Unit, South Africa.
<http://www.etu.org.za/toolbox/docs/organise/weblobby.html>

Short overview of the basics of lobbying. Website of the Democracy Center.
<http://www.democracyctr.org/resources/lobbying.html>

Online lobbying guide that can be downloaded. Website of the Independent Sector.
<http://www.independentsector.org/programs/gr/lobbyguide.html>

Good list of resources for advocacy. Website of the Asia-Pacific Alliance. Main focus on ICPD Agenda.
http://www.asiapacificalliance.org/SITE_Default/Resources_for_Advocacy_Default.asp

Good list of general resources on advocacy. Organization focuses on HIV/AIDS.
<http://www.aidsmap.com/en/docs/32364953-087A-45D3-AEED-E773BE45593D.asp>

General tips on advocacy. Website of the Ugandan AIDS Advocacy network.
http://www.phrusa.org/campaigns/aids/uganda/toolkit/eightsteps_advocacy.php

HEALTH INDICATORS, DATA SOURCES

PAHO gender differences in health and development in 48 countries in the Americas, focusing on women's reproductive health, access to key health services and major causes of death.
<http://www.paho.org/english/DPM/GPP/GH/GenderBrochure.pdf>

PAHO Country Health Profiles. <http://www.paho.org/english/sha/profiles.htm>

UNDP Human Development Reports 1990-2005. <http://hdr.undp.org/reports/global/2005/>

UNFPA Population and Reproductive Health Country Profiles. <http://www.unfpa.org/profile>

UNFPA State of the World Report 2005.
<http://www.unfpa.org/swp/2005/english/ch1/index.htm>

UN Statistics Division. <http://unstats.un.org/unsd/default.htm>

WHO Health indicators per country. <http://www.who.int/countries/en/> (also available in Spanish and French)

WHO World Statistical Information System. <http://www3.who.int/whosis/menu.cfm>

WORLD BANK GenderStats; gender statistics and indicators. <http://devdata.worldbank.org/genderstats/home.asp>

INTERNATIONAL TREATIES

CEDAW Convention on the Elimination of All Forms of Discrimination against Women.
<http://www.un.org/womenwatch/daw/cedaw/index>

CEDAW the Optional Protocol. <http://www.un.org/womenwatch/daw/cedaw/protocol/text.htm>

CEDAW General Recommendations. (see especially Recommendation 25 on health and 19 on violence against women)
<http://www.un.org/womenwatch/daw/cedaw/recomm.htm>

ICESCR International Covenant on Economic, Social and Cultural Rights. <http://www.ohchr.org/english/law/cescr.htm>
<http://66.36.242.93/treaties/cescr.php>

ICESCR General Comments. (see especially Comment 14 on health and 16 on equal rights for women and men)
<http://www.ohchr.org/english/bodies/cescr/comments.htm>

CERD International Convention on the Elimination of All Forms of Racial Discrimination.
http://www.unhchr.ch/html/menu3/b/d_icerd.htm

CRC Convention on the Rights of the Child. <http://www.unhchr.ch/html/menu3/b/k2crc.htm>

CMC. Convention on the Protection of the Rights of All Migrant Workers
http://www.unhchr.ch/html/menu3/b/m_mwctoc.htm

UDHR Universal Declaration of Human Rights. <http://www.unhchr.ch/udhr/>

REGIONAL TREATIES AND ORGANIZATIONS:

Africa:

African Charter on Human and Peoples' Rights (1981). <http://www1.umn.edu/humanrts/instreet/z1afchar.htm>

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

http://www.achpr.org/english/_info/women_en.html

African Union. <http://www.africa-union.org/home/Welcome.htm>

African Commission on Human Rights. http://www.achpr.org/english/_info/index_women_en.html

Europe:

European Convention on Human Rights (1950). <http://www.hri.org/docs/ECHR50.html>

European Social Charter (1961). <http://www1.umn.edu/humanrts/euro/z31escch.html>

Council of Europe. http://www.coe.int/t/e/Human_Rights/

European Court of Human Rights. <http://www.echr.coe.int/echr>

EU and Gender Equality. http://europa.eu.int/comm/employment_social/gender_equality/index_en.html

EU and Health. http://europa.eu.int/comm/health/ph_overview/overview_en.htm

OSCE. <http://www.osce.org/odhr/13371.html>

The Americas:

American Convention on Human Rights (1969). <http://www.oas.org/juridico/english/Treaties/b-32.htm>

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988). <http://www.oas.org/juridico/english/Treaties/a-53.htm>

Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, 'Convention of Belem do Para' (1994). <http://www.oas.org/cim/English/Convention%20Violence%20Against%20Women.htm>

Organisation of American States – OAS.

http://www.oas.org/main/main.asp?sLang=E&sLink=http://www.oas.org/key_issues/eng

Inter-American Commission. <http://www.cidh.org/basic.eng.htm>

Inter-American Court. http://www.corteidh.or.cr/index_ing.html

CONSENSUS DOCUMENTS

Beijing plus 5 and Beijing Platform for Action. <http://www.un.org/womenwatch/daw/followup/beijing+5.htm>

Declaration of Alma Ata (1978). <http://www.phmovement.org/charter/almaata.html>

Declaration of Commitment on HIV/AIDS, 'Global Crisis-Global Action' (2001).

<http://www.un.org/ga/aids/coverage/FinalDeclarationHIVAIDS.html>

Declaration on the Elimination of Violence against Women (1993).

[http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.RES.48.104.En?Opendocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.RES.48.104.En?Opendocument)

Declaration on the Right to Development (Vienna Declaration and Programme of Action) (1993). <http://www.hri.ca/viena+5/vdpa.shtml>

Declaration on the Rights of Disabled Persons (1975). <http://www.unhchr.ch/html/menu3/b/72.htm>

ICPD Programme of Action (Cairo Programme of Action) Report of the International Conference on Population and Development (1994). <http://www.iisd.ca/linkages/Cairo/program/po0000.html>

Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Maastricht, January 1997. http://www1.umn.edu/humanrts/instree/Maastrichtguidelines_.html

Millennium Declaration (MDGs) (2000). <http://www.developmentgoals.org>

People's Charter for Health. <http://www.phmovement.org/pdf/charter/phm-pch-english.pdf>

Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (1991). <http://www.unhchr.ch/html/menu3/b/68.htm>

RESOURCES ON TREATIES

ABA-CEELI. The Cedaw Assessment Tool: An Assessment Tool Based on the Convention to Eliminate All Forms of Discrimination against Women. <http://www.rightsconsortium.org/resources/assessment/CEDAWtool.pdf>

Office of the United Nations High Commissioner for Human Rights. www.ohchr.org/english/law/index.htm

Human Rights Library of the University of Minnesota. www1.umn.edu/humanrts/treaties.htm

Treaty Body Database on the Implementation of CEDAW and Other UN Human Rights Conventions. www.unhchr.ch/tbs/doc.nsf

Women's Human Rights Net provides information about women's human rights throughout the world. Also available in French and Spanish. www.whrnet.org

OTHER DOCUMENTS OF INTEREST

OHCHR, Draft Guidelines: a Human Rights Approach to Poverty Reduction Strategies, 2002, CESCR. <http://www.unhchr.ch/development/povertyfinal.html>

WHO: 25 Questions and Answers on Health and Human Rights, WHO Health and Human Rights Publication Series, Issue No.1, 2002. <http://www.who.int/hhr/activities/publications/en>

Special Rapporteur on Violence against Women: Cultural Practices in the Family That Are Violent towards Women, Report of the Special Rapporteur, January 2002. <http://www.unhchr.ch/Huridocda/Huridoca.nsf/o/42e7191fae543562c1256ba7004e963c?Opendocument>

Annex VII HeRWAI discussion guide

The HeRWAI discussion guide

WHY USE THE HERWAI DISCUSSION GUIDE?

The HeRWAI discussion guide is a summary of the Health Rights of Women Assessment Instrument (HeRWAI). It serves to make a quick **HUMAN RIGHTS-BASED ANALYSIS OF THE IMPACT OF A POLICY ON WOMEN'S HEALTH RIGHTS**. You can use the discussion guide, for example, as the basis for a brainstorming session or one-day seminar. If you want to make a more thorough analysis, we advise you to make use of the complete HeRWAI instrument. The complete HeRWAI instrument is available via the HOM website (www.hom.nl).

PURPOSE

The purpose of the HeRWAI impact assessment is to produce comprehensive arguments to **LOBBY FOR POLICIES THAT IMPROVE THE IMPLEMENTATION OF WOMEN'S HEALTH RIGHTS**.

RESULT

A HeRWAI analysis helps you to:

- make a direct link between the policy and relevant human rights issues;
- gain a better understanding of the current situation;
- make an assessment of the human rights impact of the policy, now or in the future;
- conclude what the government should do and what your organization will do to press the government into action.

WHY A HUMAN RIGHTS APPROACH?

A human rights approach is based on the idea that every human being has human rights. States are responsible for the realization of these human rights. This means that citizens can hold the State accountable for its obligations to respect, protect and fulfil human rights.

WHY FOCUS ON WOMEN ONLY?

Despite years of advocacy for equal opportunities for women, extensive discrimination against women continues to exist. Gender roles make women more vulnerable to certain conditions that affect health, for example, domestic violence and female genital mutilation. Moreover, women have specific health needs, for example, because of their genetic constitution.

WHAT IS MEANT BY 'POLICY'?

In HeRWAI, policy is interpreted in a broad sense: referring to all kinds of government action ranging from laws or a nationwide 5-year health strategy, to decisions of a more limited scope, such as a reduction of the funding to the maternity wards in a certain district.

PREPARING THE DISCUSSION:

It is important to be well prepared for the discussion. After selecting a policy with a possible impact on women's health rights, we advise you to inform yourself on the following issues before starting:

- Has your country ratified CEDAW and the ICESCR? (You will use this information in step 2.)
- The contents of the policy document. (You will use this information in step 1.)
- What is the status of the policy chosen? Is it still being developed, already implemented, under revision? Can you (still) influence decision-making of the policy? (You will use this information in step 1 and to determine what type of action is needed in step 6)
- What national laws are directly related to the policy? (You will use this information in step 2.)
- What is the (roughly estimated) government budget available for the implementation of the selected policy? (You will use this information in step 3.)

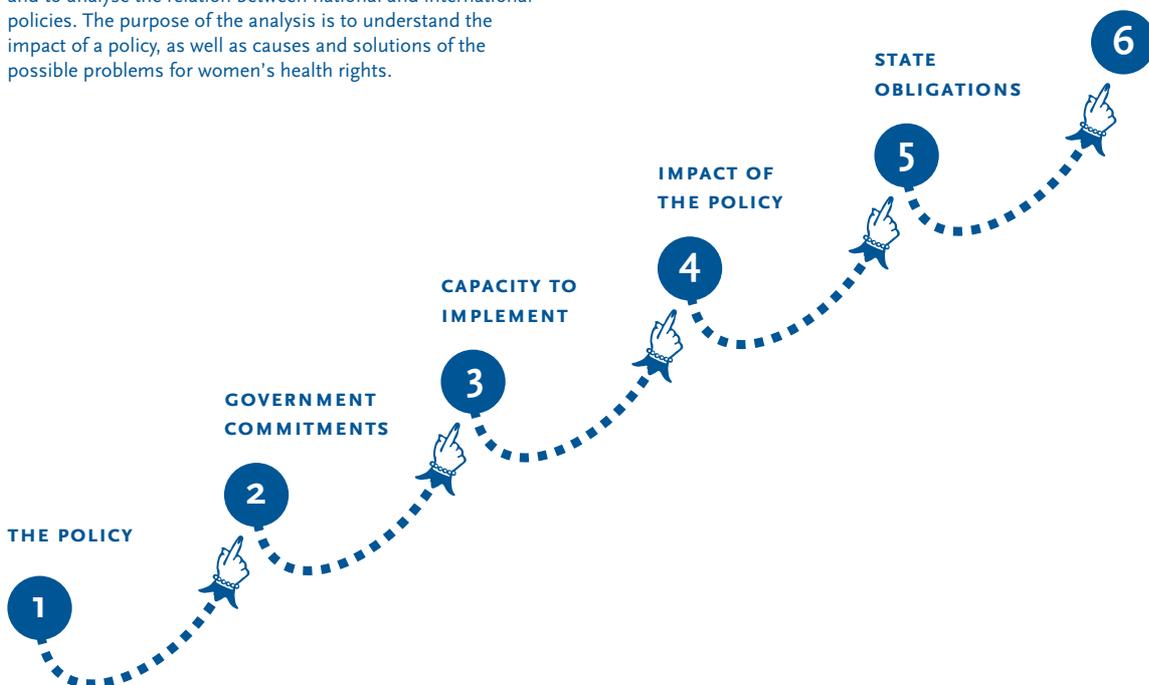
The **COMPLETE HERWAI INSTRUMENT** may serve as a background document. You can find more information about the words printed in *italics* in the complete HeRWAI instrument.

Health Rights of Women Assessment Instrument

HeRWAI provides a framework to link health and human rights and to analyse the relation between national and international policies. The purpose of the analysis is to understand the impact of a policy, as well as causes and solutions of the possible problems for women's health rights.

HeRWAI step by step

RECOMMENDATIONS AND ACTION PLAN



STEP 1 is to describe the policy, the affected groups of women and the rights involved.

STEP 2 is to find out which national and international treaties, agreements, policies and laws are relevant to the country and the policy under analysis.

STEP 3 is to describe which resources the government has to implement the policy and which factors limit or expand the implementation capacity.

STEP 4 is to describe effects (short and long-term) of the policy on women's health rights.

STEP 5 is to establish which state obligations are relevant in relation to the impact of the policy.

STEP 6 is to develop recommendations and strategies to enhance the enjoyment of women's health rights.

STEP 1 Identifying the policy

PURPOSE

In this step define the **FOCUS OF YOUR ANALYSIS**. You can do this by describing the problem and the policy that you have decided to analyse, the affected groups of women and the rights that are involved. You will use this information to specify what to include in the analysis.

THE KEY QUESTIONS:

TO CONSIDER WHEN ANSWERING THE QUESTIONS

Which (problem and related) *policy* will be analysed?

- *Policy* is used here in a broad sense; it can take the form of laws, a national health strategy, a decision to allocate resources, etc.
- To determine what further action to take, it is important to consider what the status is of the selected policy. Is it still being developed, already implemented or under revision? Can you (still) influence the policy's decision-making process? Do you need to undertake quick action or do you have more time to make an analysis (this information will be used in step 6)?
- In some situations, there is no policy at all to address the specific problem. You may decide to use HeRWAI to analyse the impact of the non-existence of a policy. This means that you will need to adapt some of the questions, for example, by reading 'lack of policy' when the questions state 'the policy'.
- See Chapter 2 of HeRWAI for an explanation of policy and the policy process in governments.

Which *actors* are involved in developing and/or implementing the policy?

- Consider the following possible actors (non-exhaustive)
 - Government (national, regional, local; for example: ministry, department, district or governmental institutions such as government hospitals),
 - Private sector; e.g. clinics, pharmaceutical industry
 - Non-governmental organizations
 - Health professional associations
 - Training institutes
 - Research institutes
 - International actors, such as:
 - Government of neighbouring or other country
 - Multinational or transnational corporations
 - International non-governmental organizations
 - Funding agencies
 - International financial institutions

Which *groups* are affected by the policy?

- Try to distinguish the effect on different groups of women and consider whether certain vulnerable or marginalized groups are more affected than others.
- See for a checklist on vulnerable and marginalized groups, step 1, question 9 of HeRWAI.

Which human *rights* are affected?

- In addition to the *right to health*, other rights may be affected, such as the right to food, the right to human dignity, the right to education, etc.
- See for a checklist on rights affected, step 1, question 11 of HeRWAI.

CONCLUSION:

To sum up, what is the focus of your analysis?

STEP 2 Exploring the government's commitments

PURPOSE

The purpose of ANALYSING GOVERNMENT COMMITMENTS is to find out which standards you can use to hold the government accountable for any negative impact – or the lack of positive impact – of the policy. Look for the most specific commitments, because these make it easier to formulate your claims to the government. If your country has not ratified the relevant human rights treaties, it will be more difficult to make such claims. This may mean that you need to shift the focus of your lobbying from the specific policy to lobbying for ratification of the relevant treaties.

THE KEY QUESTIONS:

TO CONSIDER WHEN ANSWERING THE QUESTIONS

Which *treaties* and *consensus documents* are relevant?

- Which *treaties* has your country ratified? Has your country made any reservations or limitations? Consider international treaties (amongst others, the Convention on the Elimination of Discrimination against Women – CEDAW and the International Covenant on Economic, Social and Cultural Rights – ICESCR) and regional treaties.
- You can find most information on treaties and ratification on the following websites: www.ohchr.org/english/law/index.htm (UNHCHR), www1.umn.edu/humanrts/treaties.htm (Human Rights Library of the University of Minnesota)
- Consider the following *consensus documents*: Millennium Development Goals – MDGs, Beijing Platform for Action, International Conference on Population and Development – ICPD.
- Also consider other bilateral or multilateral agreements that may influence the policy. For example, free trade agreements allowing international companies to compete with local industry, agreements of the World Trade Organization (WTO), the World Bank or other funding institutions.
- In step 2, questions 1 – 4 of HeRWAI you will find checklists on *treaties* and *consensus documents*.

What does national legislation say about *women's right to health*?

- Does the constitution or any relevant law say anything about issues related to the policy? Such as, the right to health, non-discrimination of women, sexual rights, reproductive rights, the right to informed decision, rights of disabled people, rights of mentally ill people, the right to gender equality, the right to non-discrimination, the right to water, food and housing.
- Do local, customary or religious laws influence the health rights of women?
- You will find a checklist on national legislation in step 2, question 5 of HeRWAI.

Does the government have a *national health strategy* and *other relevant policies*?

- Does the national health strategy have a gender perspective?
- Does it mention issues that are relevant for the policy?
- You will find a checklist of other relevant policies in step 2, question 12 of HeRWAI.

CONCLUSION:

What are the most relevant commitments the government has made in relation to your policy?

STEP 3 Describing the capacity for implementing the policy

PURPOSE

Step 3 looks at the capacity of the government to implement the selected policy. Government resources fluctuate, so you should also consider factors that reduce or expand THE GOVERNMENT'S IMPLEMENTATION CAPACITY. Discuss also the human and financial resources. Other factors which influence the implementation capacity include cultural, religious and social factors. Last but not least, look at the influence of donors and other international relations. This information provides a context to understand the impact of the policy in step 4.

THE KEY QUESTIONS:

TO CONSIDER WHEN ANSWERING THE QUESTIONS

Which *financial resources* are available for the implementation of the policy?

- What is the budget for the implementation of the selected policy?
- Is the budget decreasing or increasing?
- Can you compare the budget for the policy to budgets available for other issues, or for the same issue in neighbouring countries? This comparison may reveal what the priorities of the government are.

Which *human resources* are available for the implementation of the policy?

- Which staff is involved in implementing the policy; are they properly trained, gender-sensitive, motivated?
- What is the balance in the number and position of female and male staff?
- How is the staff geographically distributed?
- What is the balance in number and position of different ethnic, religious and cultural backgrounds amongst staff?
- You will find a checklist on distribution of staff in Step 3, question 6 of HeRWAI.

Which factors limit or expand the implementation capacity?

- Which *cultural, religious, social, environmental* and other factors influence the implementation of the policy? For example: cultural norms which attach low value to women's lives; floods, droughts and other environmental disasters; etc.
- Do *international actors* such as IMF, World Bank, WTO and other multilateral or bilateral donors influence the policy? For example, certain donors may donate money under the condition that a large part of it is spent on a specific issue.
- *Other positive or negative factors*: for example, a process of reform, structural adjustment, Poverty Reduction Strategy Plans or a crisis in the State that influences the implementation of the policy; conflicting interests or lack of consistency between the policies/programmes; lack of political will; etc.
- You will find a checklist on social, cultural, environmental and other factors in step 3, question 8 of HeRWAI.

CONCLUSION:

What is the capacity of the government to implement the policy?

STEP 4 The impact on the health rights of women

PURPOSE

Step 4 looks at the human rights impact of the policy. This step assesses what actually happens and whether the effects of the policy result in a violation of women's health rights. States which have ratified the human rights treaties mentioned in step 2 have to comply with all the elements of women's health rights described below. However, not all elements may be relevant for the policy you are analysing. The questions of step 4 help you to distinguish which are relevant elements and how the policy impacts on the

relevant aspects of women's health rights. If the policy has a negative impact on women's health rights, States are in VIOLATION with their obligations under those treaties. If there is no impact, it is important to ask: did the State miss an opportunity to improve women's health rights? The two main questions in step 4 are:

- What is the impact of the policy on women's health, in human rights terms?
- Does the policy have a discriminatory impact?

THE KEY QUESTIONS:

TO CONSIDER WHEN ANSWERING THE QUESTIONS

Is *timely and appropriate health care* a relevant issue?

- Timely and appropriate health care refers to a whole range of goods, services and facilities, such as medicines and contraceptive methods, well-trained and respectful health workers, health clinics and vaccination programmes.

Are underlying *determinants of health* a relevant issue?

- Determinants are the conditions which make it possible to live in health, such as:
 - Access to safe and potable water and adequate sanitation;
 - An adequate supply of safe food, nutrition and housing;
 - Healthy occupational and environmental conditions;
 - Access to education and information (in general, to enhance access to health care).

Is *participation* a relevant issue?

- The *participation* of the population in all health-related decision-making at the community, national and international levels is an important element of the right to health. Individuals and groups should be involved in setting priorities, making decisions, and planning, implementing and evaluating strategies to achieve better health. They should also have an opportunity to lodge complaints about the negative effects of laws and policies.
- Have the groups that are most affected by the policy participated in its development and implementation?
- Which mechanisms for redress are in place (such as ombudsmen, patients' rights associations, complaint procedures, etc.)?

Is *violence against women* a relevant issue?

- The CEDAW Committee considers gender-based violence as a form of discrimination. States have the obligation to prevent violence against women and to investigate and punish acts of violence (General Recommendation 19, paragraphs 1, 6 and 20).
- Is violence against women a factor in the policy/problem?
- Does the government take adequate measures to prevent and/or ban violence against women?

What is the impact of the policy on the *availability* of services, goods and facilities?

- *Availability requirement*: Functioning public health and health-care facilities, goods and services, as well as programmes, must be available in sufficient quantity within the country.

STEP 4 continued

THE KEY QUESTIONS:

TO CONSIDER WHEN ANSWERING THE QUESTIONS

What is the impact of the policy on the *accessibility* of services, goods and facilities?

- *Accessibility requirement:* Health facilities, goods and services must be accessible to everyone without discrimination, within the jurisdiction of the country.
- Accessibility includes:
 - *Physical accessibility*
 - *Economic accessibility*
 - *Information accessibility*

What is the impact of the policy on the *acceptability* of services, goods and facilities?

- *Acceptability requirement:* All health facilities, goods and services must be respectful of medical ethics and culturally appropriate, i.e. respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and age, as well as designed to respect the confidentiality and improve the health status of those concerned.

What is the impact of the policy on the *quality* of services, goods and facilities?

- *Quality requirement:* Health facilities, goods and services must be scientifically as well as medically appropriate and of good quality. This requires, amongst others, skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation.

Does the policy have *discriminatory effects*?

- Is the impact of the policy – as analysed in the previous questions – equally felt by all groups, or are some groups affected more than others?
- A policy violates the right to non-discrimination if its direct or indirect impact:
 - negatively affects some groups but not others,
 - positively affects groups that were already advantaged (thereby widening the gap),
 - affects all groups equally, without taking into account significant differences between those groups, and/or
 - reaffirms stereotypes which maintain all or certain groups of women in an inferior position.
- A policy is not considered discriminatory if it has a positive effect for disadvantaged groups only, on the condition that it is a temporary special measure with the specific aim of reducing the gap between advantaged and disadvantaged groups.

CONCLUSION:

What is the human rights impact of the policy on women's health rights? Distinguish between positive, negative or neutral effects. Can we speak of violations of women's health rights? (Explain why/ which ones.)

STEP 5 State obligations

PURPOSE

Step 5 looks at the relevant state obligations in relation to the selected policy. In step 2 you explored which commitments the government has made. Below you will find the obligations that result from these commitments in relation to the right to health. Select the obligations which are most relevant to the selected policy and explore the difference between what the government promised to do (step 2)

and what the government actually has achieved (step 4). This difference provides strong arguments to improve the policy. In addition, connect the obligations of the government to the violations established in step 4. This helps to determine the violations for which you can hold your government accountable.

THE KEY QUESTIONS:

TO CONSIDER WHEN ANSWERING THE QUESTIONS

Who is responsible?

- Who are the main actors responsible for the violations noted in step 4? The government or other national actor(s)?
- Do foreign governments or international actors have an influence on the violations?
- Do these actors correspond with the actors identified in step 1?

Is the government meeting its *core obligations* in relation to the policy?

Core obligations are the most basic obligations related to the right to health that all governments are required to meet, no matter what the circumstances. They oblige governments:

- To ensure, at the very least, *minimum essential levels* of
 - A Access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups;
 - B Access to basic food;
 - C Access to basic shelter, housing, water and sanitation;
 - D Essential drugs;
 - E Equitable distribution of all health facilities, goods and services;
 - F A national public health strategy and plan of action.
- The following core obligations are *of comparable priority*:
 - G Reproductive, maternal (pre-natal as well as post-natal) and child health care;
 - H Immunization against major infectious diseases;
 - I Measures to prevent, treat and control epidemic and endemic diseases;
 - J Education and access to information concerning health;
 - K Training for health personnel, including education on health and human rights.

Is the government meeting its obligations to *respect, protect and fulfil* health rights in relation to the policy?

- The government fails *to respect* women's health rights if the policy itself has an effect which reduces women's chances to enjoy good health.
- The government fails *to protect* women's health rights if the policy permits or does not prevent that others endanger women's health.
- The obligation *to fulfil* means that the government has to take positive measures that enable and assist people to enjoy their health rights. These measures include the development of a health policy ensuring that everyone has equal access to the determinants of health, providing sexual and reproductive health services through the public health system and measures to reduce infant and maternal mortality rates.
- It is a good idea to make a connection to the commitments you identified in step 2.

STEP 5 continued

THE KEY QUESTIONS:

TO CONSIDER WHEN ANSWERING THE QUESTIONS

Does the *obligation of progressive realization* apply?

- The *obligation of progressive realization* requires governments to do whatever they can to improve women's health rights. This means that if the government can achieve more by improving the policy, it has the obligation to do so.

Does the *obligation of non-retrogression* apply?

- *Obligation of non-retrogression*: Governments are not allowed to remain passive in a situation where health rights deteriorate. Nor are they permitted to take measures that reduce the enjoyment of rights. If a government does take retrogressive measures, it has to prove that it had no other option, for example, due to a severe crisis. The government also must demonstrate that it has protected the rights of the most vulnerable groups.
- The *obligation of non-retrogression* is applicable only if:
 - the deterioration is avoidable,
 - the government has not done all it can to prevent the deterioration,
 - the government has not asked for international assistance to address the problem, and/ or
 - the government has not protected vulnerable groups against the deterioration.

Is *lack of resources* a major obstacle?

- If yes:
 - Has the government used the resources it does have to the maximum extent?
 - Has the government attempted to obtain international technical and financial assistance?
 - Have other (donor) governments or international institutions extended the necessary assistance?
 - Base your answer on your findings in step 3.

For which violations can you hold your government accountable?

- List the main negative or lack of effects established in step 4.
- From the above questions, which of the relevant obligations can you connect to these effects?
- Can you link them to the government commitments discussed in step 2?
- Please note: In determining whether the government is meeting its obligations it is important to distinguish a government's inability from its unwillingness to comply with its obligations. Only in the case of unwillingness can you hold your government accountable for a violation.

CONCLUSION:

For which violations can you hold your government accountable?

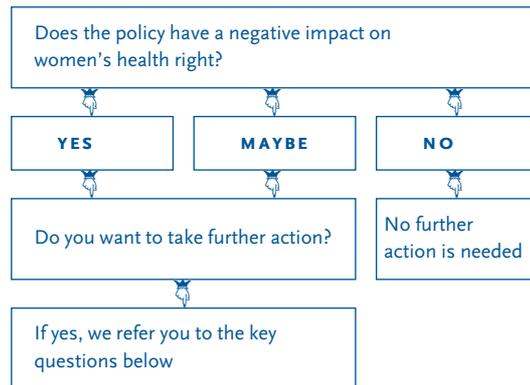
STEP 6 Conclusions and way forward

PURPOSE

On the basis of the above conclusions decide what the next step will be: further action such as a lobbying campaign, advocacy, training and/or an in-depth study of the policy made by your organization. Step 6 helps you to USE THE RESULTS OF THE ANALYSIS FOR ACTION. It serves to organize information and to make choices.

Before deciding on the way forward we ask you to do the following exercise:

- Consider the above conclusions as a whole.
- Looking at the conclusions, what is your overall conclusion?



THE KEY QUESTIONS:

TO CONSIDER WHEN ANSWERING THE QUESTIONS

What will you do with the information that resulted from the discussions in the previous steps?

- Did you gather sufficient information to take further action, or do you need to make a more in-depth analysis/ study of the policy? In the latter case we refer you to the complete version of the HerWAI instrument.

What will your *recommendations or demands* to the government be?

- Try to *formulate a recommendation* for each of the violations and unwanted effects of the policy.
- If a change in the policy is not the solution, what *action* should the government take?
- To what extent is your organization willing and able to assist the government in the further development and implementation of the recommendations?

What will your *action plan to lobby* for improvement of the policy be?

- Examples of further action could be: an urgent action letter addressed to the responsible minister, a meeting with responsible policy-makers or members of parliament, a press briefing, etc.
- Consider who you want to approach: which national government department, person or procedure could be most helpful in achieving implementation of the recommendations and demands? Or which other governments, funding agencies or other actors that have an influence on the policy could you approach?
- What is the most suitable time to present the findings?
- Approach: Is an approach based on dialogue or on confrontation more likely to succeed? Which administrative, judicial, complaints or other procedures can be used?

What does your organization need to execute the above plans?

- How much time and which resources (financial and in terms of skills) does your organization need to implement the action plan? Can these be made available?

Can you involve others in the execution of your plans?

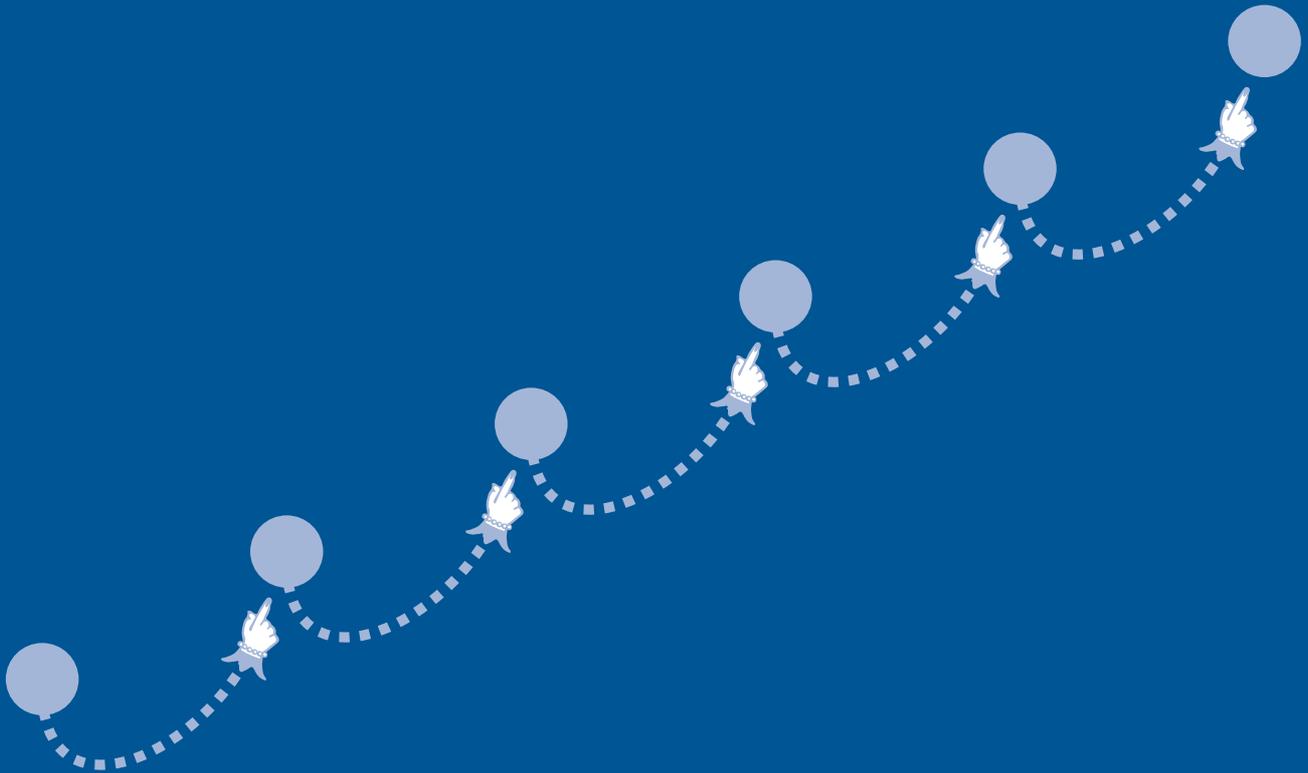
- Linking up with other organizations can make your lobbying efforts stronger.

A final word

We would like to THANK YOU for using the discussion guide. The authors sincerely hope that the HeRWAI discussion guide has proven to be a useful tool to analyse and influence the impact of policy on women's health rights. We would very much appreciate receiving your FEEDBACK about the HeRWAI discussion guide and would be grateful to hear about your experiences with this tool. Please send your comments to h.plagman@hom.nl or s.bakker@hom.nl. These comments will be helpful for the further improvement of the instrument.

If you are interested to learn about the background and history of the document or if you would like to receive HERWAI IN ITS FULL-LENGTH you can contact h.plagman@hom.nl or s.bakker@hom.nl.

*Utrecht, The Netherlands,
November 2005*



ABOUT HOM

The Humanist Committee on Human Rights (HOM) works to improve human rights, for all people, all over the world. HOM aims to contribute to the effective implementation of human rights by means of:

- developing instruments to measure the effectiveness and impact of human rights policy;
- capacity-building efforts in human rights organizations throughout the world;
- influencing Dutch and European human rights policy;
- carrying out assignments (such as evaluations) to advance human rights.

