

**Ad-Hoc Experts' Group II
Workshop on Legislative Development
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**Key elements for the effective investigation, cooperation and
prosecution of people smuggling, trafficking in persons and
related transnational crime**

People Smuggling

“What are the elements which are needed to produce effective legislation to prosecute people smugglers?”

Key elements for the effective prosecution of people smugglers

Legislation to cover legal entry into a country.

Make people smuggling a crime.

- People smuggling is assisting or arranging for (facilitating) a person to enter a state illegally.
- Consider whether this should only be a crime when done for gain (material benefit, profit or other gain).
- The crime should cover smuggling a person into a country, through a country, or from one country to another country.
- The crime should cover all aspects of smuggling (for example attempt, conspiracy, incitement and aiding).
- States should also make harbouring of smuggled persons a crime.
- Legislation should cover actions outside the state (extraterritorial application), to the extent possible in the national legal system.

Laws and penalties need to reflect the serious nature of people smuggling.

- At a minimum, they should allow extradition and mutual assistance.
- States might consider whether higher penalties are necessary in some situations (“aggravated circumstances”).
- States should be aware of the penalties applying in other states.

Laws should aim to make prosecutions for people smuggling easier.

- These could include allowing the use of evidence gathered in other countries, allowing witnesses to stay in the country to give evidence, and protection of witnesses.

Human Trafficking

“What are the elements which are needed to produce effective legislation to prosecute human traffickers?”

Key elements for the effective prosecution of human traffickers

Make human trafficking a crime.

- Define human trafficking, to include using deceptive or coercive practices to move a person across borders or within a country for the purpose of exploitation.

Laws need to be comprehensive, and include:

- trafficking in men, women and children.
- “recruiting” persons to be trafficked (including “using fraud, threats, force or abuse of power).
- exploiting persons who have been trafficked.
- harbouring persons who have been trafficked.
- arranging, organising, facilitating, financing or profiting from any of the trafficking activities above.

Laws should also target the main organisers of trafficking, including organised crime where relevant.

- Including by using conspiracy provisions and measures to combat organised crime.

Legislation or other measures should cover actions outside the state (extraterritorial application), to the extent possible in the national legal system.

Laws and penalties need to reflect the serious nature of human trafficking.

- At a minimum, they should allow extradition and mutual assistance.
- States might consider whether higher penalties are necessary in some situations (“aggravated circumstances”).
- States should be aware of the penalties applying in other states.

Laws should aim to make prosecutions for human trafficking easier.

- These could include allowing the use of evidence gathered in other countries, allowing witnesses to stay in the country to give evidence, and protection of witnesses.
- Recognise the specific problems that trafficked persons have in identifying many of the organisers of trafficking.

Protection of and assistance to persons who have been trafficked needs to be considered.

Investigation and cooperation

“What are the elements which are needed in legislation to allow effective investigation and cooperation to combat people smuggling, human trafficking and related aspects of transnational crime?”

Key elements for effective investigation and cooperation

Laws to allow extradition (extraditions will, of course, still be subject to ordinary rules including dual-criminality).

Laws to allow information sharing between law enforcement agencies, both domestically and internationally.

- These laws need to take account of national privacy provisions.

Laws to allow mutual legal assistance.

- These laws should support cooperation between police forces and other national officials or with relevant international agencies.

Laws for confiscation of the profits and the goods used in people smuggling and trafficking in persons.

- Include ability to find and hold the profits.
- Make “money-laundering” a crime (ensure that people smuggling and trafficking in persons are “predicate offences” for the purposes of money-laundering legislation).

Criminalise the production, provision, possession, trading or use of false documents for the purpose of facilitating trafficking in persons or people smuggling, even if the documents are to be used in another state.

Give adequate powers to law enforcement agencies to investigate people smuggling and trafficking in persons

- These powers could include ready access to search warrants; access to surveillance and telecommunications intercepts; and undercover and controlled operations.

Laws should aim to make prosecutions for trafficking in persons and people smuggling more effective.

- Procedures for the identification and proof of forged documents should be made easier.
- Laws should make it easier for children to give evidence.

Laws to combat corruption and bribery of public officials.

Laws to make obstruction of justice a crime in the investigation and prosecution of trafficking in persons or people smuggling.

Provide legislative basis for the reliable identification of persons crossing national borders, including biometrics and developing cooperation with commercial carriers.