

LEGISLATION

Brunei	<ul style="list-style-type: none"> • Has drafted legislation against people trafficking and smuggling in persons and combined them both in the one law. • Legislation follows the model laws.
Fiji	<ul style="list-style-type: none"> • Passed people smuggling legislation on 30 October 2003. • Its new law contains all elements discussed in the model law.
Indonesia	<ul style="list-style-type: none"> • Has recently amended its law to criminalise perpetrators and the parties that harbour the perpetrators of these crimes. • Have also amended law to increase the maximum penalty that applies.
Japan	<ul style="list-style-type: none"> • Covers both offences in its penal code.
Laos	<ul style="list-style-type: none"> • Laos criminal law mentions people smuggling and trafficking in persons but are currently thinking about introducing new legislation
Malaysia	<ul style="list-style-type: none"> • Immigration Act criminalised both people smuggling and trafficking in persons.
Nepal	<ul style="list-style-type: none"> • Legislation against people trafficking has been in place since 1996. • Nepal's legislation places the burden of proof on the accused if the trafficking victim goes to court.
New Zealand	<ul style="list-style-type: none"> • Enacted the Transnational Organised Crime Convention Act in 2002 which implements the TOC Convention and its associated protocols and goes even further.
Philippines	<ul style="list-style-type: none"> • Recently enacted an anti-trafficking in persons law, which includes trafficking in persons within its borders. • The Philippines law has been designed not merely to penalise traffickers but to prevent demand. • The Philippines law does not only criminalise trafficking in persons but provides certain institutional mechanisms and policies for the protection of trafficked persons. • The Philippines law is also designed to prevent corruption in government where public officials may facilitate trafficking in persons. • The Philippines raised concern with the offence of aggravated people smuggling. It

	<p>is currently considering implementing an offence against people smuggling in its immigration law however it feels aggravated people smuggling is an offence that is better placed under trafficking.</p>
Republic of Korea	<ul style="list-style-type: none"> • In the process of making a unit law relating to trafficking in persons.
Hong Kong	<ul style="list-style-type: none"> • Hong Kong has specific legislation in place to criminalise the trafficking of women for the purposes of prostitution but it does not have a specific definition for trafficking in persons or the smuggling of migrants.
Sri Lanka	<ul style="list-style-type: none"> • Immigration Act in place. • Sees an overlap between human smuggling and human trafficking. • Planning to introduce people smuggling legislation soon as a separate offence but is intending to leave human trafficking as an offence in its penal code.
Samoa	<ul style="list-style-type: none"> • Currently considering implementing legislation but is concerned about what is the best approach to take: have the legislation as a separate offence or include it within their criminal code.
Tonga	<ul style="list-style-type: none"> • Tonga has no provisions in its legislation against people smuggling and trafficking in persons however its criminal law contains similar provisions relating to forgery and it relies on this to prosecute offenders.

ISSUES

- As people smuggling involves some element of voluntariness whereas human trafficking involves some use of force, should victims of people smuggling be afforded the same protection as victims of trafficking?
- Is the offence of aggravated people smuggling more akin to people trafficking than people smuggling?
- Should consent to being smuggled/trafficked be a defence or at least be relevant to both offences?
- Although there is an agreed need to be harsh on smugglers and traffickers but soft on victims there is a problem of getting the victim to admit that he/she has been trafficked and to ensure that they are actually victims. Point made that a lot of times the “victims” may have actually come into the country on their own accord.
- Can it still be people smuggling if all you are doing is facilitating a person’s legal entry into a country?
- Enforcement issues need to be addressed. It is important to have comparable border management systems with both hardware and software support to enable better regional cooperation. Smaller countries need to have the ability to learn firsthand of problems at the border and systems in place to identify risk passengers and fraud travel documents.
- Suggested that a secure immigration consultative network needs to be formed. Such a network would provide countries with assistance in visa systems, migration policies, management border systems, model legislation and country contacts in various areas of immigration work.
- Suggested that a regional coordination body is needed to disseminate information to all immigration services.
- Suggested that a centralised point of contact is required for exchange of information/intelligence.
- Suggested that all countries in the region need an ongoing and sustainable way of sharing information.