

Establishing effective legal, policy and national coordination frameworks.

Establishing comprehensive national legal and policy frameworks constitutes the **most basic prerequisite for effectively combating human trafficking and migrant smuggling**. The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children¹ and Protocol against the Smuggling of Migrants by Land, Sea and Air² set forth international standards pertaining to both crimes, with which State signatories are expected to align their national legislation.

Migrant smuggling and human trafficking are **distinct but related crimes**. The former constitutes a crime against the State, while the latter is a crime against the individual, resulting in distinct implications for the criminal justice process. National legal definitions must contain all of the constituent elements of each crime and sanctions should appropriately reflect the gravity of the crimes, including any aggravating circumstances.

The legal models established by the Protocols are comprehensive, entailing

definitions of the crimes and protective measures for and access to services for victims, and foreseeing international cooperation, recognizing that both crimes can only be addressed through a holistic and coordinated approach. **The absence of comprehensive national legislation can seriously compromise criminal prosecutions.** For example, failure to provide protection and assistance to victims, including protection from prosecution, frequently exacerbates any initial reluctance to cooperate with law enforcement, impeding the collection of evidence to the further detriment of prosecutions on both sides of any border.

In addition to specifically addressing migrant smuggling and human trafficking, a truly comprehensive legislative and policy framework would encompass effective laws and policies on: suitable alternatives for legal migration and employment opportunities; combating crimes that constitute push factors and other related crimes, including domestic and sexual violence, child or early marriage and child begging;

1. <https://www.osce.org/odihr/19223?download=true>

2. https://www.unodc.org/documents/southeastasiaandpacific/2011/04/som-indonesia/convention_smug_eng.pdf

and, laws and policies pertaining to child protection, adoption, foster care and social inclusion policies, among others.

Human trafficking and migrant smuggling **touch upon multiple sectors and involve numerous stakeholders**. National policies to address these crimes, such as specialized national strategies, action plans and referral mechanisms, provide the necessary frameworks for inter-agency cooperation and coordination at the national level. Effective national policy documents ensure the delegation of tasks and authorities, the active involvement of civil society, and the development of indicators for monitoring and evaluating progress achieved within established time frames.

ACP States are in **diverse stages of progress** in establishing comprehensive legislation in line with international standards, and in ensuring effective implementation. This session will provide participants with the opportunity to share positive examples and to discuss barriers experienced in developing the necessary legal and policy framework and engaging in active implementation through effective coordination.

Participants will be invited to reflect on the following questions:

Do the definitions of human trafficking and smuggling reflect the constituent elements of the crimes as established by the UN

Protocols?

Is national legislation on migrant smuggling and human trafficking in line with the standards set forth in the UN Protocols? What have been the primary barriers in doing so? Does the legal framework define smuggling and human trafficking as distinct crimes?

Do all stakeholders have the necessary awareness and knowledge of existing legislation?

What are the primary barriers in implementing existing legislation? Are there significant resource constraints? Is political will lacking?

Does a national strategy or national action plan exist? Were civil society organizations (CSOs) involved in its development?

Do existing policy documents establish a national coordination and referral mechanism? Is cooperation with CSOs explicitly foreseen?

The objective of this session will be to identify strategies for the development of comprehensive law and policy for both crimes, through the enactment of issue-specific legislation and policies, as well as for those policies that fundamentally intersect with human trafficking and migrant smuggling, such as migration and child protection.