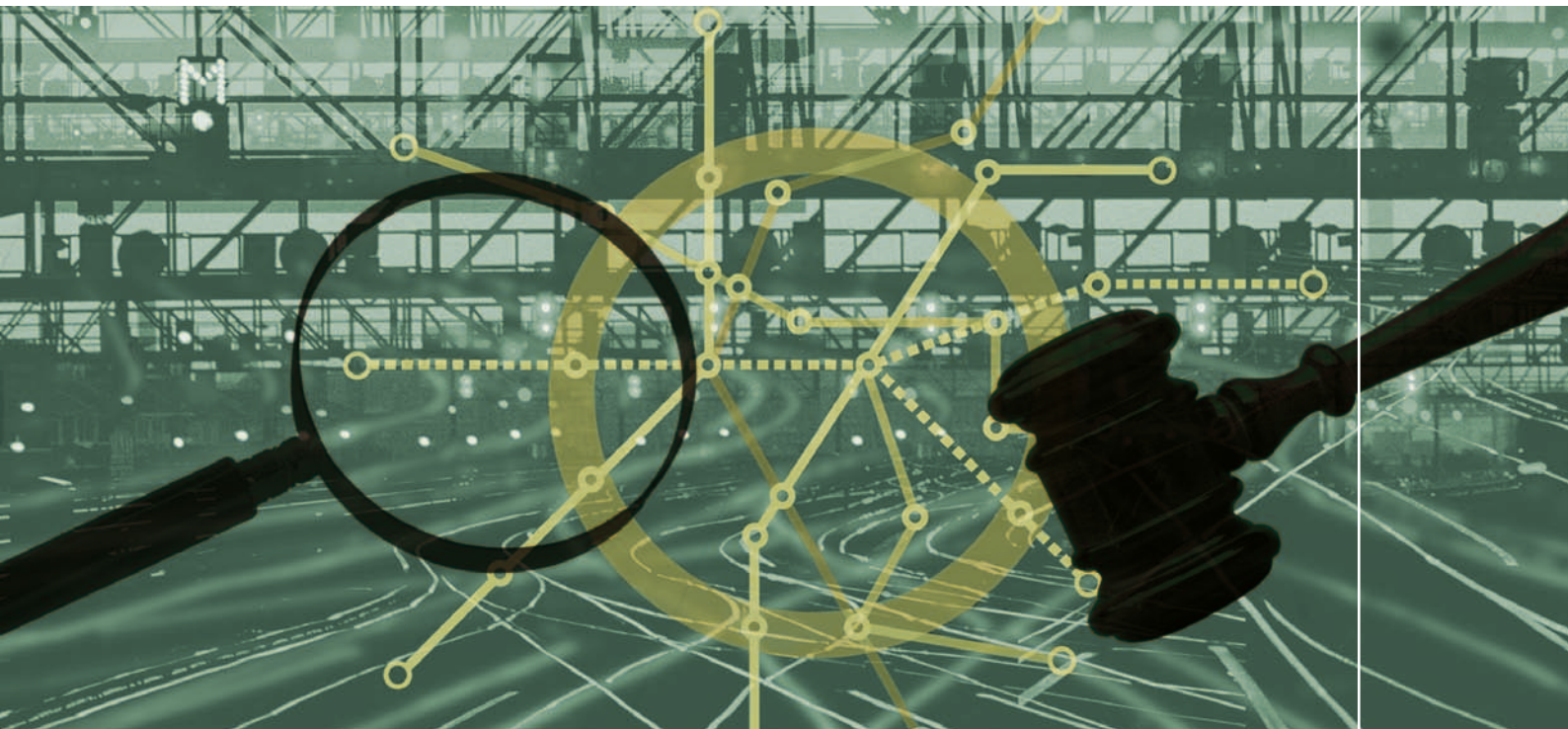




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United Nations Office on Drugs and Crime



Basic training manual on investigating and prosecuting the smuggling of migrants

Module 7
Legislative issues



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UNITED NATIONS OFFICE ON DRUGS AND CRIME
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Module 7. Legislative issues

A. Learning objectives

The present module looks at some of the legal issues that surround investigations into the smuggling of migrants. In particular, it will look at the legislative background with respect to the offence, and the alternative offences that could be prosecuted in cases where either no smuggling of migrants offences exist or there is insufficient evidence to support a charge of smuggling of migrants. At the end of this module, you should be able to:

- Understand the legislative background with respect to investigations into the smuggling of migrants and related offences.
- Identify other offences that may have been committed in the course of the smuggling of migrants.
- Identify areas of potential strength and weakness to be considered when a case moves to prosecution.

B. Legislative background

Your laws matter

By adopting the Smuggling of Migrants Protocol, countries become equipped to respond to the smuggling of migrants and have a strong basis for cooperating with other countries. To facilitate this process, UNODC has a model law on the smuggling of migrants.

Investigations carried out in different jurisdictions will be governed by different legislative frameworks. Ensuring that appropriate authority is sought and appropriate legislative procedures are followed can pose an investigative challenge to law enforcers who are seeking to mount investigations efficiently or apply investigative tactics creatively.

In some jurisdictions, specific anti-migrant smuggling legislation exists, while in others the smuggling of migrants may be criminalized under the criminal code. In still others, the smuggling of migrants may not be criminalized in any legal instrument. In the last-mentioned situation, prosecutors may have to rely on alternative offences to secure a conviction of smugglers of migrants.



When working with other jurisdictions, you must be aware of the rules and laws in that country. Failure to comply with rules and regulations could be fatal to your case!

Criminalization

Article 6 of the Smuggling of Migrants Protocol sets out the types of criminal conduct that States parties are required to criminalize.

- The procurement for material gain of the illegal entry of a person into a State party of which the person is not a national or permanent resident (article 6, paragraph 1 *(a)*).
- Producing, procuring, providing or possessing fraudulent travel or identity documents when done for the purpose of enabling smuggling of migrants (article 6, paragraph 1 *(b)*).
- Enabling a person to remain in a country where the person is not a legal resident or citizen without complying with requirements for legally remaining by illegal means (article 6, paragraph 1 *(c)*).
- Organizing or directing any of the above crimes (article 6, paragraph 2 *(c)*).
- Attempting to commit any of the above offences, subject to the basic concepts of the State party's legal system (article 6, paragraph 2 *(a)*).
- Participating as an accomplice in any of the above offences, subject to the basic concepts of the State party's legal system (article 6, paragraph 2 *(b)*).

Article 3, subparagraph *(b)*, further defines illegal entry as the crossing of (international) borders without complying with the necessary requirements for legal entry into the receiving State.

At this point, you need to refer to your own national legislation and judicial authorities for guidance, but the above provisions of the Smuggling of Migrants Protocol clearly outline what has been internationally agreed on with respect to criminalization. It should assist you when examining the type of conduct you should be seeking to prove.

In some jurisdictions, a person can be prosecuted for turning a blind eye to smuggling, that is, he or she may not actively participate in the offence but is guilty by virtue of his or her failure to do anything about it.



Example: criminal legislation — the Netherlands

Criminal Code, article 197a, Smuggling of human beings.

1. Whoever provides assistance to another person to acquire entry to the Netherlands or to transit the Netherlands, another Member State of the European Union, Iceland, Norway or any State which has acceded to the Protocol against the Smuggling of Migrants by Land, Sea and Air concluded in New York on 15 November 2000 supplementing the Organized Crime Convention concluded on 15 November 2000 in New York, or provides that person with an opportunity or the means or information enabling him to do so, whilst cognizant of the fact or having serious reason to believe that the said entry or transit is illegal, will be guilty of the smuggling of human beings and receive a penal sentence of a maximum of four years or a pecuniary penalty of the fifth category.

2. Whosoever in pursuit of gain provides assistance to another person to acquire residence in the Netherlands or another Member State of the European Union, Iceland, Norway or any State which has acceded to the Protocol mentioned in the first paragraph, or provides that person with an opportunity or the means or information enabling him to do so, whilst cognizant of the fact or having serious reason to believe that the said residence is illegal, will be punished with a penal sentence of a maximum of four years or a pecuniary penalty of the fifth category.

3. If one of the offences described in the first and second paragraphs is committed whilst exercising any office or practising any profession, a penal sentence of a maximum of six years or a pecuniary penalty of the fifth category will be awarded and the holder may be disqualified from holding that office or practising that profession and the judge may order his/her sentence to be made public.

4. If one of the offences described in the first and second paragraphs is committed by a person who makes a profession of doing so or who habitually does so, or by several persons acting in association, a penal sentence of a maximum of eight years or a pecuniary penalty of the fifth category will be awarded.

5. If one of the offences described in the first and second paragraphs results in severe bodily injuries or it is feared that a person's life may be in jeopardy, a penal sentence of a maximum of twelve years or a pecuniary penalty of the fifth category will be awarded.

6. If one of the offences described in the first and second paragraphs results in death, a penal sentence of a maximum of fifteen years and a pecuniary penalty of the fifth category will be awarded.

Aggravating and mitigating factors

You should also consider the possibility that aggravating circumstances may be involved. Article 6, paragraph 3 of the Smuggling of Migrants Protocol requires States parties to adopt legislative and other measures to establish aggravating circumstances, including those that:

- Endanger or are likely to endanger the lives or safety of the migrants concerned; or
- Entail inhuman or degrading treatment, including exploitation of the migrants.

Examples of such circumstances include (but are not limited to):

- Abuse of a child or abuse of a position of trust or authority.
- Connections with other crimes such as drug smuggling and trafficking in persons; for instance, migrants may be compelled to carry drugs when they are themselves smuggled.¹
- Conditions in which migrants are smuggled: was the boat, bus or car particularly hot, cold, wet, dry or crowded? Was the current at sea particularly strong?

¹It should be noted that the exploitation of a migrant by compelling him or her to carry drugs or perform other illegal activities in the course of being smuggled could mean that he or she is a victim of trafficking in persons.

On aggravating (and mitigating) circumstances see also module 3.

Some possible aggravating and mitigating factors that could influence sentences are:

<i>Aggravating factor</i>	<i>Mitigating factor</i>
Methodology: high level of risk placed upon those smuggled, e.g., people sent unattended in a boat that is not sea worthy.	No risk is posed to smuggled migrants as a result of the smuggling methodology used.
High number of migrants involved.	Low number of migrants involved.
Deaths of migrants.	Migrants kept safe and secure.
Criminal record with pattern of repeated offences involving the smuggling of migrants.	One-off occasion (e.g., young offender with no criminal record).
Poor conditions of travel (lack of air, water, food, extremely hot or extremely cold temperatures, and unsafe sea conditions).	Good conditions of travel.
High profit, e.g., sole income is profit.	Low profit.
Use of violence against migrants, e.g., assaulting migrants to control them during travel.	No use of violence.
Exploitation of migrants or potential for trafficking in persons.	
Resisting arrest, use of violence or otherwise uncooperative with law enforcers.	Cooperative with police; providing evidence against the smuggling network.
Presence of children.	
Involvement of public officials.	
Commission of other offences (for instance, violence against smuggled migrants, e.g., sexual assault during travel).	

Non-criminalization

It is imperative to remember that the Smuggling of Migrants Protocol in no way criminalizes the involvement of the migrants themselves for having been smuggled, by virtue of article 5 of the Protocol, which reads:

“Migrants shall not become liable to criminal prosecution under this Protocol for the fact of having been the object of conduct set forth in article 6 of this Protocol.”



Questions and exercises

- Does specific anti-migrant smuggling legislation exist in your country?
- If anti-migrant smuggling legislation does exist in your country, how does it differ from the Smuggling of Migrants Protocol?

For instance, are the following criminalized:

<i>Criminal conduct</i>	<i>Criminalized? Yes/No</i>	<i>Relevant domestic law</i>	<i>Example of conduct</i>
Procurement for material gain of the illegal entry of a person into a State party of which the person is not a national or permanent resident.			E.g., Mr. D receives \$1,500 for driving Mr. M five kilometres over the border into a State that he knows Mr. M is entering illegally.
Producing, procuring, providing or possessing fraudulent travel or identity documents when carried out for the purpose of enabling the smuggling of migrants.			E.g., Mr. P provides Ms. M with Ms. O's passport for a payment of \$1,500 so that Ms. M can gain illegal entry into a country.
Enabling a person to remain in a country where the person is not a legal resident or citizen without complying with requirements for legally remaining, by illegal means.			E.g., Ms. A, a school administrator, personally receives \$1,500 to register Mr. M as a student at the school, knowing that Mr. M has no intention of studying but wants merely to remain in the country.
Organizing or directing any of the above crimes.			E.g., Mr. S arranges for Mr. P to provide a fraudulent passport to Ms. M so that she can gain illegal entry into a country.
Attempting to commit any of the above offences.			E.g., Mr. D receives payment to drive Mr. M into a State that he knows Mr. M is entering illegally, but is intercepted at the border.
Participating as an accomplice in any of the above offences.			Mr. B accompanies Ms. M on her journey into a country of destination in the event that she has difficulties crossing the border with a falsified passport.

- Provide one additional example of each crime in the "Example of conduct" column.
- If no anti-migrant smuggling legislation exists in your country, what other offences are introduced to secure the conviction of the smugglers of migrants?

- Does specific anti-migrant smuggling legislation exist in other countries that you typically partner with?
If not, what other legislative provisions are relevant to your joint work?
- If you do not know the relevant laws of the countries that you partner with, how would you go about finding out what those laws are? Who would you approach?
- Is turning a blind eye to the smuggling of migrants a punishable offence in your country?
What would the consequences be if the person who turned a blind eye was a police officer or public official?
- Does the legislation you work with balance criminalization against human rights considerations?
- Are aggravating circumstances provided for in your legislation? If so, what are they?
- Have you had any experience of investigating or prosecuting cases of the smuggling of migrants involving aggravating circumstances?
- Where aggravating circumstances are involved in a case of the smuggling of migrants, how does sentencing change?

C. Other offences

In the course of smuggling migrants, it is highly likely that other offences will have been committed. The investigators may need, depending upon national laws and policies, to investigate all such offences. Alternatively, they may seek to prove other offences where initial suspicion of the crime of the smuggling of migrants cannot be corroborated (with all of its components) or where there may be no national legislation criminalizing the smuggling of migrants as such.

The list below outlines many other offences, or types thereof, that may be committed during the smuggling of migrants. The list is not exhaustive and does not seek to cover all the different legal systems and national laws. Its purpose is purely to give you an idea of the types of crime that may be committed. It should also be borne in mind that where too many offences are part of the charge, the case can become unmanageable.

Other offences can include:

- Transport-related offences:
 - Transportation without declaring goods in vehicle
 - Misrepresenting cargo or identity at a border
- Document-related offences/crimes of dishonesty:
 - Document fraud/forgery
 - Dishonest handling (of stolen passports for example)
- Immigration-related offences:
 - Clandestine entry
 - False statements made to border officer

- Harbouring an immigration offender
- Not surrendering to immigration bail
- Crimes of dishonesty:
 - Money-laundering
 - Theft (such as passports)
 - Forgery
 - Deception
 - Fraud
 - Corruption
 - Abuse of office
- Other criminal offences:
 - Murder
 - Involuntary manslaughter
 - Assault
 - False imprisonment or unlawful confinement
 - Kidnapping or abduction
 - Drug-related offences (possession, supply or trafficking)
 - Sham marriage
 - Perjury (in marriage cases)
 - Bigamy (as above)
 - Trafficking in persons
 - Participation in an organized criminal group
 - Bodily harm or injury
 - Sexual offences
 - Torture, or inhuman or degrading treatment
 - Weapons offences
 - Endangering lives contrary to dignity
 - Obstruction of justice
 - Interference with witnesses
 - etc.

When considering different offences, investigators need to be mindful that offences that have actually been committed and can be proved are not simply to be viewed as aggravating factors.² Viewing those offences as such often leads to the undermining of the case to be made for their seriousness.

Unless the other potential offence(s) is or are more serious than the smuggling of migrants in terms of the maximum possible sentence, then care must be taken not to deviate too far from the primary investigative aims. Obviously, if your investigation into the smuggling of migrants becomes a murder enquiry, then the murder offence would take priority. Always look to prove the most serious offence with the evidence that you have or can obtain.

² See section B above on aggravating and mitigating circumstances.

The smuggling of migrants is a deadly business

Smugglers of migrants often conduct their illegal activities with little or no regard for the lives of the people they smuggle.

The BBC reported that in 2006 alone, about 6,000 migrants from Africa died or went missing on the sea journey to the islands of one Western European country.

Every year, thousands of people flee from conflict, violence, drought and poverty in the Horn of Africa, across the Gulf of Aden, in search of relative safety. Some 30,000 people undertook this journey in 2007, and another 20,000 made it alive in the first five months of 2008. Many of the people attempting this journey used the services of smugglers of migrants to cross the treacherous Gulf of Aden; the smugglers operating this route are notorious for their brutality. Fatality rates are very high. Survivors have told harrowing tales of their ordeal: more than 100 people crammed into boats designed to carry 30 or 40, windowless storage spaces, people forced to sit without moving in urine, seawater, faeces or vomit, and being deprived of food and water, suffocation as a result of having other people sit on them, people being asked for more money to come out of the hold and being pushed back down when their money had been taken and men, women and children being assaulted by their smugglers with sticks, pipes, rifle butts or knives.

In April 2008, 54 people died in the back of a lorry after the air-conditioning system failed. Survivors told of how they had been just 30 minutes into their journey to the South-East Asian country of destination where they were hoping to find work, when conditions became unbearable and people began to suffocate. Passengers banged on the container's walls and frantically called the driver's mobile phone, but the driver, fearing that the police would be alerted, warned them to be quiet. When the driver finally stopped on a quiet road, he opened the lorry doors to discover that many of the migrants, most of whom were women, had collapsed. The driver ran away from the scene. One of the survivors from another South-East Asian country, 30 year-old Saw Win, said "If the truck had driven for 30 minutes more, I would have died for sure."

In July 2008, 13 people were found dead near the capital of a West Asian country. They had suffocated in a packed truck and their bodies were dumped in a field.



Questions and exercises

- Are there any other offences in addition to those listed above that could be relied in prosecuting a smuggler of migrants in your country?
- Consider the situation of Saw Win in the box above entitled "The smuggling of migrants is a deadly business"
 - List as many offences as you can that the driver of the truck could potentially be charged with.
 - List aggravating circumstances that may apply in the driver's case.
 - List any mitigating circumstances that may apply in the driver's case.

D. Prosecution matters

Actus reus requirement

The *actus reus* or material elements of the smuggling of migrants vary depending on the legislation of your country. In the case of the crime of smuggling, as defined in the Smuggling of Migrants Protocol, the *actus reus* requirement includes the following:

- Procurement of illegal entry or illegal stay of another person.
- Entry into another country by the other person who is neither a national nor permanent resident of that country.
- Agreement to receive a financial or other material benefit.

The Smuggling of Migrants Protocol does not define “procurement”. Generally speaking, this refers to the act of bringing about a specific result; in the case of the smuggling of migrants, this is the illegal entry of another person into a country.

Mens rea requirement

The *mens rea* requirement reflects the state of mind of the person charged with an offence. Only those with a sufficiently “guilty mind” can be found liable for a criminal offence. In certain jurisdictions and in certain cases, criminal liability may be imposed in “strict liability” offences, even in the absence of *mens rea*.

The requisite mental feature required in a case of the smuggling of migrants is that the person committed the material act(s) intentionally and in order to obtain a financial or other material benefit, directly or indirectly. Hence, smuggling for non-profit purposes does not fall within the scope of the Smuggling of Migrants Protocol.

The mental element can be proved in a number of ways. It should be noted that the Smuggling of Migrants Protocol requires that countries criminalize smuggling of migrants only when conducted intentionally, as per article 6, paragraph 1. This speaks to the mental element. However, countries are not precluded from allowing the *mens rea* requirement to be established through a lesser standard, that is, recklessness, wilful blindness or even criminal negligence, subject to the requirements of the domestic legal system.

Again, it is important to remember that the obligation set out in the Smuggling of Migrants Protocol to criminalize smuggling of migrants does not require that domestic legislation use the precise language contained in the definition of “smuggling of migrants”. Rather, domestic legislation should be drafted in such a way as to be consistent with your domestic legal framework, provided it comprises a combination of the constituent elements contained in the definition. It is also important to note that migrants are not to be made liable to criminal prosecution under the Smuggling of Migrants Protocol for the fact of having been the object of smuggling, as per article 5 of the Protocol.

Preparing a case for prosecution and ensuring admissibility of evidence

At the beginning of your investigation, identify what potential offences may have been committed, and consider what you need to prove in order for evidence to be admissible and the offences to be charged. The table below illustrates the process.

Example of the preparation of a case for prosecution

<i>Offence</i>	<i>Facts</i>	<i>Points to prove</i>	<i>Ways to obtain admissible evidence</i>
Smuggling of migrants	Car stopped at border. Mr. B is driving. Ms. M is concealed under a blanket in the boot.	Mr. B is obtaining financial or material gain.	Searching the vehicle. Searching Mr. B. Financial investigations. Searching Ms. M.
		Ms. M is not a resident of the country of destination.	Looking for documentation. Consulting immigration authorities
		Ms. M is entering the country illegally.	Obtaining statement from immigration officer. Finding documentation.
		Mr. B is aware that Ms. M is entering the country illegally.	Establishing that the boot was locked and Mr. B and Ms. M have each other's mobile phone numbers on their phone.

The investigator should collect evidence of facts with a view to proving them and producing such proof in an admissible form in court. Written statements often form the basis for evidence.³

See module 2D for guidelines for witness statements taken for investigations into the smuggling of migrants.

Aside from facts that can be proved, investigators need to collect as much circumstantial and corroborative evidence as possible. While circumstantial evidence alone is unlikely to prove a case, an overwhelming amount pointing to the guilt of the offender could do so with little or no direct evidence. Below is an example of circumstantial evidence that was used to secure a conviction.

³ An example of a witness statement is contained in annex I.

**Example: circumstantial evidence**

A group of migrants were seen walking up a beach in January. They were dripping wet. Cell site analysis of the boat owner's phone established that he was in the area. His boat was not in the harbour at the relevant time. Eventually, he was convicted of facilitating illegal entry.

When preparing a case for prosecution, always ensure that you have collected all available and relevant evidence and have presented it in such a way as to render it compelling in court. If particular evidence cannot be obtained, but something similar and relevant can, then consider providing the "best available evidence". An example of this is shown below.

**Example: "best evidence"**

A person arrives using a false passport. The passport is subsequently destroyed by police. However, a photocopy was retained by them. This photocopy becomes the best evidence.

Finally, when gathering your evidence always remember that the case may end in court. Evidence should be handled appropriately so as to avoid risks that would undermine your efforts to bring a smuggler of migrants to justice.

**Example**

Person A identifies himself to officer at border with false identification.

The officer compiles the following checklist:

Facts:

- Person A is present at border
- Person A presents false documentation
- Interrogated by officer
- Officer concludes — based on fingerprints — that the person is person B

Proof:

- Fingerprints were taken and compared and analysed by experts
- Would call officer to give testimony at trial who would testify that he or she was first called to person A (who was actually person B)
- Exhibit: false passport

Admissibility:

Admissibility rules are different in different jurisdictions. Find out what the rules in your jurisdiction are.

- Ensure that legislation, constitution and rights protections have been adhered to
- Officer acting under appropriate authority, followed proper legislation and procedure, provided notice, disclosure of good and bad facts

Using witnesses

In module 2 we looked at the issues surrounding the use of smuggled migrants as witnesses. These witnesses may often be your best resource and you should always look to use them, where possible. In doing so, due regard should be paid for their rights and safety. You may face a conflict between the need to keep the smuggled migrants in your country, if they have arrived at a destination country or are in transit, and the requirement to deport them. Some jurisdictions allow for temporary visas to enable smuggled migrants to stay and give evidence. Other jurisdictions allow them to stay indefinitely. If, however, your country does not have these provisions you could consider:

- Bringing the migrant back from his or her home country in time for the trial and returning him or her afterwards; or
- Using video or written testimony to transmit the testimony of the witness from his or her home country; or
- In some countries, it is sometimes acceptable to replace the witness at trial with a non-governmental organization representative or the law enforcer who interviewed the witness.

The above considerations are dependent, in the first instance, upon the legal requirements that exist within your country and the resources available to you. The latter two options may be beneficial for the physical protection of the witness. If such methods have not been considered or tried before, then it may be worth looking at them afresh, with appropriate consideration for how the safety of the migrant and his or her family can be protected when these techniques are being employed.

When dealing with witnesses, it must always be borne in mind that witnesses and/or their families may have been threatened by smugglers. Other cultural considerations play a role here: some migrants are believers in juju or voodoo and may have sworn an oath or have some other reason why they cannot cooperate with the criminal justice process. In these situations, creative approaches must be taken. Law enforcers and prosecutors may work with people who understand traditional practices in order to release witnesses from the “spell” under which they have been placed that prevents them from speaking.

See module 2D for guidance on conducting interviews.

Jurisdiction

When seeking a criminal justice outcome, investigators should always be mindful that in investigations into the smuggling of migrants, offences have often been committed in more than one country and could therefore be prosecuted in any of the countries concerned. A person should not be prosecuted more than once for the same criminal conduct.⁴ It is therefore important to identify cases that can be prosecuted in more than one jurisdiction as soon as possible and then decide which jurisdiction is the best one to prosecute them in. Generally, prosecution takes place in the jurisdiction where most of the criminality or most of the loss took place, but the decision should always be made on a case-by-case basis guided by the following principles.

- Existence of legislation
 - Does the legislation of the jurisdiction include the offence of smuggling of migrants?
- Sentencing powers
 - Does sentencing reflect the gravity of the offence?
- Location of the accused person
 - Is it possible to prosecute in that jurisdiction?
 - Are transfer or extradition proceedings possible?
- Division of prosecution
 - Cases may be complex and cross-border. Prosecution in more than one jurisdiction is not desirable.
 - What practical and realistic measures can be taken to allow a prosecution to take place in one jurisdiction?
- Witness attendance
 - Ensure measures are taken to give the best possible support to victim witnesses.
 - Where witnesses are in other jurisdictions, consider how evidence can be received in other forms (video link/writing).
 - Keep in contact with witnesses (by providing them with a mobile phone, checking on whether they can use e-mail etc.).
- Witness assistance or protection
 - What assistance can a witness be given in a particular jurisdiction?
 - Does the jurisdiction have a legal framework allowing protection or assistance?
 - If there is no such legal framework, is there a witness assistance programme or other protection available on a case-by-case basis?
 - What evidence is there that such a programme is effective?
 - Is there a possibility that a migrant smuggler could harm a witness in a particular jurisdiction?
 - Are there any other conflicts or potential conflicts that may affect the ability to protect witnesses?

⁴This is captured by the Latin term *ne bis in idem*.

- Delay
 - Are there backlogs that would delay the case? Delays should be minimized where possible.
 - What is the potential timescale for a case's coming to trial in a particular jurisdiction?
- Interests of victims of crime
 - Would the interests of victims of crime be prejudiced by the changing of jurisdiction?
- Evidential issues
 - Cases should proceed based on the best possible evidence. Admissibility of evidence varies from jurisdiction to jurisdiction.
 - Given the evidence available and the rules of admissibility, which jurisdiction would offer the best chance of successful prosecution?
- Legal requirements
 - Decisions on where to hear cases cannot be taken in order to avoid complying with legal requirements in one jurisdiction or another.
- Proceeds of crime
 - Where are assets held?
 - Where is the best chance of securing asset seizure?
 - Will jurisdictions share recovered assets with other jurisdictions?
 - Do victims of crimes have access to any recovered assets as compensation?
- Resources and costs of prosecuting
 - This should be a consideration only when all other factors are balanced equally.



Questions and exercises

- Police search a house in Anyland where they find 10 migrants who are in the country irregularly. The house is owned by Mr. A. Complete the table below with a view to charging Mr. A with certain offences and ensuring that evidence is admissible: Officer concludes — based on fingerprints — that the person is person B

<i>Offence</i>	<i>Facts</i>	<i>Points to prove</i>	<i>Ways to obtain admissible evidence</i>

- Have you had any experience with a case of smuggling of migrants that did not succeed because of evidentiary issues? If so, compile a checklist as above for that case.

- What challenges have you faced in working with witnesses in your country?
How did you address these challenges?
- Are temporary visas available to smuggled migrants who are willing to remain in the country to give evidence?
- What are some low-cost measures that could be used to protect witnesses before and during the trial?
- With whom would you need to cooperate to protect the family of the witness if it is in another jurisdiction?
- How would you learn what relevant rules and laws are applicable in other jurisdictions? Whom would you contact?

E. Concluding remarks

When an investigation into the smuggling of migrants commences, it is important to remember the nature of the crime committed. Combine this with the consideration of other offences that may have been committed in the course of the smuggling of migrants, and the evidential standard of proof required within your legal system.

Consider all offences that may have been committed and decide, in conjunction with prosecutors, judges or senior officers what charges should be brought and agree on the best possible evidence required to support that prosecution or prove the charges.

Finally, always remember that prosecutions do not always need to be brought into your own country. It may be as effective or more effective to prosecute smugglers of migrants in another country. Early work with prosecutors, judges and international partners will assist you in this regard.



In all the work you do in investigating and prosecuting smugglers of migrants, human rights considerations come into play. Take guidance from applicable treaties and your domestic legislation. Not only is respecting the rights of smuggled migrants and smugglers of migrants obligatory for humanitarian reasons, but it will also strengthen the likelihood of securing a prosecution by eliminating operational pitfalls in the course of investigation.

For more on human rights considerations, see module 9.



Self-assessment questions

- What international and domestic instruments provide the legislative framework for investigations into the smuggling of migrants?
- What are the constituent elements of the smuggling of migrants?
- What other offences may have been committed in the course of the smuggling of migrants?
- What legislative provisions are most relevant to the smuggling of migrants for you and your work in your domestic context?
- What can be considered aggravating and mitigating circumstances in cases of the smuggling of migrants?
- What factors should be considered in determining where a case on the smuggling of migrants should be tried?
- What is the value of conducting interviews and taking witness statements in cases of the smuggling of migrants?



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