

Model Law to Criminalise People Smuggling

1 Purpose of law

This is a law to criminalise people smuggling, including in accordance with the obligations under the *Protocol Against the Smuggling of Migrants by Land, Sea and Air*, supplementing the *United Nations Convention Against Transnational Organised Crime*.

2 Definitions

In this law:

commercial carrier includes any company, or the owner, operator or master of any means of transport, that engages in the transportation of goods or people for commercial gain.

company means any entity that is not an individual, but which has a legal personality.

exploitation includes all forms of sexual exploitation (including sexual servitude and exploitation of another person's prostitution), forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs

financial or other material benefit includes any type of financial or non-financial inducement, payment, bribe, reward, advantage or service.

fraudulent travel or identity document means a travel or identity document that:

- (a) has been made, or altered in a material way, by a person other than a person or agency lawfully authorised to make or issue the travel or identity document on behalf of a country; or
- (b) has been issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or
- (c) is being improperly used by a person other than the rightful holder.

illegal entry means crossing the border of [name of country], or any other country, without complying with the requirements for lawful entry of that country.

people smuggling means arranging or assisting a person's illegal entry into any country of which the person is not a citizen or permanent resident, including [name of country], either knowing or being reckless as to the fact that the person's entry is illegal, in order to obtain a financial or other material benefit.

receiving country means the country into which the smuggled person's entry is arranged.

smuggled person means any person who is a victim or object of an act of people smuggling, regardless of whether that person participated in the people smuggling.

3 Offence of people smuggling

A person commits an offence if the person intentionally engages in people smuggling, regardless of whether the smuggled person arrives in the receiving country.

Maximum penalty: *[Set out the maximum penalty].*

4 Aggravated people smuggling offences

A person commits an offence if the person intentionally engages in people smuggling under one or more the following circumstances:

- (a) the smuggled person is, or is intended to be, subject to exploitation;
- (b) the smuggled person is subjected to torture or to any other cruel, inhuman or degrading treatment; or
- (c) the life or safety of the smuggled person is, or is likely to be, endangered

regardless of whether the smuggled person arrives in the receiving country.

Maximum penalty: *[Set out the maximum penalty - a more serious penalty than applies to the people smuggling offence].*

5 Offence to facilitate stay of a smuggled person

- (1) A person commits an offence if that person intentionally facilitates, by any unlawful means, the continued presence of a smuggled person in a receiving country in order to obtain a financial or other material benefit.

Maximum penalty: *[Set out penalty.]*

- (2) For the purposes of subsection (1), "unlawful means" includes producing, providing or procuring false travel or identity documents in respect of the smuggled person.

6 Offence relating to fraudulent travel or identity documents

A person commits an offence if the person:

- (a) makes;
- (b) obtains;
- (c) gives or sells; or
- (d) possesses

a fraudulent travel or identity document for the purpose of facilitating people smuggling.

Maximum penalty: *[Set out penalty.]*

7 Scope of application

The offences in this law apply, regardless of whether the conduct constituting the offence took place inside or outside [name of country], in the following circumstances:

- (a) if [name of country] is the receiving country; or
- (b) if the receiving country is a foreign country but the people smuggling starts in [name of country] or transits [name of country]; or
- (c) if the person who engages in the people smuggling is a citizen or permanent resident of [name of country].”

8 Participation in a people smuggling offence

- (1) Any person who aids, abets, counsels or procures the commission of an offence under this law by another person is taken to have committed that offence and may be punished accordingly.
- (2) For the person to be guilty under subsection (1), the offence must have been committed by the other person.
- (3) A person who urges the commission of an offence under this law is guilty of the offence of incitement.

Maximum penalty: *[Set out penalty - less than the principal people smuggling offence.]*

- (4) A person who conspires with another person to commit an offence under this law is guilty of the offence of conspiracy to commit that offence and may be punished as if the offence to which the conspiracy relates had been committed.

9 Attempt to commit a people smuggling offence

Any person who attempts to commit an offence under this law is guilty of attempting to commit that offence and may be punished as if the offence attempted had been committed, provided that the person's conduct is more than merely preparatory to the commission of the offence.

10 Immunity from criminal prosecution

A smuggled person shall not be liable to criminal prosecution under this law in respect of:

- (a) his or her illegal entry into the receiving country; or
- (b) any period of unlawful residence in the receiving country; or
- (c) his or her procurement or possession of any fraudulent travel or identity documents which he or she obtained, or with which he or she was supplied, for the purpose of entering the receiving country illegally.

11 Money Laundering, Extradition and Mutual Assistance

The offences set out in this law are:

- (a) predicate offences for the purposes of [insert name of country's money laundering legislation];
- (b) extraditable offences for the purposes of [insert name of country's extradition legislation]; and
- (c) offences in respect of which mutual assistance may be granted under [insert name of country's mutual assistance legislation]

[If the country has ratified or intends to ratify the People Smuggling Protocol, then –

If there is no existing extradition or mutual legal assistance relationship then [name of country] accepts that the *United Nations Convention Against Transnational Organised Crime* (in particular Articles 16 and 18), and the *Protocol Against the Smuggling of Migrants by Land, Sea and Air* which supplements that Convention (in particular Article 1), forms the legal basis for extradition and mutual legal assistance between [name of country] and other States Parties regarding offences set out in this law.]

12 Obligation on commercial carriers

- (1) A commercial carrier commits an offence if the carrier brings a person into a receiving country and, upon entry into the receiving country, the

person does not have the travel documents required for lawful entry into that country.

Maximum penalty: *[Set out penalty – fine]*

- (2) A commercial carrier is not guilty of an offence under subsection (1) if:
 - (a) the carrier had reasonable grounds to believe that the documents that the person has are the travel documents required for lawful entry of that person into the receiving country; or
 - (b) the person possessed the travel documents required for lawful entry into the receiving country when that person boarded, or last boarded, the means of transport to travel to the receiving country; or
 - (c) entry into the receiving country occurred only because of illness of or injury to a person on board, stress of weather or other circumstances beyond the control of the commercial carrier.
- (3) A commercial carrier that is guilty of an offence under this is liable to pay the costs of the person's detention in, and removal from, the receiving country.

13 Liability of a company

- (1) This law applies to a company in the same way as it applies to an individual. A company may be found guilty of any of the offences set out in this law, in addition to the liability of any person for the same offence.
- (2) For the purposes of offences under this law, the conduct or state of mind of an employee, agent or officer of a company will be attributed to the company if that person is acting within the scope of his or her employment or actual or apparent authority or with the consent (express or implied) of a director, servant or agent of the company.
- (3) A reference in this section to the state of mind of a person includes the person's knowledge, intention, opinion, belief or purpose and the person's reasons for that intention, opinion, belief or purpose.