



APG Typologies Workshop 2010

APG Typologies Working Group Paper:

Draft Preliminary Scoping Study on People Smuggling, People Trafficking, Money Laundering and Criminal Asset Confiscation

Background

1. During the 2009 APG Typologies Workshop the APG Typologies Working Group decided to conduct further work to scope a number of regional issues on anti-money laundering (AML) and human trafficking / people smuggling.
2. The 2009 APG Typologies Workshop included a focus on money laundering and human trafficking and people smuggling.
3. Australia, through the Attorney General's Department led the work to draft a preliminary scoping study. As part of the scoping study a questionnaire was sent to all APG members, responses to which were due in August 2010.

Discussion of the Preliminary Scoping Study at the 2010 Typologies Workshop

4. The attached Preliminary Scoping Study represents the findings of the initial scoping exercise and will be shared with APG members at the APG's 2010 Typologies Workshop in Bangladesh.
5. Discussions will include preliminary findings, gaps and opportunities for further work.
6. This may include a possible project team in the APG Working Group to ensure that the Asia/Pacific experience of this issue is fed into the FATF project and that key findings from both the APG and FATF project are comprehensively shared with APG members.
7. At the same time, the FATF and OGBS are co-leading a project on human trafficking and AML through the FATF WGTYP.

APG Secretariat
19 October 2010



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APG Typologies Working Group

**Preliminary Scoping Study on People Smuggling,
People Trafficking, Money Laundering and
Criminal Asset Confiscation**

Prepared for the APG Typologies WG by
the Australian Attorney-General's Department

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Executive summary

People smuggling and people trafficking are both profit-seeking crimes. Smugglers and traffickers obtain substantial earnings from their illicit activities by exploiting vulnerable persons. Rather than estimate financial flows or provide a list of example money laundering cases, this paper aims to explore the legal frameworks and the use of anti-money laundering (AML) and asset confiscation systems in countering people smuggling and people trafficking amongst Asia/Pacific Group on Money Laundering (APG) members.

In January and July 2010, a general questionnaire was sent to all APG members. Fourteen APG members responded (Responding Members) and those responses were analysed in relation to legal frameworks and the implementation of those frameworks.

The questionnaire that formed the basis of this scoping study was general in nature and the answers to the survey reflect this. The analysis and findings of this report are based solely on the responses received on the questionnaire and have not encompassed external reports or data other than for illustrative purposes. Care should be taken in relying on the statistics presented in the report given the small sample size and difficulties APG members experienced in obtaining accurate data.

This report does not seek to be a comprehensive study of all the issues and does not make prescriptive recommendations. The responses received provide an initial indication of how money laundering related to people smuggling and people trafficking is being dealt with by Responding Members, the difficulties in detecting, investigating and prosecuting money laundering and taking proceeds of crime action in relation to these crimes, and what steps might need to be taken to address those difficulties. It is hoped that the findings of this report can contribute to ongoing regional and international work on the topic, including the project being pursued by the FATF and the Offshore Group of Banking Supervisors (OGBS).

This study makes a number of findings in relation to the ways in which Responding Members target the financial aspects of people smuggling and people trafficking. The **findings** are as follows:

1. The transnational nature of people smuggling and people trafficking requires multi-jurisdictional responses to the crimes, including 'following the money' between jurisdictions.
2. Legal frameworks could be strengthened and harmonised, which would also allow more effective international cooperation.
3. Money laundering investigations into the proceeds of people smuggling and people trafficking offences, and subsequent prosecutions, are rare.
4. There are a wide range of impediments hindering the investigation of people smuggling and people trafficking, associated money laundering and the confiscation of proceeds of crime.

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5. The potential for international cooperation by way of mutual assistance is encouraging, however it can be a time consuming process.
6. Financial Intelligence Units could be utilised more in detecting the money flows for people trafficking and people smuggling offences.
7. Further research into the amount and typologies for how proceeds of people smuggling and people trafficking are laundered (either through formal or informal financial systems) is required.
8. There is a need for further research with respect to statistics on people smuggling and people trafficking, and the financial aspects of these crimes.

In light of these findings, this study makes the following **recommendations**:

1. APG members should continue to assess and improve their legal frameworks in accordance with the FATF Recommendations, ensuring that people smuggling and trafficking are comprehensively criminalised, and are predicate offences for money laundering. APG members should take steps to become party to, and implement fully, the *United Nations Convention on Transnational Organised Crime*, including the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* and the *Protocol against the Smuggling of Migrants by Land, Sea and Air*, if they have not already.
2. APG members should increase awareness of the benefits of using AML systems to combat people smuggling and people trafficking.
3. In order to increase the regularity of proceeds of crime and money laundering investigations into all profit driven crime, Member Countries should develop a broader understanding of how robust proceeds of crime laws can act as a disincentive to criminal activity by targeting the proceeds, and high level organisers, of crime.
4. APG members are encouraged to:
 - 4.1. Support investigation agencies and Financial Intelligence Units to build knowledge and awareness of the typologies of laundering proceeds of people smuggling and people trafficking in order to support the analysis of relevant reports.
 - 4.2. Collate and share statistics on the incidence, investigation and prosecution of money laundering and proceeds of crime action for people smuggling and people trafficking.
 - 4.3. Engage with non-government organisations and other stakeholders on people smuggling and people trafficking to obtain greater information on the incidence of these crimes.
 - 4.4. Train police, border enforcement agencies and prosecutors involved in people smuggling and people trafficking cases to build their capacity to investigate

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and prosecute money laundering and take proceeds of crime action. This could include donor assisted training.

- 4.5. Enhance multi-jurisdictional intelligence sharing and investigations to ‘follow the money’ involved in money laundering associated with people smuggling and people trafficking.
- 4.6. Continue to develop and strengthen mutual assistance relationships and to engage in information exchange where legislative and mutual assistance arrangements permit.
- 4.7. Take steps to improve laws and procedures for timely mutual legal assistance in line with FATF Recommendations 36-40.
- 4.8. Strengthen and harmonise laws on AML and criminal asset confiscation, including considering adopting non-conviction based asset forfeiture laws to enhance their ability to target the proceeds of people smuggling and people trafficking.
5. The APG should contribute to the FATF’s work in this subject, including considering forming a working committee to:
 - 5.1. Share regional experience of money laundering and proceeds of crime action associated with people smuggling and people trafficking.
 - 5.2. Consider strategies to increase awareness of the role of asset restraint and forfeiture in fighting people smuggling and people trafficking.
 - 5.3. Conduct further research into known typologies associated with people smuggling and people trafficking, including further case studies and develop red flag indicators for Financial Intelligence Units, border enforcement and law enforcement agencies.
 - 5.4. Conduct further research into instigating money laundering and proceeds of crime investigations in parallel with people smuggling and people trafficking investigations.

These findings and recommendations are considered in further detail in the Study. **Appendix A** provides a more detailed analysis of the responses received to the questionnaire, to provide background and context to the main findings and recommendations of the Study.

Introduction

Key issues and definitions

People smuggling and people trafficking are complex transnational crimes. Almost every country is affected by people smuggling or people trafficking, either as a source, transit or destination country. These crimes exploit vulnerable people, have massive income generating potential and pose challenges to State sovereignty and the integrity of border control systems. They are a global challenge of the same proportions as the illegal trafficking of drugs and weapons. The architects and financiers of people smuggling and people trafficking are often well organised international criminal groups attracted by the lucrative profits that flow from the smuggling and trafficking of persons. Robust anti-money laundering (AML) and proceeds of crime frameworks can be used to disrupt people smugglers and people traffickers by detecting the financial aspects of these crimes and taking away any benefit gained from them.

The impact of people smuggling and people trafficking crimes penetrate throughout countries of origin, transit, and destination. For victims of trafficking and for smuggled persons, the dangers and consequences of the crimes can be significant and devastating. Given the widespread and serious effects of these crimes, it is important to try and understand how money is laundered in connection with these crimes and to reduce the financial incentive for persons to commit these crimes.

The Financial Action Task Force (FATF) 40+9 Recommendations require countries to designate people smuggling and people trafficking as predicate offences for money laundering, and require countries to take action to combat money laundering and follow the proceeds of crime.

What are people smuggling and people trafficking?

The terms “people smuggling” and “people trafficking” are often used interchangeably but they are in fact different. “People smuggling”, or “migrant smuggling”, is the organised, illegal movement of people across borders, usually on a payment for service basis. While often undertaken in dangerous or degrading conditions, people smuggling involves migrants who have consented to the smuggling.¹ People trafficking on the other hand is the physical movement of people through deceptive means, coercion or force. Importantly, people traffickers are motivated by the prospect of exploiting their victims once they reach the destination country.²

¹ Article 3(a) of the Protocol against the Smuggling of Migrants by Land, Air or Sea (People Smuggling Protocol) defines people smuggling as the “procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a country of which the person is not a national or a permanent resident.”

² Article 3(a) of the Protocol to Prevent, Suppress and Punish Trafficking in Person, Especially Women and Children (Trafficking Protocol) defines trafficking in persons as the recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat, force, coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation includes the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

It is important to distinguish between people smuggling and people trafficking as the elements of each offence are different and the response required will vary depending on the offence. The four key differences between people smuggling and people trafficking - exploitation, consent, transnational and source of profits - are discussed below.

Exploitation

The key difference between people trafficking and people smuggling is exploitation. The activity of people trafficking involves an intention to exploit the victim. However, as a smuggled migrant generally has consented to and paid for the service provided, exploitation is generally not a feature of the offence of people smuggling, except in aggravated circumstances. Until the exploitation has occurred it may be difficult to distinguish between a people smuggling and people trafficking case. This is because some trafficked persons may start their journey by agreeing to be smuggled but then find themselves in a situation where they are vulnerable to exploitation.

Consent

In almost all cases of people smuggling, the individual being smuggled has consented to the unlawful crossing of a border. The person being smuggled pays the smuggler for the service of being taken across the border.

People trafficking victims, on the other hand, have either never consented or if they initially consented, that consent has been rendered meaningless by the coercive, deceptive or abusive action of the traffickers. Consent of a victim will also be irrelevant in a trafficking scenario where the person being trafficked is a child.³

Transnational

People smuggling and people trafficking both involve the movement of people. However, people smuggling is always transnational: the objective of people smuggling is always to facilitate the unlawful entry or stay of a person from Jurisdiction A into Jurisdiction B.⁴ People trafficking is not always transnational, and can occur regardless of whether victims are taken to another jurisdiction or moved within a jurisdiction's borders.⁵

Source of Profits

For people smugglers, profit is primarily derived from fees paid by the migrant for the service people smugglers provide – including transportation or facilitation of the unlawful entry or stay of a person in another country. The primary source of profit for a people trafficker is the exploitation of the trafficked person.

³ *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, opened for signature 15 November 2000, 2237 UNTS 319, (entered into force 25 December 2003), articles 3(a) and 3(b) ('Trafficking Protocol').

⁴ United Nations Office on Drugs and Crime, 'Issue Paper: A short introduction to migrant smuggling' (2010) <www.unodc.org/documents/human-trafficking/publications> accessed 18 August 2010.

⁵ Please note the scope of this Study is in respect of trafficking across jurisdictional borders only.

How are the proceeds of people smuggling and people trafficking laundered?

This study has not gone into the various typologies of laundering proceeds of people smuggling and people trafficking, however it is clear that the transnational nature of people smuggling and people trafficking enterprises often means that the money flows from these crimes are also transnational. The involvement of international criminal organisations in these highly lucrative crimes also suggests that proceeds from these crimes are likely to pass through a complex financial web.

Links with Anti-Money Laundering and Asset Recovery

Strong AML systems assist in detecting criminal activity through the reporting of suspicious transactions in the financial system and by providing strong tools to law enforcement and prosecution agencies to detect, seize and confiscate proceeds of crime. Robust AML frameworks that include effective asset restraint and confiscation provisions can also enable countries to restrain and confiscate the proceeds of people smuggling and people trafficking, prevent reinvestment of these proceeds in criminal activity and reduce the financial incentive for individuals to engage in these crimes in the future.

While there is little reliable data about the amount of profits derived from people smuggling and people trafficking, there is general consensus that people smuggling and/or people trafficking affects almost every country in the world. With estimates of some 15.2 million refugees in 2009⁶ and 1.2 million children trafficked every year⁷, criminal organisations are profiting substantially from the vulnerability of others.

The transnational nature of people smuggling and people trafficking enterprises often means that the money flows from these crimes are also transnational. Unravelling such webs requires monitoring of financial transactions, strong investigatory capacity, international cooperation, vigorous prosecution and pursuit of the proceeds of crime. These elements are integral to effectively deterring criminals from engaging in people smuggling and people trafficking through targeting a primary motivation for committing these offences – the money.

Background and report methodology

Recognising the impact of people smuggling and people trafficking throughout the world, particularly in the Asia/Pacific, this study was proposed and unanimously endorsed by APG members at the 2009 APG Typologies Meeting.

In January 2010, the APG sent a questionnaire to all APG member and observers (**Appendix B**). Eleven APG members responded. A further three responses were received after an additional request at the APG Annual Meeting in July 2010. This Study has only been possible due to the participation of the Responding Members. The time and resources allocated by the Responding Members in completing the

⁶ United Nations High Commissioner for Refugees, 2009 Global Trends: Refugees, Asylum-seekers, returnees, internally displaced and stateless persons.

⁷ UNICEF, <http://www.unicef.org/protection/index_exploitation.html>

questionnaire to contribute to knowledge of current legal frameworks, practices and challenges in this area is most appreciated.

The questionnaire that formed the basis of this Study was general in nature and the answers reflect this. This report does not seek to provide a comprehensive study of all the issues and does not make prescriptive recommendations. The responses received provide an initial indication of how people smuggling and people trafficking is being dealt with in Responding Countries, the difficulties in detecting, investigating, prosecuting and taking proceeds of crime action in relation to these crimes, and what steps might need to be taken to address those difficulties.

Aim and objectives of the Study

The **aim** of this preliminary study is to explore the legal frameworks and the use of AML and asset confiscation systems in countering people smuggling and people trafficking throughout APG members. The questionnaire sought information in order to provide guidance to APG members on the approaches to and success in combating these crimes and “following the money” in the region.

The **objectives** of the study were to:

- obtain information about how APG members deal with these crimes and whether proceeds of crime actions are readily pursued in respect of persons charged with people smuggling or people trafficking
- identify the obstacles APG members have experienced or anticipate in using AML, asset restraint and confiscation laws to target the proceeds of people smuggling and people trafficking crimes
- seek information regarding the success of prosecutions for these crimes and the difficulties faced and anticipated by APG members in investigating and prosecuting people smuggling and people trafficking cases
- obtain information about how the proceeds from these crimes enter financial systems
- identify information gaps, and
- propose steps to enhance the use of AML and proceeds of crime measures to combat people smuggling and people trafficking.

The main findings and recommendations arising from the study are below, with more detailed analysis of the questionnaire responses contained in **Appendix A**. A copy of the original questionnaire is included at **Appendix B** for reference.

Main findings and recommendations

The main findings arising from the Study relate to legal frameworks, investigations and prosecutions, proceeds of crime and statistics. These points are discussed in turn below.

Case Studies of Money Laundering Typologies

This preliminary study did not collect case study data on the methods and trends of laundering proceeds of people smuggling and people trafficking.

There is a need for the APG to take further steps to collect example case studies of the methods and trends of laundering proceeds of people smuggling and people trafficking.

Limited numbers of cases may have been shared during previous typologies exercises and should be included in APG typologies publications.

Legal frameworks

Legal frameworks could be strengthened and harmonised, which would also allow more effective international cooperation

The preliminary study identified a number of legal constraints which affect the ability of APG members to target the money in investigating people smuggling and people trafficking offences. Many of these issues have broader ramifications for international cooperation. The key areas identified are as follows:

1. **People smuggling is not criminalised in all Responding Countries.** This means that people smuggling is not a predicate offence for money laundering in all Responding Members (contrary to FATF Recommendation 1).⁸ It also means that some APG members are unable to take action to confiscate the proceeds of this activity.

This can also have consequential effects on international cooperation where dual criminality is required, as follows:

- 1.1 **Proceeds of crime:** Foreign asset restraint or confiscation orders relating to people smuggling offences (or money laundering where the predicate offence is people smuggling) may not be able to be registered, or given effect to, in those countries (contrary to FATF Recommendation 38).

⁸ Even where some aspects of people smuggling can be prosecuted under immigration laws, often these do not meet relevant threshold requirements for an offence to qualify as a predicate offence for money laundering. Further, immigration offences were not found to have been categorised as predicate offences where countries followed a list based approach for predicate offending.

- 1.2 **Information sharing:** Mutual assistance may be limited in the absence of dual criminality (contrary to FATF Recommendation 37).
 - 1.3 **Extradition:** In the absence of dual criminality, the extradition of a person sought in relation to people smuggling (or money laundering where the predicate offence is people smuggling) may be prevented (contrary to FATF Recommendation 37).
2. **People trafficking is criminalised in all of the Responding Members, however it is not always a predicate offence for money laundering** (contrary to FATF Recommendation 1). This can inhibit international cooperation in respect of money laundering offences related to people trafficking, in similar ways as outlined above.
 3. **Not all APG members have extraterritorial jurisdiction for people smuggling and people trafficking offences in accordance with Article 15 of the *United Nations Convention on Transnational Organised Crime*.** This means that if these offences are committed outside the jurisdiction they could not necessarily be prosecuted.
 4. **There are widespread differences in proceeds of crime laws in Responding Members with respect to people smuggling and people trafficking.** Even within Responding Members there are differences in the types of criminal asset confiscation mechanisms that can be used for people smuggling and people trafficking. Amongst the Responding Members there are differences in the times and circumstances when asset restraint and confiscation can take place, and in most cases confiscation can only occur after conviction. These differences can adversely affect cooperation between countries in proceeds of crime matters. For example, countries that require a conviction prior to restraint and / or confiscation are not able to recognise non-conviction based restraint and confiscation orders obtained in other countries.
 5. **Not all APG members have implemented the United Nations Convention on Transnational Organised Crime Protocols on People Smuggling and People Trafficking.** These Protocols are important in providing international benchmarks and a universal definition of people smuggling and people trafficking. The conventions and protocols can also provide a framework for international legal cooperation in investigating and prosecuting relevant offences. Increased ratification and implementation of these Protocols would go some way to increasing international cooperation and compliance with the FATF Recommendations.

Recommendation 1: APG members should continue to assess and improve their legal frameworks in accordance with the FATF Recommendations, ensuring that people smuggling and trafficking are comprehensively criminalised, and are predicate offences for money laundering. APG members should take steps to become party to, and implement fully, the *United Nations Convention on Transnational Organised Crime*, including the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* and the *Protocol against the Smuggling of Migrants by Land, Sea and Air*, if they have not already.

Recommendation 4.8: APG members are encouraged to strengthen and harmonise laws on AML and criminal asset confiscation, including considering adopting non-conviction based asset forfeiture laws to enhance their ability to target the proceeds of people smuggling and people trafficking

Investigations and prosecutions

Investigations into the proceeds of people smuggling and people trafficking offences, and subsequent prosecutions, are rare

According to the responses received, investigations into the proceeds of crime generated by people smugglers and people traffickers have not been conducted in 71% (10/14) of Responding Members. This is surprising in light of the income generating potential of these crimes for international criminal organisations and the role proceeds of crime investigations can play as a disincentive for investment and reinvestment in criminal activity. Indeed, one Responding Country with a dual civil and conviction based confiscation system commented on the difficulty of prosecuting people trafficking offences and suggested that proceeds of crime action, even in the absence of a criminal brief, may impact criminal operations and act as a deterrent.

The suggestion that countries rarely look into the financial aspects of people smuggling and people trafficking matters was confirmed by other information provided by Responding Members. For example, only 29% (4/14) of Responding Members reported that restraint or forfeiture applications had been made in respect of people smuggling and people trafficking. In addition, while some Responding Members reported having the capacity to give effect to foreign proceeds of crime orders, few of the Responding Members had actually received requests to register foreign proceeds of crime orders. This indicates that the region is not effectively pursuing proceeds of crime investigations in all people smuggling and people trafficking cases.

The available prosecution figures in respect to people smuggling and people trafficking also indicate that few proceeds of crime investigations occur and result in restraint or forfeiture orders. The table below compares the prosecution figures in respect of people smuggling and people trafficking, with the number of proceeds of crime orders made. The number of restraint and forfeiture orders is vastly under proportion to the number of prosecutions.

Number of people smuggling prosecutions reported	Number of people trafficking prosecutions reported	Number of restraint or forfeiture orders reported in people smuggling or people trafficking cases
~ 1061	~ 5637	~ 14

These figures are approximations only, due to the different ways in which Responding Members reported their statistics. Further research into precise figures in a common time period would provide a more useful foundation for analysis, as would maintenance of statistics in all countries. This is discussed further below.

There are a wide range of impediments hindering the investigation of people smuggling and people trafficking, and the confiscation of proceeds of crime

Responding Members reported wide-ranging legal and other impediments hindering restraint and forfeiture applications in people smuggling and people trafficking matters. Responding Members expressed concerns about a lack of human resources, lack of law enforcement concern and awareness, lack of training, lack of financial resources, lack of cooperation from reporting institutions and difficulties tracing proceeds of crime through complex international financial transactions. These concerns are noted in more detail in **Appendix A**.

Recommendation 2: APG members should increase awareness of the benefits of using AML systems to combat people smuggling and people trafficking.

Recommendation 3: In order to increase the regularity of proceeds of crime and money laundering investigations into all profit driven crime, APG members should develop a broader understanding of how robust proceeds of crime laws can act as a disincentive to criminal activity by targeting the proceeds, and high level organisers, of crime.

Recommendation 4.4: APG members are encouraged to train police, border enforcement agencies and prosecutors involved in people smuggling and people trafficking cases to build their capacity to investigate and prosecute money laundering and take proceeds of crime action. This could include donor assisted training.

The potential for international cooperation by way of mutual assistance is encouraging however it can be a time consuming process

The potential for general international cooperation is encouraging; many countries have established mutual assistance relationships and laws. In respect of both people trafficking and people smuggling, however, numerous Responding Members noted that whilst often necessary, mutual legal assistance was time consuming which often hampered timely investigation and evidence collection. It was unclear however if police to police enquiries in these cases had first been made and whether the mutual assistance request was following up after those informal police to police inquiries.

It was noted by one Responding Member that establishing mutual legal assistance relationships was difficult in itself, whilst another noted that incompatibility of legal systems limited full cooperation. Another country also noted that international cooperation still focussed on the predicate crime rather than the related money laundering or proceeds of crime investigation. Further discussion of international cooperation is also contained part 4.2 of **Appendix A**.

Recommendation 4.6: APG members are encouraged to continue to develop and strengthen mutual assistance relationships and to engage in information exchange where legislative and mutual assistance arrangements permit.

Recommendation 4.7: APG members are encouraged to take steps to improve laws and procedures for timely mutual legal assistance in line with FATF Recommendations 36-40.

FIUs could be utilised more in detecting money flows for people trafficking and people smuggling offences

Responding Members also indicated that there is a lack of information known about whether suspicious transaction reports (STRs) relate to or identify people smuggling or people trafficking. This is discussed in further detail below.

Recommendation 4.1: APG members are encouraged to support Financial Intelligence Units to build knowledge and awareness of the typologies of laundering proceeds of people smuggling and people trafficking in order to support the analysis of relevant reports.

Proceeds of crime connected with people smuggling or people trafficking

Further research into the amount and ways proceeds of people smuggling and people trafficking activities enter financial systems is required

The above findings on proceeds of crime connected with people smuggling and people trafficking indicate that the Responding Members lack detailed information about associated typologies of money laundering, including how proceeds from these crimes enter financial systems and the amount of proceeds generated. This includes a limited number of suspicious transaction reports. Further, from the responses received, it appeared that few Responding Members had information about the amount of proceeds being generated by people smuggling and people trafficking and whether the proceeds that were generated remained in domestic system or were transferred to another jurisdiction. Very few suspicious transaction reports (STRs) related to these crimes have been received and there did not appear to be any strategies in place to address this.

This lack of information may, perhaps, be a result of few proceeds of crime investigations into people smuggling and people trafficking cases. Likewise, it may indicate the complexity of the systems used by people smugglers and people traffickers, or that cash deposits, transfers and informal remittance systems are being widely used to disguise the source of the proceeds.

By encouraging a higher rate of money laundering and proceeds of crime investigations into people smuggling and people trafficking cases, there are a number of positive flow on effects. These include:

- obtaining greater knowledge about the typologies associated with these crimes in and across countries
- more information about the value of the proceeds generated by these crimes would be available generally

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- the typical flow of the proceeds – e.g. whether proceeds from trafficked persons largely remain in the country where the trafficked person works, and
- greater international cooperation on money laundering and proceeds of crime cases in addition to the predicate offence.

The corporate knowledge for law enforcement agencies working in this area would also increase as they become more experienced in proceeds investigations within these crime types. Understanding the main typologies used to launder money in these types of cases could also increase the number of STRs that could be reported in relation to these crimes in the future. We note here that one Responding Country is currently analysing an STR filed in respect of people trafficking to determine whether it can identify links between people trafficking and money laundering.

Recommendations 2, 3, 4.1 and 4.4 address these issues.

Statistics, sources of information and principal offenders

There is a need for further research with respect to statistics on people smuggling and people trafficking, and the financial aspects of these crimes

Minimal statistics were reported on the incidence of people smuggling and people trafficking within Responding Members. The statistics that were provided in response to this question largely reflected the prosecution statistics that were provided.

Communication with non-government organisations on the issues of people smuggling and people trafficking could assist in this regard. Non-government organisations working with irregular immigrants and victims of trafficking are likely to be able to provide further insights to the size of the problem in a given country and a range of other information. Greater ongoing communication between government and non-government organisations may therefore contribute to an increased awareness by government on the incidence of these crimes.

Information regarding the nationality of principal suspects of people smuggling and people trafficking offences was also scarce in many countries, even where prosecutions had taken place. This may indicate a lack of statistical information routinely collated. Further collection of statistics would be useful in analysing these matters in the future.

Recommendation 4.2: APG members are encouraged to collate statistics on the incidence, investigation and prosecution of money laundering and proceeds of crime action taken on people smuggling and people trafficking.

Recommendation 4.3: APG members are encouraged to engage with non-government organisations on people smuggling and people trafficking to obtain greater information on the incidence of these crimes.

Conclusion

In light of the significant information gaps on the nature and financial aspects of people smuggling and people trafficking, as well as the low number of money laundering prosecutions and asset confiscations proceedings, further work is required on this topic. This is particularly the case given the limited number of Responding Members participating in this Study (only 14 out of 40 APG Members). There are a number of areas which could benefit from further consideration at a regional level.

Recommendation 5: The APG should contribute to the FATF’s work in this subject, including considering forming a working committee to:

5.1 Share regional experience of money laundering and proceeds of crime action associated with people smuggling and people trafficking

5.2 Consider strategies to increase awareness of the role of AML, asset restraint and forfeiture in fighting people smuggling and people trafficking.

5.3 Conduct further research into known typologies associated with people smuggling and people trafficking, including further case studies and develop red flag indicators for Financial Intelligence Units, border enforcement and law enforcement agencies.

5.4 Conduct further research into instigating money laundering and proceeds of crime investigations in parallel with people smuggling and people trafficking investigations.

Such work should be informed by, and feed into, the FATF Working Group on Typologies on “Money Laundering Risks arising from the Trafficking of Human Beings”.

Appendix A – Detailed analysis of questionnaire responses

Appendix A provides a more detailed analysis of the responses received to the questionnaire, to provide background and context to the main findings and recommendations of the Study. In some cases, countries responded only in relation to people trafficking, and unless otherwise known, the figures below were calculated on the basis that the country did not have specific people smuggling offences, but did have immigration laws under which some people smuggling conduct could be prosecuted.

Legal frameworks

1.1 The legal frameworks for people trafficking and people smuggling vary significantly (Questions 1, 2 and 4)

Both within a country and between countries, the legal frameworks dealing with the crimes of people smuggling and people trafficking vary significantly. On the whole, the Responding Members appear to have more comprehensive legislation dealing with people trafficking than people smuggling.

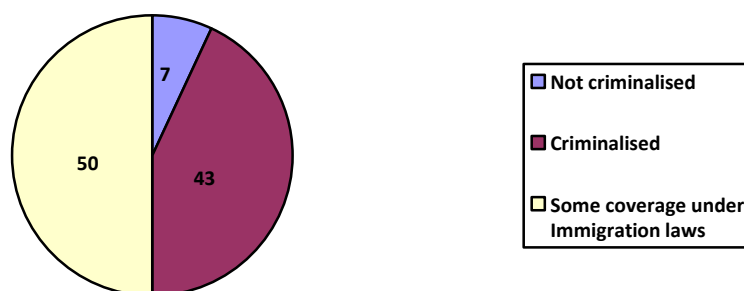
People smuggling

43% (6/14) of the Responding Members have criminalised people smuggling. The maximum sentences of imprisonment for people smuggling offences range from 10 to 20 years. It was also possible to impose large fines in addition to, or as an alternative to, imprisonment. The people smuggling offences in the majority of these Responding Members have extraterritorial jurisdiction (only one of the six Responding Members reported people smuggling offences as not having extraterritorial jurisdiction).

One of the 14 Responding Members indicated that there was no legislation that criminalised people smuggling. Since the questionnaire was completed, this Responding Country has passed people smuggling laws which will soon enter into force.

Of the remaining seven Responding Members, people smuggling conduct could be prosecuted under immigration laws. In these countries, the maximum penalties reported for offences such as irregular entry and false travel documentation range between three and five years imprisonment. It is also possible to impose fines in addition to, or as an alternative to, imprisonment. Two of these countries reported the relevant legislation as having extraterritorial application.

Figure 1: Criminalisation of people smuggling



People trafficking

All Responding Members have legislative provisions dealing with people trafficking. The range of offences included in people trafficking legislation are generally extensive. Some legislation explicitly included trafficking for the purpose of organ and / or body parts, and the recruitment of children to engage in armed activities. However some of the legislation simply dealt with trafficking for the purpose of prostitution or any form of forced servitude or labour. Withholding or destroying travel documentation of trafficked persons was also criminalised in some countries. The breadth of offences often evident in people trafficking cases was illustrated by a case study reported to us in which charges were proven in respect of people trafficking, dealing in proceeds of crime, and aiding, abetting, counselling or procuring the presentation of false documents.

The maximum penalties for people trafficking generally range from five to 25 years imprisonment with the potential to impose large fines in addition to, or as an alternative to imprisonment. The penalties for trafficking in children were generally harsher than for trafficking in adults.

The legislation criminalising people trafficking varied in its extraterritorial application. In more than half the Responding Members, people trafficking offences have extraterritorial jurisdiction (8/14). However the offences in the remaining Responding Members either did not apply extraterritorially and/ or applied extraterritorially to some, but not all, offences.

1.2 People smuggling and people trafficking are not always predicate offences for money laundering (Question 3)

The FATF Recommendations list people smuggling (‘migrant smuggling’) and people trafficking as designated categories of offences which should constitute predicate offences for money laundering. All Responding Members have legislation creating money laundering offences, however not all Responding Members have designated people smuggling and people trafficking as predicate offences.

People smuggling

In 57% (8/14) of Responding Members, people smuggling is a predicate offence for money laundering.

As noted above, one Responding Member reported that it had not criminalised people smuggling. This necessarily means that people smuggling is not a predicate crime for money laundering in that country. (Note, this country has since criminalised people smuggling, and the law will shortly enter into force.) A further 72% (5/7) of the Responding Members with some type of legislation that could be used to prosecute people smuggling indicated that people smuggling is not a predicate offence for money laundering.

People trafficking

According to the information received, in 93% (13/14) of Responding Members people trafficking offences are predicate offences for money laundering. In one country however, only certain people trafficking offences are predicate offences for money laundering. In the country that did not currently include people trafficking as a predicate offence for money laundering, legislative amendments are underway to change that position.

1.3 Proceeds of crime provisions differ, are generally located in multiple pieces of legislation, and charges must usually be imminent (Questions 7-9)

According to FATF Recommendation 3, countries should adopt legislative measures similar to those set out in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the United Nations Convention on Transnational Organised Crime. Under these Conventions, legislative measures, including those to enable confiscation of property laundered, proceeds from money laundering or predicate offences, instrumentalities used in or intended for use in the commission of offences, or of property of corresponding value, should be adopted.

The brief review of proceeds of crime provisions as they relate to people smuggling revealed that 71% (10/14) of Responding Members reported that there were some restraint and / or confiscation provisions which could be used. This was largely in general criminal laws, where proceeds could be forfeited upon conviction. No Responding Members reported having asset restraint and forfeiture provisions in laws criminalising people smuggling. Some countries have non-conviction based provisions.

In respect of people trafficking, all Responding Members have at least some restraint and / or confiscation provisions for proceeds of crime. The provisions for restraint and / or confiscation of proceeds of crime and instrumentalities are largely located either in a criminal code and / or the people trafficking legislation. A general proceeds of crime law is only evident in 21% (3/14) of Responding Members.

Where a defendant was not facing a charge imminently, the responses received indicated that assets could only be restrained in 21% (3/14) of Responding Members

and in 14% (2/14), no restraint action was possible prior to charge. With respect to confiscation, 71% (10/14) of Responding Members required the person to be convicted before proceeds of crime could be confiscated. Of the four countries that do not require conviction before confiscation can be ordered, three have dual conviction and civil-based confiscation systems. One of these countries uses a criminal standard of proof (beyond a reasonable doubt) in seeking civil forfeiture of proceeds and thus stated that those provisions are not used very often and that conviction based forfeiture is usually used. The legislation in a fourth country gave the court broad powers to confiscate assets seized during search, regardless of conviction.

Investigations and Prosecutions

2.1 Difficulties are being experienced or are anticipated in the investigation of people smuggling, people trafficking and in bringing proceeds of crime cases before the courts in respect of people smuggling and people trafficking (Questions 15-16)

People smuggling

In respect of the difficulties that are being experienced or are anticipated in the investigation of people smuggling offences, Responding Members indicated difficulties in the following areas:

- lack of law enforcement to investigate
- lack of legislation criminalising people smuggling
- lack of financial capacity to investigate
- lack of procedures and experience in investigation of people smuggling offences
- cross border nature of the crime means investigation and location of the organisers of people smuggling can be difficult
- language difficulties
- lack of law enforcement concern in relation to people smugglers
- location of people smugglers in foreign countries
- lack of legal infrastructure in other countries to cooperate fully
- compiling reliable intelligence and evidence
- limited use of foreign evidence, and
- lack of public awareness.

From the above list, capacity, resources, international cooperation, legislation and a lack of concern and awareness appear to be key impediments for these countries in investigating people smuggling cases.

People trafficking

55% (6/11) of Responding Members that reported conducting prosecutions of people trafficking offences noted difficulties obtaining the cooperation of victims and witnesses. This was variously stated to be a result of fear of retaliation by the traffickers or returning home, shame, and a distrust of the criminal justice system.

Other difficulties reported by Responding Members included:

- gathering evidence
- victim's security concerns
- lack of law enforcement to investigate
- lack of financial capacity to investigate
- porous borders
- lack of procedures and experience in investigation of
- people trafficking offences
- language difficulties
- cultural misunderstandings
- funding witnesses during the court process
- compiling reliable intelligence and evidence, and
- limited use of foreign evidence.

It appears from this list and the one above in respect of people smuggling that many of the reported difficulties are similar. However, a lack of law enforcement concern was not reported with regard people trafficking offences.

Proceeds of crime

The difficulties reported as anticipated or experienced in bringing proceeds of crime action before the courts where people smuggling or people trafficking are the predicate offences reflected the often complex nature of proceeds of crime investigations and cases. Included in the difficulties reported by Responding Members were the following:

- lack of training for investigators particularly with respect to evidence and the elements required to be proven by prosecutors
- difficulties in identifying and tracking proceeds due to the use of straw accounts and cross border remittance systems
- use of cash payments as opposed to more traceable means
- difficulty tracing proceeds across multiple countries involving complex structures
- investigatory culture focus on predicate offences rather than proceeds of offences
- incompatible legislation
- lengthy process of obtaining evidence and difficulties in compiling evidence
- lack of time and resources both in respect of investigators and prosecutors
- convincing decision makers
- funding investigations
- lack of effective legal measures for asset forfeiture

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- timely mutual legal assistances
- laws not tested, and
- lack of law enforcement to investigate.

Although the above list is not exhaustive, it is indicative of the wide range of difficulties anticipated or encountered by Responding Members in investigating and bringing proceeds of crime cases before the courts. It is noteworthy that only 14% (2/14) of Responding Members made distinctions between difficulties with proceeds of crime action in people smuggling cases and proceeds of crime action in people trafficking cases. Even within that 14%, only minor differences were experienced or anticipated. The list of difficulties may therefore be representative of the difficulties Responding Members experience or anticipate in taking action to restrain and confiscate the proceeds of crime, particularly cases in which complex systems are employed by criminals to disguise the source of the proceeds or those which cross borders.

2.2 There have been few proceeds of crime investigations reported as being conducted into cases involving people smuggling or people trafficking. This has resulted in few domestic restraint and forfeiture applications and orders and minimal international registration of orders (Questions 10-12)

Proceeds of crime investigations

Only 29% (4/14) of the Responding Members indicated that proceeds of crime investigations have been conducted into cases of people smuggling and / or people trafficking. Of those four countries, one noted that no statistics regarding the number of investigations are kept and one did not provide any further detail. The remaining two countries noted that only two proceeds of crime investigations related to people smuggling and less than 10 related to people trafficking have been undertaken. It is interesting to note that no Responding Country indicated a policy to always look behind these profit-driven crimes and to “follow the money” generated by people smuggling and people trafficking.

The limited number of Responding Members conducting proceeds of crime investigations in relation to these crimes may be due to a number of reasons. Many countries will not conduct separate proceeds of crime investigations as they only have conviction based confiscation provisions. That is, in some countries it may be that investigations are not focussing on proceeds of crime beyond the proceeds that may be seized upon the commission of an offence.

Applications for restraint and / or forfeiture orders

Bearing in mind the above comments, it is interesting to note that 29% (4/14) of Responding Members indicated that restraint and / or forfeiture applications have been made in respect of people smuggling and / or people trafficking offences. One country stated that statistics are unknown. However, within the detailed statistics provided, 62% (8/13) of those restraint and / or confiscation applications have been made in respect of people trafficking. One country also noted that a pecuniary penalty order has been made in respect of people trafficking offences.

The ability to register foreign proceeds of crime orders with respect to people smuggling or related money laundering activity

The numbers of restraint and confiscation orders is low with respect to people smuggling and people trafficking offences, as is the potential level of international registerability of these orders. Of the countries with laws under which some or all people smuggling conduct can be prosecuted, 38% (5/13) of countries expressly indicated they are able to register and act on requests to register foreign proceeds of crime orders in respect of people smuggling or related money laundering activity.⁹ One country further noted that the only requirement for registration of such orders in that country is that the foreign offence be punishable by more than 12 months imprisonment. Only one country reported having received a request to register a foreign proceeds of crime order related to people smuggling.

The ability to register foreign proceeds of crime orders with respect people trafficking or related money laundering activity

Less than half (6/14) of Responding Members are able to register and act on requests to register foreign proceeds of crime orders in relation to people trafficking and related money laundering.¹⁰ Only one country provided information that it had received such requests.

2.3 The potential for international cooperation by way of mutual assistance appears encouraging however countries noted that it is a time consuming process (Question 14)

The potential for general international cooperation is encouraging. In respect of both people trafficking and people smuggling, however, numerous Responding Members noted that whilst often necessary, mutual legal assistance is time consuming which often hampered timely investigation and evidence collection. It was unclear, however, if police to police enquiries in these cases had first been made and the mutual assistance request was following up after those informal police to police inquiries.

It was noted by one Responding Country, that establishing mutual legal assistance relationships is difficult in itself whilst another noted that incompatibility of legal systems prohibited full cooperation. Another country also noted that international cooperation still focuses on the predicate crime, rather than any related money laundering or proceeds of crime investigation.

⁹ It should be noted that 54% of Responding Countries with some laws under which people smuggling could be prosecuted did not answer this question.

¹⁰ It should also be noted that 50% (7/14) of Responding Countries did not respond to this question

2.4 The data provided with respect to prosecutions undertaken for people smuggling and people trafficking offences was difficult to interpret (Questions 5-6)

The responses to questions regarding the number of prosecutions undertaken for people smuggling and people trafficking offences provided data over different time periods. This made interpretation of the data difficult. Further, the more recent figures provided indicate that court findings are still pending in some cases.

People smuggling

Only 29% (4/14) of Responding Members reported prosecuting people smuggling offences. **Table A** in **Appendix C** reflects the data received as it relates to people smuggling prosecutions. It is apparent from Table A that the great majority of people smuggling cases proceed to prosecution when referred to prosecution agencies. Although little detail was provided regarding the outcomes of those cases, the detail that was provided nevertheless tends to suggest that the prosecutions were largely successful. No information was offered which shed any light about the penalties for those convicted, however. The meaning that can be derived from these results is limited by the small number of countries with people smuggling legislation and also by the absence of detailed information about prosecution of people smuggling offences.

People trafficking

Some 79% (11/14) of Responding Members have prosecuted people trafficking offences. **Table B** in **Appendix C** provides the data received as it relates to people trafficking prosecutions. Similarly to people smuggling prosecutions, the figures suggest that prosecutions are conducted in the large majority of people trafficking cases where they are referred to prosecution agencies. Once again, there was a lack of detail regarding the outcomes of the cases prosecuted and any penalties imposed.

Proceeds of crime connected with people smuggling or people trafficking

3.1 How proceeds from people smuggling or people trafficking is entering the financial systems of reporting countries is somewhat uncertain (Question 17)

Of the Responding Members, 50% (7/14) have no information on how proceeds of crime generated by people trafficking and people smuggling enter their financial systems. Although there was some uncertainty indicated within the responses of the remaining 50% (7/14) of Responding Members, the following methods of proceeds from people smuggling and people trafficking entering financial systems were reported:

- cash transfers or deposits
- electronic funds transfer
- use of formal and informal banking systems and remittance systems

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- hawala / hundi
- co-mingling of funds with legitimate business proceeds
- smuggling of cash
- use of straw accounts
- use of company accounts including shell and offshore companies, and
- payments on credit cards from foreign countries

There were no differences reported on the methods used in respect of people smuggling and people trafficking by 14% (2/14) of Responding Members. 36% (5/14) reported some minor differentiation of methods between people smuggling and people trafficking. The responses of 21% (3/14) of Responding Members included in the above list related only to people trafficking.

The above list is supported by a number of case studies that were reported in respect of people smuggling and proceeds of crime. In one case study, large funds transfers between a local business operator and persons of interest were found. In a second case study, reported as relating to people smuggling between Asia and Europe, the operators of a remittance agency, through which the substantial proceeds of people smuggling had passed, were arrested. The investigation revealed that the monies remitted were a mix of funds remitted by smuggled persons to persons in another country to pay the organising syndicate. A third case study reported identified moneys being collected by way of various methods including cash deposits onto debit cards from throughout the country.

At least one Responding Country noted the difficulty in differentiating between proceeds from people smuggling and people trafficking from other crimes such as drug trafficking. This may be a more widespread problem which impacted on the ability to respond to this question.

3.2 Little is known about the amount of proceeds generated by people smuggling or people trafficking (Questions 22-23)

64% (9/14) of Responding Members indicated that the amount of proceeds being generated by people smuggling or people trafficking in their country is unknown or unable to be estimated. Of the other Responding Members, one reported that a figure in excess of \$1,000,000 USD related to people smuggling had been restrained in its country. After further inquiry, this figure was said to not relate to people smuggling to, through or from that country but that its financial system was used to launder the proceeds. In respect of the remaining three countries, one reported that they did not believe any proceeds had been generated by these crimes, another indicated that the figure was less than \$200,000 USD and another indicated a figure in excess of \$1,000,000 USD in respect of both people trafficking and people smuggling.

Having little information regarding the level of funds generated from people smuggling and people trafficking in their countries, Responding Members indicated uncertainty as to whether the proceeds remained in country or were sent overseas. It was noted by one country that the majority of financial activity in relation to people smuggling occurs prior to arrival in the destination country. Another country reported that the majority of proceeds generated by people smuggling was remitted overseas.

In respect of people trafficking, it was indicated that the difficulties associated with estimating the amount of proceeds from the crime were a result of the ongoing generation of proceeds due to the continuous nature of the offence. By this it was meant that, although some transactions related to trafficking may occur in one country where the offence was initiated, proceeds were known to continue to be generated in what is often another country. An example of this is where people are trafficked from one country to perform sexual services in another country. In such cases it was indicated that proceeds may flow back to the country of origin or, alternatively, that the proceeds remain in the country of the trafficked person to be applied to the “debts” that the trafficked person owes according to their traffickers.

3.3 Suspicious Transaction Reports (STRs) are rarely known to identify or relate to people smuggling or people trafficking (Question 20)

The responses indicated the lack of information known about whether STRs relate to or identify people smuggling or people trafficking. 29% (4/14) of Responding Members indicated that it is not possible to identify relationships between certain financial transactions and people trafficking or people smuggling, or that the number of STR’s identifying or relating to these crimes is unknown. 50% (7/14) of countries reported that no STRs have been received that identify or relate to people trafficking or people smuggling.

Another 21% (3/14) of Responding Members indicated that STRs have been received in relation to people smuggling and / or people trafficking. Eight of the 12 STRs reported related to people smuggling offences. This statistic is interesting to note in light of the money flows associated with people trafficking and people smuggling. In respect of people smuggling, the financial transaction between the person to be smuggled and the smuggler is understood to usually involve a one-off payment at the point of departure or during transit. In contrast, people trafficking offences are usually characterised by ongoing financial transactions over the period of time the victim is exploited.

Statistics, sources of information and principal offenders

4.1 Statistics on the incidence of people trafficking and people smuggling within countries are largely unknown (Question 21)

People smuggling

The information that was received on the incidence of people smuggling in Responding Members is provided in the **Table C** in **Appendix C**. The information reported with respect to people smuggling indicated a widespread lack of data maintained on the incidence of people smuggling. As such, no thorough analysis can be conducted on these figures.

People trafficking

The information that was received on the incidence of people trafficking in countries is provided in **Table D** in **Appendix C**. As with people smuggling, the Responding

Members were largely unable to provide data with respect to the incidence of people trafficking. As such, no thorough analysis can be conducted on these figures. This is one area in which further information from non-government organisations may be useful.

4.2 The agencies from which responding countries could seek information about proceeds of crime being generated by people smuggling or people trafficking were generally government agencies (Question 13)

Government agencies and non-government organisations

Responding Members overwhelmingly indicated that, for information on money being generated by people smuggling or people trafficking, they would turn to government agencies such as financial intelligence units (FIUs), police, immigration, customs, maritime enforcement and prosecution agencies. Some Responding Members also indicated that financial institutions may be consulted. Only one country listed non-government organisations that might be contacted for information about proceeds of crime and people trafficking.

The responses to this question may be viewed as demonstrating a gap between government and non-government organisations. It is to be reasonably expected, however, that both government and non-government organisations working in the areas of people trafficking and people smuggling could usefully contribute to the wider knowledge of each other. Within many sectors, non-government organisations have useful and up-to-date information that can be usefully acted upon by a variety of government agencies in the fight against people smuggling and people trafficking.

International Cooperation

In terms of international cooperation between agencies for information on proceeds of crime generated by people smuggling and people trafficking, 86% (12/14) of Responding Members reported numerous relationships with other countries by which cooperation was possible in proceeds of crime actions. These were reported to be largely in the form of bilateral mutual assistance agreements although agreements between domestic and foreign police forces were also mentioned. 14% (2/14) of responding countries stated that they had no relevant mutual assistance agreements in place.

Police to police inquiries were mentioned by 36% (5/14) of countries. This is an important and perhaps underutilised avenue of inquiry. Police to police inquiries are often integral to obtaining up to date information and progressing the mutual assistance process as quickly as possible.

The sharing of information for intelligence purposes between FIUs was not widely mentioned. This may reflect the point that some countries reported that it was not possible to identify financial information as pertaining solely to people smuggling or people trafficking.

4.3 The information is mixed on the principal persons suspected of people smuggling or people trafficking in or through countries (Question 18)

People smuggling

Of the Responding Members with legislation under which some people smuggling conduct could be prosecuted, 38% (5/13) reported foreign nationals as being the principal suspects for people smuggling. Within that 38% of Responding Members, most had laid charges or prosecuted people smuggling conduct. One of these countries also reported that, although foreign nationals were the majority of persons that organised people smuggling destined for that country, there was some evidence that a number of its recently nationalised persons were involved in organising people smuggling.

In the remaining Responding Members with people smuggling legislation, 15% (2/13) reported people smuggling suspects are believed to be both nationals and foreign nationals, and another 15% (2/13) indicated that no information on the nationality of persons suspected as being people smugglers was available. 15% (2/13) of countries have not reported any instances of people smuggling and 23% (3/13) did not respond to the question.

People trafficking

14% (2/14) of Responding Members indicated that they have no available data on whether people trafficking suspects are largely foreign nationals, citizens or whether both citizens and foreign nationals engaged in people trafficking activity. However, of this 21% (2/14), prosecutions for people trafficking had taken place in both of them. Consequently, although the information was not readily available, it may be possible to determine this with further research.

Of the remaining 79% (12/14) of countries, the reporting on those suspected of committing people trafficking offences was divided. In 36% (5/14) of Responding Members, foreign nationals were suspected to be the principal offenders of people trafficking. It was indicated by one country here that, in cases of people trafficking, the offenders were found to usually be from the same region as the trafficked victims. In another 29% (4/14) of Responding Members, both citizens and foreign nationals were indicated as being suspected of people trafficking, whilst nationals were reported as the principal offenders in 14% (2/14) of Responding Members. A further 14% (2/14) of countries have not reported any instances of people trafficking.

Appendix B – Questionnaire

SCOPING STUDY: LINKS BETWEEN MONEY LAUNDERING, PEOPLE SMUGGLING AND PEOPLE TRAFFICKING

The Australian Attorney-General's Department is conducting an APG Typologies Working Group Scoping Study to evaluate the links between money laundering and people smuggling and trafficking in persons in the Asia/Pacific region.

This questionnaire is being sent to all APG members and observers. Results provided in response to the questions will be collated and condensed into a scoping study which will be tabled at the APG Annual Meeting in July 2010. The information collected will be used to consider potential challenges faced by the region in effectively combating both offences using AML systems.

Note: the term 'people smuggling' will be used throughout this document and is analogous with the term 'migrant smuggling' as used by the FATF in 40 Recommendations.

Due to their cross-border nature and income generating potential, both people smuggling and trafficking in persons are recognised as a global challenge of the same proportions as the illegal trafficking of drugs and firearms. The impact of these crimes penetrates throughout countries of origin, transit and destination. It is therefore important to understand how money is laundered in the facilitation of trafficking in persons or smuggling migrants across jurisdictions. This will allow a greater understanding of obstacles to combating trafficking in persons and people smuggling and strategies to address these obstacles.

The terms 'people smuggling' and 'trafficking in persons' are often used interchangeably but they are in fact, different. Trafficking in persons is the acquisition of people by improper means such as force, fraud or deception, with the aim of exploiting them. People smuggling involves the procurement for financial or other material benefit of illegal entry of a person into a jurisdiction of which that person is not a national or resident. For the purposes of conducting this study it is important to clearly define the separate conduct that constitutes trafficking in persons and people smuggling.

Trafficking in persons

- Article 3(a) of the Protocol to Prevent, Suppress and Punish Trafficking in Person, Especially Women and Children (Trafficking Protocol) defines trafficking in persons as the recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat, force, coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation includes the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.
- People traffickers are motivated by the prospect of exploiting their victims once they reach their destination. This exploitation can continue well after the victim has reached their destination.
- Trafficking in persons can occur whether people cross borders by legal or illegal means.

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- Although trafficking in persons often has a transnational component, trafficking can also take place within or across national borders
- Whether or not a person has consented to cross a border, or consented to the proposed exploitation, is not relevant when determining whether a person has been trafficked.

People smuggling

- Article 3(a) of the Protocol against the Smuggling of Migrants by Land, Air or Sea (People Smuggling Protocol) defines people smuggling as the “procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a country of which the person is not a national or a permanent resident.”
- The smuggling of migrants, while often undertaken in dangerous or degrading conditions, involves migrants who have consented to the smuggling.
- The relationship between the smuggler and the migrant is a commercial transaction which usually ends with the migrants’ arrival at their destination.
- People smuggling involves illegal border crossing and entry into another country.
- People smugglers generate profit from fees to move people.

These crimes affect almost every country in the world, whether as a country of origin, transit or destination, generating large profits for the criminals involved. Indeed, trafficking in persons and people smuggling represent a core business of many international criminal organisations and are thought to be among the most lucrative of their worldwide activities. The FATF’s standards require countries to designate trafficking in persons and people smuggling as predicate offences for money laundering.

Strong AML systems can help detect trafficking in persons and people smuggling activities by triggering financial and other institutions to report suspicious financial activities. Additionally, a robust AML framework will enable countries to restrain and confiscate the proceeds of people smuggling and trafficking in persons, prevent reinvestment in criminal activity and reduce the financial incentive for individuals to engage in these crimes in the future.

The Australian Attorney-General’s Department would appreciate your cooperation by filling out the survey below and returning it to the Department by. Please answer questions in the boxes provided and include responses that address both people smuggling and trafficking in persons where possible. Should jurisdictions be unable to answer certain questions because of lack of available information, we would be happy to receive partial responses.

APG Delegates kindly reply by 31 August 2010 to:

**Anti-Money Laundering Assistance Team
Australian Attorney-General’s Department
3-5 National Circuit
Barton ACT 2600
AUSTRALIA**

Email: amlat@ag.gov.au

QUESTIONNAIRE

LINKS BETWEEN AML, PEOPLE SMUGGLING AND TRAFFICKING IN PERSONS

[PLEASE INSERT YOUR JURISDICTION NAME HERE]

Please forward completed questionnaire to the Anti-Money Laundering Assistance Team, Attorney-General's Department at amlat@ag.gov.au by 26/02/2010.

Question	Jurisdiction response regarding people <u>smuggling</u>	Jurisdiction response regarding <u>Trafficking in persons</u>
Criminal Offence Provisions		
1. What laws do you have that address people smuggling / trafficking in persons? If applicable, please state where the terms are defined in your legislation and any relevant provisions.		
2. What are the penalty provisions which relate to these offences?		
3. Do these offences qualify as predicate offences for related money laundering offences?		
4. Do these offences have extra territorial jurisdiction?		
5. How many prosecutions have been undertaken for these offences and what were the results?		
6. How many matters have been referred for prosecution where no prosecution has been undertaken		

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Question	Jurisdiction response regarding people smuggling	Jurisdiction response regarding Trafficking in persons
Proceeds of Crime Provisions		
<p>7. What provisions do you have to confiscate proceeds of crime generated by people smuggling / trafficking in persons in your jurisdiction?</p> <p>If applicable, please state the relevant Proceeds of Crime legislation used.</p>		
<p>8. Do your proceeds of crime provisions require that a person be charged at any point prior to or after restraint of assets?</p> <p>Do you require a conviction to obtain forfeiture of assets?</p>		
<p>9. Do your proceeds of crime provisions require that a particular person be identified as having committed an offence or can the suspected criminal assets be restrained without an identified owner?</p>		
<p>10. Has there been any restraint or forfeiture applications made in respect to people smuggling/trafficking activity or related money laundering activity in your country?</p>		

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Question	Jurisdiction response regarding <u>people smuggling</u>	Jurisdiction response regarding <u>Trafficking in persons</u>
<p>11. Have you received any requests to register foreign proceeds of crime orders in respect to people smuggling/trafficking activity or related money laundering activity?</p> <p>Could you register and act on this if they were made?</p>		
Investigations		
<p>12. Have there been any Proceeds of Crime focused investigations conducted into cases where people smuggling / trafficking in persons is the predicate offence?</p> <p>If so, please provide an estimate of the number of investigations undertaken.</p>		
<p>13. What agencies would you contact to get information about proceeds of crime being generated by people smuggling / trafficking in persons?</p> <p>For example – financial intelligence units, police, immigration and customs agencies.</p>		

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Question	Jurisdiction response regarding people <u>smuggling</u>	Jurisdiction response regarding <u>Trafficking in persons</u>
14. Are there agencies in other countries that cooperate with you in Proceeds of Crime actions? For example, do you have any Mutual Assistance Relationships in place to assist in investigations in foreign jurisdictions?		
15. What are the problems and difficulties that are encountered or anticipated to be encountered in your jurisdiction in the investigation of people smuggling / trafficking in persons?		
16. What are the problems and difficulties that are encountered or anticipated to be encountered in your jurisdiction in bringing Proceeds of Crime action before the courts where people smuggling / trafficking in persons is the predicate offence?		
17. How are the proceeds from people smuggling / trafficking in persons entering the financial system in your jurisdiction?	<i>For example – by way of cash transfers.</i>	<i>For example, through the mixing of legitimate and illegitimate income of brothels being deposited into the bank.</i>

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Question	Jurisdiction response regarding people <u>smuggling</u>	Jurisdiction response regarding <u>Trafficking in persons</u>
18. Are the principal offenders suspected of undertaking people smuggling / trafficking in persons in or through your jurisdiction foreign nationals?		
19. Can you provide any case studies that relate to people smuggling /trafficking and AML?		
Statistics and Reporting		
20. How many STR's have been submitted to your FIU that identify or relate to (a) people smuggling and (b) people trafficking?		
21. Do you have any statistics on the incidence of people smuggling / trafficking in persons in your jurisdiction?		
22. How much money do you estimate is being generated by people smuggling / trafficking in persons in your jurisdiction per year?	<input type="checkbox"/> Less than USD\$200,000 <input type="checkbox"/> Between USD\$200,000 and \$500,000 <input type="checkbox"/> Between USD\$500,000 and \$1,000,000 <input type="checkbox"/> More than USD\$1,000,000 <input type="checkbox"/> Other	<input type="checkbox"/> Less than USD\$200,000 <input type="checkbox"/> Between USD\$200,000 and \$500,000 <input type="checkbox"/> Between USD\$500,000 and \$1,000,000 <input type="checkbox"/> More than USD\$1,000,000 <input type="checkbox"/> Other
23. Does this money remain in your country or does it get sent overseas?		
24. Do you have any further comments you would like to share about the links between AML and either people smuggling or people trafficking?		

Appendix C – Statistics

Table A – People Smuggling Prosecutions

Country	Time period	Number of prosecutions	Outcomes known	Number of matters referred for prosecution but not prosecuted
A	2004 - 2009	404	No detailed data provided - some convictions, some in progress	0
B	No statistics on people smuggling cases maintained			
C	No law criminalising people smuggling			
D	07/1999 – 06/2009	567	17 acquittals 16 discontinued 4 hung juries 1 incomplete 529 proven	140
E	No law criminalising people smuggling			
F	No statistics available			
G	No statistics on people smuggling cases maintained			
H ¹¹		0	0	0
I		0	0	0
J		0	0	0
K	04/2004 – 03/2009	67	Majority resolved by guilty plea or conviction	~10
L	2008-2009	23	No detail	63
M	No statistics on people smuggling cases provided			
N	No statistics on people smuggling cases provided			
Total		1061		~213

¹¹ This country noted that although a charge had been laid for people smuggling, the accused had absconded.

Table B – People Trafficking Prosecutions

Country	Time period	Number of prosecutions	Outcomes known	Number of matters referred for prosecution but not prosecuted
A	2007 - 2010	93	No detailed data provided - some convictions, some in progress	0
B	2009	118 relating to 335 accused	Judgments handed down in 2009 resulted in the conviction of 376 defendants ¹²	17
C	2005 – 06/2007	59 ¹³	No detail provided - many cases still pending in court.	7
D	07/2004 – 06/2009	20	2 acquittals 6 discontinued 12 convictions with imprisonment sentences	10
E	03/2008 – 02/2010	193	8 convictions	0
F	2009	229	No detail provided	0
G	2009	2	Pending in court	0
H		0	0	0
I		0	0	0
J		0	0	0
K	04/2004 – 03/2009	1 ¹⁴	Convicted of some charges	No statistics available
L	2008-2009	6	No detail	14
M	2009	97 relating to 231 accused	112 people sentenced and imprisoned 25 absolved of charges 9 acquitted	68
N	2007-2010	4819	No detail	46
Total		~5637		~162

¹² Note that this figure reflects decisions delivered in 2009 and likely relates to prosecutions conducted prior to 2009. It is therefore not reflective of the outcomes of the cases prosecuted in 2009.

¹³ This country indicated that a further 52 cases were under investigation.

¹⁴ Indications from this country were that a number of prosecutions had occurred under other legislation at a regional level and detailed information about those prosecutions was unavailable.

Table C – Statistics on the incidence of people smuggling

Country	Time period	Number of investigations	Detail and outcomes provided	Number of matters referred for prosecution
A	No statistics known			
B	2009	158	196 offenders	
C	No law criminalising people smuggling			
D	No statistics known			
E	No law criminalising people smuggling			
F	No statistics			
G	2008 - 2009	40	No further information	
H	2004 - 2009	13	12 closed due to insufficient evidence and a previous lack of legislation, 1 pending trial	1
I		0	0	0
J		0	0	0
K	Statistics unavailable			
L	No statistics provided			
M	No statistics provided			
N	2007-2010	14,922	No further information	

Table D – Statistics on the incidence of people trafficking

Country	Time period	Number of investigations	Detail and outcomes provided	Number of matters prosecuted
A	No statistics known			
B	2009	88	46 involving labour exploitation 42 involving sexual exploitation	118 cases of people trafficking: 83 cases and 335 offenders of labour exploitation 35 cases and 233 offenders of sexual exploitation
C	2003 – 2005	109	25 rescue operations led to the arrest of 56 persons and the rescue of 137 victims	22 cases out of the 25 rescue operations
	2006	122	7 cases subjected to inquest proceedings 7 cases closed for insufficient evidence further detail unknown	3
D	No statistics known			
E	No statistic provided			
F	Yes, but no detail provided			
G	2008 - 2009	3	No further information	
H		0	0	0
I		0	0	0
J		0	0	0
K	2008	12	2 involving minors	No further information provided
L	2008-2009	17	No further information	
M	2009	165	No further information	
N	2007-2010	4819	No further information	