

Constructive dialogue on the review process in accordance with paragraph 53 of the Procedures and rules for the functioning of the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime (UNTOC) and the Protocols thereto

Summary by the Chair

I. Introduction

1. At its ninth session, in October 2018, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime established the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto¹ through Conference resolution 9/1, which included in its annex the procedures and rules for the functioning of the UNTOC review mechanism.

2. According to paragraph 53 of the procedures and rules for the functioning of the UNTOC review mechanism and in accordance with article 32, paragraph 3 (c), of the Organized Crime Convention, constructive dialogues with relevant stakeholders, including non-governmental organizations, will be convened as a regular practice, following the conclusion of the sessions of the working groups and the adoption of the reports. The constructive dialogues aim to promote fruitful engagement with relevant stakeholders. They allow for briefing participants on the development and outcomes of the review process, and for collecting inputs and suggestions from participants, including their contributions on ways to improve the implementation of the Convention and the Protocols thereto.

3. The constructive dialogue held after the conclusion of the ninth session of the Working Group on Smuggling of Migrants, on 1 July 2022, was chaired by the Chair of the Working Group, Mr. Francesco Testa.

4. Thirty-seven non-governmental organizations (NGOs) and seven other relevant stakeholders (five from the academia and two from the private sector) participated in the constructive dialogue. Written comments that were received in accordance with paragraph 53 of the procedures and rules for the functioning of the UNTOC review mechanism were made available on the website of the mechanism: (<https://www.unodc.org/unodc/en/organized-crime/intro/review-mechanism-untoc/constructive-dialogues.html>).

5. This document presents the summary of discussions at the above-mentioned constructive dialogues prepared by the Chair of the ninth session of the Working Group.

II. Opening

6. The Chair delivered introductory remarks, expressing his confidence that the UNTOC review mechanism will greatly benefit from the

¹ Hereinafter: UNTOC review mechanism.

contributions of relevant non-governmental stakeholders, including civil society, academia and the private sector.

III. Briefing on the developments and outcomes of the review process

7. Under agenda item 2, the secretariat shared an overview of the status of the review process, which had been launched in October 2020 through conference resolution 10/1, after a two-year preparatory phase. A status report on the progress of the UNTOC review mechanism had also been shared with the Working Group in form of a conference room paper (CTOC/COP/WG.6/2022/CRP.1). The overview also included information on the support provided by UNODC to States parties in the review process and to non-governmental stakeholders.

IV. Panel discussion, with representatives from relevant stakeholders, on the Review of the Implementation of the Criminalization and Jurisdiction provisions of Cluster 1, which is currently under review

8. The discussion on agenda item 3 was facilitated by three panelists representing three non-governmental organizations: Casa Monarca; Migrant Forum in Asia, and Rapha International.

9. The representative of Casa Monarca introduced the work of his organization and highlighted the efforts undertaken with a Member States and UNODC to bring together representatives from government, civil society, academia and private sector to ensure that all perspectives and expertise are included in the review process to better prevent and counter forms of organized crime. The panelist presented concrete proposals to Member States, including as related to conducting regular training in order to raise awareness from civil society and developing indicators in order to better evaluate the effectiveness and efficiency of anti-trafficking and anti-smuggling programmes. The panelist also highlighted positive national practices related to the role of NGOs in protecting migrants through the management of shelters.

10. The representative of Migrant Forum in Asia provided concrete suggestions to Member States for a victim-centered approach in countering organized crime in its various forms. The panelist also mentioned the relevance of technology, the need for Member States to address jurisdictional issues, and evidence collection through effective cross-border collaboration. The panelist also called on UNODC to monitor governments' efforts in reviewing their national laws to align them with the requirements of the Smuggling of Migrants Protocol. The panelist underscored the importance of expanding collaboration between Member States in order to ensure that witness and victims' families are protected before, during and after court proceedings. She further called for governments to enhance their efforts to understand the push factors to migrant smuggling, including those related to access issues and costs associated with the issuance of legal identity and travel documents.

11. The representative of Rapha International highlighted the fact that the rising incidence of the smuggling of migrants presents increased challenges to the effective implementation of the UNTOC and its Protocols. Furthermore, he referred to recently conducted country-specific research efforts indicating limits in the knowledge of law and policies related to trafficking in persons and the smuggling of migrants among the judiciary. According to this survey, 42% of the judges, 65% of the lawyers and 60% of the civil court clerks had never heard of specific laws on trafficking in persons and the smuggling of migrants. The panelist shared his concern about these gaps in knowledge, which in his view may lead to the stigmatization and criminalization of victims and migrants. In response to this situation, the panelist suggested to tailor specific responses according to each jurisdiction's weaknesses.

12. Following the panelists' presentations, the floor was opened for an exchange of additional information with panelists and participating delegates in response to several questions and comments.

13. Several speakers expressed their appreciation for the presentations and shared their expectations for the constructive dialogues to provide a fruitful platform to discuss and exchange local, regional and international expertise.

14. One speaker highlighted the importance of ensuring a broad participation of non-governmental stakeholders in the constructive dialogues and the need for inclusivity of the process. Furthermore, he expressed reservation against the objection that had been made by two States parties against the participation of three non-governmental organizations.

15. One speaker highlighted the role of embassies and consulates in supporting efforts to address various forms of organized crime, as well as providing assistance to the victims. The speaker further called for UNODC to facilitate their engagement in that regard.

16. In relation to the issue related to the cost of legal documentations, highlighted by the representative of Migrant Forum in Asia, one speaker called upon all States Parties to reduce the cost of such documentations. Subsequently, the panelist representing the Migrant Forum in Asia complemented his presentation by underscoring the fact that migrants sometimes lack detailed information on where to obtain legal documentation and called on States to address this gap.

17. One speaker posed a question to the representative of Rapha International on the measures in place by governments to protect NGOs' staff from retaliation for their engagement to address migrant smuggling and human trafficking issues. He stressed the need not only to discuss how to assist and protect victims of crime but also how to protect those who are assisting those victims. Subsequently, the representative of Rapha International confirmed that enhancing collaboration with various government agencies should be addressed as a priority in this regard.

V. Collection of inputs and suggestions from participants and provision of information on relevant activities, including those related to meeting technical assistance needs

18. Following the closure of agenda item 3, the Chair opened the floor to the participants for the collection of inputs and suggestions, on ways to improve the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, and the provision of information on relevant activities, including those related to meeting technical assistance needs.

19. Many speakers highlighted the importance of mainstreaming human rights considerations into responses to the smuggling of migrants, including through a victim-centered and human-rights based approach, in order to avoid the revictimization of migrant victims of crime. In this regard, some speakers mentioned the key role and significance of the participation of migrant victims of crime, witnesses and their families during jurisdictional proceedings. One speaker highlighted the importance of fostering multi-faceted public policies, as well as the need for ensuring an active participation of deprived communities, women and youth in their formulation. One speaker called upon States to ensure equal access to justice and protection under the law for migrants, in order to prevent cases of exploitation. The importance of differentiating between criminals and migrants, as well as the need to decriminalize migration worldwide were also emphasized by two speakers.

20. The interlinkages between technology and smuggling of migrants were highlighted by several speakers. The growing importance of digital tools by smugglers to recruit migrants was also underscored by several speakers. One speaker expressed concern at the lack of national laws to address the misuse of the cyberspace in the context of the smuggling of migrants, and called upon States to enable effective legal frameworks to prevent the smuggling of migrants on both the Clearnet and Darknet. Subsequently, one speaker referred to the ongoing negotiations of the Ad Hoc Committee to elaborate a comprehensive international convention on the use of Information and Communications Technologies for criminal purposes, underscoring how the negotiations in that context could benefit from the inputs shared during the Constructive Dialogues. Additionally, the benefits of the use of technology to identify smuggling networks were underscored by one speaker.

21. One speaker stressed the importance of corporate social responsibility efforts, and referred to a digital tool available within the compliance department of one specific private sector organization that aims at helping to prevent exploitation in the travel industry.

22. Several speakers highlighted the need to increase efforts on data collection on migration and in particular on the impact of pathways for regular migration in reducing the incidence of smuggling migrants. Two speakers suggested the setting up of integrated data tools to support data collection efforts including related to trafficking in persons, and to enhance efforts to establish national coordination mechanisms and screening measures at borders to identify and assist smuggled migrants who may be victims of crime, including of human trafficking. One speaker underscored the importance of coordination among countries of origin, transit and destination.

23. One speaker called upon States to consider the various forms of migrations in the light of emerging challenges on the root causes of migration such as that of natural disaster.

24. Other speakers provided examples of their constructive engagement with governments and called for an increased mutual trust between governments and non-governmental stakeholders. One speaker reported on good practices related to the coordination of the participation in the UNTOC Review Mechanism at national level, with reference to the establishment of a comprehensive national committee comprised of national competent authorities, civil society actors, indigenous groups and regional-level representatives.

25. One speaker highlighted the lack of financial resources as a challenge in combatting the smuggling of migrants. Expanding availability of training and capacity building for law enforcement that could be delivered with the participation of civil society actors were also underscored by some speakers as a priority in tackling the smuggling of migrants more effectively.

26. The Chair thanked all participants for their valuable inputs and for the constructive exchange of views. The Chair also called for a continued broad participation of non-governmental stakeholders in the constructive dialogues and emphasized their key role in contributing to the progress of the review mechanism through sharing of experiences and suggestions in a constructive manner, thus enriching the discussions to the benefits of the entire review process and to ultimately strengthen the implementation of the United Nations Convention against Transnational Organized Crime and its Protocols thereto.
