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English only

Working Group on the Smuggling of Migrants

Vienna, 4–5 July 2018

Non-paper containing a draft questionnaire for the review of the implementation of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, in accordance with resolution 8/2 of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime**Circulated at the request of the Chair of the fourth session of the Working Group on the Smuggling of Migrants, held from 11 to 13 September 2017***

At its eighth session, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime decided to continue the process of establishing the mechanism for the review of the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, and that such mechanism should progressively address all the articles contained in the Convention and the Protocols thereto (Conference resolution 8/2).

The Conference also decided that the review mechanism should be conducted within the Conference and its existing working groups, which should add the matter as an item to their agenda, consistent with their areas of expertise and without prejudice to their respective existing mandates, and that for that purpose, each relevant working group should define, in the following two years, with the assistance of the Secretariat, a short, precise and focused self-assessment questionnaire.

The present questionnaire was developed pursuant to this mandate, to collect information from States parties and signatories to the Protocol against the Smuggling of Migrants by Land, Sea and Air, in accordance with Conference resolution 8/2.

The questionnaire builds on previous information-gathering questionnaires developed by the Secretariat and adopted by the Conference at its first and second sessions¹ and covers all relevant provisions of the Protocol. The questionnaire has also been aligned with the *International Framework for Action to Implement the Smuggling of Migrants*

* The present document is reproduced in the form in which it was received.

¹ www.unodc.org/unodc/en/treaties/CTOC/review-questionnaires.html. <http://undocs.org/unodc/en/treaties/CTOC/review-questionnaires.htm> www.unodc.org/unodc/en/treaties/CTOC/review-questionnaires.html



Protocol (2012), a key technical assistance tool developed and widely used to support United Nations Member States in the effective implementation of the Smuggling of Migrants Protocol.

The questionnaire is based on the following general principles:

(a) In order to avoid the need for extensive interpretation, questions contain language on concrete measures instead of generic references to the Protocol and Convention provisions;

(b) Questions aim at providing a basis for the review of the legislative transposition as well as the practical implementation of measures provided in the Protocol;

(c) Questions also relating to the *mutatis mutandis* application of the Convention on specific matters falling under the scope of application of the Protocol are addressed in a separate questionnaire on the implementation of the Convention;

(d) States are encouraged to submit laws, regulations, cases and other documents on the Sharing Electronic Resources and Laws on Crime (SHERLOC) knowledge management portal.

I. Definition and criminalization requirements under the Smuggling of Migrants Protocol

Foreword: Those responding to this questionnaire may submit in lieu of the response information that has already been provided in the context of the review of the Convention or other Protocols or another review. Please enclose the response provided with the necessary update, if any.

1. Is smuggling of migrants criminalized under your domestic legislation (art. 6, para. 1, of the Protocol)?

Yes No

If the answer is “No”, please explain.

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If the answer is “Yes”, is smuggling of migrants defined in your country as a criminal offence in accordance with article 3, subparagraph (a), of the Protocol?

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2. Is in particular the element of “financial or other material benefit” of the definition a constituent element of the offence?²

Yes No

² US and Iran: reservation.

3. If the “financial or other material benefit” element must be established, is it defined?³

Yes No

If the answer is yes, please provide details about this definition.

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4. If the “financial or other material benefit” element must be established, is there a minimum threshold for it to be established?⁴

Yes No

5. If the “financial or other material benefit” element must not be established, can the presence of a “financial or other material benefit” constitute an aggravating circumstance in the sentencing?

Yes No

Please cite the applicable law(s) and/or other measure(s), including the applicable sanctions for this offence.

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6. Does your domestic legislation make a distinction between smuggling of migrants and trafficking in persons?

Yes No

If the answer is “Yes”, please specify.

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7. Is producing, procuring, providing or possessing a fraudulent travel or identity document (as defined in art. 3, subpara. (c), of the Protocol) for the purpose of smuggling of migrants criminalized under your domestic legislation (art. 6, para. 1 (b), of the Protocol), or as a related offence or offences?

Yes No

If the answer is “Yes”, please specify.

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8. Is enabling a person who is not a national of or a permanent resident in your country to remain in its territory without complying with the necessary requirements for legally remaining, by using the means referred to in question 9 above or any other illegal means, criminalized under your domestic legislation (art. 6, para. 1 (c), of the Protocol)?

Yes No

³ US and Iran: reservation.

⁴ US and Iran: reservation.

A. Ancillary offences (article 6, paragraph 2 (a), (b) and (c) of the Protocol)

9. Does your country’s legislation establish as a criminal offence the attempt to commit the offences referred to in questions 1, 9 and 10 above (art. 6, para. 2 (a), of the Protocol)?

Yes No

If the answer is yes, please cite the applicable law(s) and/or other measure(s), including the applicable sanctions.

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10. Is participating as an accomplice in the offences referred to in questions 1, 9 and 10 above criminalized under your domestic legislation (art. 6, para. 2 (b), of the Protocol)?

Yes No

If the answer is yes, please cite the applicable law(s) and/or other measure(s), including the applicable sanctions.

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11. Are organizing or directing other persons to commit the offences referred to in questions 1, 9 and 10 above criminalized under your domestic legislation (art. 6, para. 2 (c), of the Protocol)?

Yes No

If the answer is yes, please cite the applicable law(s) and/or other measure(s), including the applicable sanctions.

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12. Does your country adopt such legislative and other measures as might be necessary to establish as aggravating circumstances to any of the offences referred to in questions 1, 9, 10, 12 and 13 above, conduct that endangers, or is likely to endanger, the lives or safety of the smuggled migrants or that subjects them to inhuman or degrading treatment, including for exploitation (art. 6, para. 3, of the Protocol)?

Yes No

If the answer is yes, please cite the applicable law(s) and/or other measure(s), including the applicable sanctions, if any.

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II. Law enforcement and judicial system

A. Matters related to border measures, security and control of documents and legitimacy and validity of documents

13. Has your country adopted any legislative or other appropriate measures to prevent means of transport operated by commercial carriers from being used in the commission of the offence of smuggling of migrants (art. 11, para. 2, of the Protocol)?

Yes No

If the answer is “Yes”, please specify and provide any available information on whether such measures include establishing the obligation of commercial carriers to ascertain that all passengers are in possession of the travel documents required for entry into the country, as well as on any sanctions in case of violation of such obligation (art. 11, paras. 3 and 4, of the Protocol).

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14. Have your country’s competent authorities strengthened border measures in order to prevent and detect the smuggling of migrants (art. 11, para. 1, of the Protocol)?

Yes No

If the answer is “Yes”, please specify.

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15. Does your country’s legislation provide for any measures that permit the denial of entry or revocation of visas of persons implicated in the commission of offences related to the smuggling of migrants (art. 11, para. 5, of the Protocol)?

Yes No

If the answer is “Yes”, please specify.

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16. Has your country taken any measures to ensure the adequacy of the quality and the integrity and security of travel or identity documents issued by its competent authorities (art. 12, of the Protocol)?⁵

Yes No

If the answer is “Yes”, please specify which measures have been adopted.

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17. Do your country’s competent authorities, in accordance with your domestic law, verify, at the request of another State party, within a reasonable time, the legitimacy and validity of travel or identity documents issued or purported to have been issued in your country’s name and suspected of being used for the smuggling of migrants (art. 13, of the Protocol)?

Yes No

If the answer is “Yes”, please specify.

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⁵ Please note that a similar question is included in the questionnaire related to the Trafficking in Persons Protocol.

18. Does your country’s legislation provide for the use of special investigative techniques to investigate migrant smuggling (art. 20, of the Convention), when related to transnational organized criminal groups?⁶

If the answer is “Yes”, please specify what kind of techniques are used:

- Video surveillance
 - Wiretapping or other forms of interception
 - Under-cover operations
 - Financial investigations
 - Cooperative defendants
 - Any other options. Please provide additional information, if applicable.
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19. Does your country’s legislation criminalize the laundering of proceeds of migrant smuggling (art. 6, of the Convention)⁷?

Yes No

If the answer is “Yes”, please specify.

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20. Has your country adopted measures to deter and detect money-laundering when linked to migrant smuggling (art. 7, of the Convention)⁸?

Yes No

If the answer is “Yes”, please specify.

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21. Has your country adopted measures to identify, trace, freeze, confiscate and seize proceeds derived from migrant smuggling (art. 12, of the Convention)⁹?

Yes No

If the answer is “Yes”, please specify.

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⁶ Japan reservation.

⁷ Please note that a similar question might be included in the questionnaire related to the UNTOC.

⁸ Please note that a similar question might be included in the questionnaire related to the UNTOC.

⁹ Please note that a similar question might be included in the questionnaire related to the UNTOC.

III. Protection and assistance measures for smuggled migrants

22. Has your country taken any legislative or other appropriate measures to preserve and protect the rights of smuggled migrants, in particular the right to life and the right not to be subject to torture or other cruel, inhuman or degrading treatment or punishment (art. 16, para. 1, of the Protocol)?

(a) If the answer is “No”, please explain.

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(b) if the answer is “Yes”, please specify

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23. Has your country taken any appropriate measures to afford smuggling migrants protection against violence that may be inflicted upon them by individuals or groups (art. 16, para. 2, of the Protocol)?

(a) If the answer is “No”, please explain.

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(b) If the answer is “Yes”, please specify

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24. Has your country taken any measures to enable the provision of appropriate assistance to smuggled migrants whose lives or safety are endangered (art. 16, para. 3, of the Protocol)?

(a) If the answer is “No”, please explain.

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(b) If the answer is “Yes”, please specify.

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25. Which of the below measures are applied by your country to enable the provision of assistance to smuggled migrants by sea whose lives are in imminent danger (art. 8, para. 5, of the Protocol)?

- Review or amendment of legislation, strategies or national action plans to provide basic assistance to smuggled migrants.
- Review or amendment of legislation to ensure that the provision of humanitarian assistance to smuggled migrants is not criminalized.
- Allocation of resources to support the provision of basic assistance to smuggled migrants whose lives and safety are endangered, ensuring that the State covers the full cost of assistance and that the migrants do not bear it.

- Establishment of procedures to provide urgently required medical care, access to health facilities, food, water and sanitation, as well as other necessary goods and services.
- Investigation and prosecution of allegations of failure to assist smuggled migrants whose lives and safety are endangered.
- Other measure (please specify):
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26. In implementing protection and assistance measures for smuggled migrants, do your country's laws, regulations, national strategies and policies take into account the special needs of women and children (art. 16, para. 4, of the Protocol), with particular regard to access to education for children?

Yes No

If the answer is "Yes", please specify the measures taken by your country to address the special needs of women and children who have been smuggled.
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27. Does your country ensure that smuggled children are not subjected to administrative immigration detention, and that their best interests are respected?¹⁰

Yes No

If the answer is "Yes", please specify where children are accommodated.
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28. In the case of detention of smuggled migrants, do your country's competent authorities comply with the obligation under the Vienna Convention on Consular Relations to inform those persons without delay about the provisions of the Convention concerning notification to and communication with consular officers (art. 16, para. 5, of the Protocol)?

Yes No

29. Which of the below measures are applied by your country in preventing violence against smuggled migrants and in protecting their rights?

- Periodic evaluation of legal instruments and administrative practices, policy(ies), action plans and other measures to ensure non-discrimination towards smuggled migrants.
- Establishment and promotion of best practices and policies (art. 31 (1) of the Convention).
- Mandate to anti-discrimination institutions (national human rights institutions, ombudsperson's offices, etc.) to monitor the situation of smuggled migrants.

¹⁰ US: reservation.

- Promotion of public awareness regarding the phenomenon of irregular migration and the smuggling of migrants as a means to promote respect for the dignity of migrants and counteract anti-migrant attitudes (art. 31, para. 5, of the Convention).
 - Capacity-building of service providers, medical professionals, law enforcement officials, members of the judiciary and other relevant actors on the principle of non-discrimination (art. 14, para. 2 (e), Protocol).
 - Creation or support to an independent complaint mechanism receiving confidential allegations of discrimination from smuggled migrants, and providing all necessary support, including legal aid, information, representation and assistance, guaranteeing access to justice and ensuring the safety and security of all smuggled migrants who file a complaint.
 - Access to interpretation services
 - Other measure (please specify):
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IV. Preventive measures

A. Capacity-building measures (article 14 of the Protocol)

30. Have you built the capacity of border, immigration and law enforcement officials to prevent, combat and eradicate migrant smuggling while respecting the rights of smuggled migrants as set forth in the Protocol?

Yes No

If the answer is “Yes”, please specify on which of the below topics the capacity-building was:

- International and domestic legal framework to combat migrant smuggling.
 - Improving the security and quality of travel documents.
 - Recognizing and detecting travel or identity documents which have been produced fraudulently.
 - Gathering criminal intelligence, relating in particular to the identification of organized criminal groups known to be or suspected to be engaged in migrant smuggling, the methods used to transport smuggled migrants and the means of concealment.
 - Improving procedures for detecting smuggled migrants at conventional and non-conventional points of entry and exit.
 - The humane treatment of migrants and the protection of their rights.
 - Protecting and assisting smuggled migrants.
 - Assisting and rescuing smuggled migrants whose lives are in imminent danger.
 - Preventing migrant smuggling.
 - International law enforcement cooperation (e.g. joint investigation teams, information-sharing).
 - Other topics (please specify):
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Please provide more details on the type of capacity-building activities provided and their frequency.

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31. Have you built the capacity of criminal justice institutions to prevent, combat and eradicate migrant smuggling while protecting the rights of the smuggled migrants?

Yes No

If the answer is “Yes”, please specify on which of the below topics the capacity-building was:

- International and domestic legal framework to combat migrant smuggling.
- Investigation methods and techniques in migrant smuggling cases.
- Prosecuting and sentencing of migrant smuggling cases.
- Financial investigations and prosecutions.
- Witness protection.
- The humane treatment of migrants and the protection of their rights.
- Improving judicial cooperation and mutual legal assistance.
- Other topics (please specify):

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Please provide more details on the type of capacity-building activities provided and their frequency.

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32. Have you built the capacity of diplomatic and consular representatives to prevent, combat and eradicate migrant smuggling while protecting the rights of the smuggled migrants?

Yes No

If the answer is “Yes”, please specify on which of the below topics the capacity-building was:

- International and domestic legal framework to combat migrant smuggling.
- Recognizing and detecting travel or identity documents which have been produced fraudulently.
- Improving procedures for detecting smuggled migrants.
- Witness protection.
- Other topics (please specify):

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Please provide more details on the type of capacity-building activities provided and their frequency.

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33. In what areas would diplomatic and consular representatives need more capacity-building?
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34. Does your country cooperate, as appropriate, with international and regional organizations, civil society and other relevant stakeholders to develop and deliver training on combating migrant smuggling and protecting the rights of migrants who have been smuggled (art. 14, para. 2, of the Protocol)?

Yes No

B. Other prevention measures (article 15 of the Protocol)

35. Has your country carried out awareness-raising campaigns on the dangers of migrant smuggling?

Yes No

If the answer is “Yes”, for which target audience was it?

- Law enforcement officials, such as police, immigration and border officials.
- Navy and military personnel.
- Magistrates.
- Parliamentarians.
- Commercial carriers.
- Media.
- Schools and universities.
- Diaspora communities.
- Civil society at large.
- Potential migrants.
- Others (please specify):
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36. Has your country taken measures to reduce the vulnerability to migrant smuggling of communities by combating the root socioeconomic causes of the smuggling of migrants (art. 15, para. 3, of the Protocol)?¹¹

If the answer is “No”, please explain:

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If the answer is “Yes”, please specify:

- microcredits,
- skills training,
- job counselling

¹¹ US: reservation.

- education programmes,
 - programmes to promote women’s participation in economic decision-making
 - programmes to keep children in school,
 - grants to non-governmental organizations
 - Others (please specify):
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37. Have international and local civil society organizations been involved in the design and the implementation of these measures and programmes, as appropriate?¹²

Yes No

If the answer is “Yes”, please provide more details.

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38. Has your country established measures and procedures applicable for the protection, where necessary, of smuggled migrants and their relatives and other persons close to them, from potential retaliation or intimidation, and for their physical protection, such as relocation, non-disclosure of identity, the possibility to provide testimonies through communication technology, etc. (art. 16 of the Protocol)?¹³

Yes No

If the answer is “Yes”, please explain which measures and procedures have been adopted.

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V. Information exchange, coordination and international cooperation

A. Information

39. Has your country adopted measure(s) to promote the secure and fast information exchange with other States to implement the provisions set forth in article 10 of the Protocol?

If the answer is “No”, please explain.

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If the answer is “Yes”, please provide more details.

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40. Does your country identify information to be restricted in use in the context of international cooperation procedures (art. 10, para. 2 of the Protocol)?

¹² Cuba: reservation.

¹³ Japan: reservation.

If the answer is “No”, please explain.

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If the answer is “Yes”, please specify.

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41. Does your country regularly collect data and analyse trends on the smuggling of migrants (art. 28, of the Convention)?

Yes No

If the answer is “No”, please explain.

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If the answer is “Yes”, please specify.

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B. Coordination

42. What measures has your country taken to promote national coordination among relevant authorities, local government and non-governmental service providers to prevent and combat migrant smuggling and protect the rights of migrants?

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43. Has your country taken any measures to strengthen cooperation with the border control agencies of other States parties, by, inter alia, establishing and maintaining direct channels of communication (art. 11, para. 6, of the Protocol)?

Yes No

C. Cooperation

44. Has your country concluded bilateral or regional agreements or operational arrangements to States to allow the establishment of joint investigative bodies in relation to migrant smuggling? (art. 17, of the Protocol, and art. 19, of the Convention)?

Yes No

If the answer is “Yes”, please elaborate further on the agreements and arrangements and provide examples of their implementation, and cite also the applicable policy/policies or law(s).

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45. Has your country entered into any bilateral or multilateral agreement or arrangement related to migrant smuggling including governing, in whole or in part, the return of smuggled migrants (art. 18, para. 8, of the Protocol)?

Yes No

If the answer is “Yes”, please specify.

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46. With particular regard to the smuggling of migrants by sea, has your state notified the Secretary General of the authority designated to receive and respond to requests for assistance? (art. 8 para 6, of the Protocol)

Yes No

47. Has your country adopted specific legislative, administrative and other measures against smuggling of migrants at sea? Please also include information on operational challenges, successes, and best practice (art. 7, 8 and 9 of the Protocol).

Yes No

If the answer is “Yes”, please specify.

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D. Matters related to the return of smuggled migrants

48. Do your country’s competent authorities facilitate and accept, without undue or unreasonable delay, the return of a smuggled migrant who is a national of, or has the right of permanent residence in your country at the time of his/her return (art. 18, para. 1, of the Protocol)?

Yes No

If the answer is “Yes”, please provide more details on the procedure.

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49. Do your country’s competent authorities facilitate and accept the return of a smuggled migrant who had the right of permanent residence in your country at the time of entry into the receiving State in accordance with its domestic law (art. 18, para. 2, of the Protocol)?

Yes No

If the answer is “Yes”, please provide more details on the procedure.

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50. Do your competent authorities respond without undue or unreasonable delay to the request from other States to verify whether a smuggled migrant is a national of, or has the right of permanent residence in, your country (art. 18, para. 3, of the Protocol)?

Yes No

If the answer is “Yes”, please provide more details on the procedure.

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51. Do your country’s competent authorities issue, at the request of the receiving State party, such travel documents or other authorization as may be necessary to enable the smuggled migrant, after identification of his or her nationality, to travel and re-enter the territory of your country (art. 18, para. 4, of the Protocol)?

Yes No

If the answer is “Yes”, please provide more details on the procedure.

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52. What kind of measures are taken in your country to carry out the return of smuggled migrants in an orderly manner? Please specify and provide any available information on how the need to ensure the safety and dignity of smuggled migrants is taken into account in the process of their return (art. 18, para. 5, of the Protocol).

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53. Do your country’s competent authorities cooperate with relevant international organizations in implementing measures to carry out the return of smuggled migrants (art. 18, para. 6, of the Protocol)?

Yes No

If the answer is “Yes”, please specify with which international organizations you cooperate.

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VI. Difficulties encountered and assistance required

54. Please describe challenges by your country in the implementation of the Smuggling of Migrants Protocol provisions.

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If domestic legislation has not been adapted to the Protocol’s requirements, what steps remain to be taken? Please specify.

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55. Does your country require additional measures, resources, or technical assistance to effectively implement the Protocol?

Yes No

If yes, please indicate the type of assistance required to implement the Protocol:

- Assessment of criminal justice response to migrant smuggling.
- Legal advice/legislative drafting support.
- Model legislation/regulation(s)/agreement(s).
- Development of strategies/policies, action plans.
- Good practices/lessons learned.
- Capacity-building through the training of criminal justice practitioners and/or the training of trainers.
- Capacity-building through awareness-raising among judiciary.
- On-site assistance by a relevant expert.
- Institution-building/strengthening.
- Prevention/awareness-raising.
- Technological assistance and equipment (please be specific).
- Development of data collection/database(s).
- Workshops/platform to enhance regional and international cooperation.
- Specialized tools such as e-learning modules, manuals, guidelines and standard operating procedures.
- Other (please specify):

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56. On what areas would your border, immigration and law enforcement officials in your country need more capacity-building?

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57. On what areas would criminal justice institutions in your country need more capacity-building?

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58. Are you already receiving technical assistance in these areas?

- Yes No

If the answer is “Yes”, please specify the area of assistance:

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Please note, if your State has any additional material that you would like to share, please provide this through the SHERLOC database.

Country:	_____
Date on which the questionnaire was received:	
	____/____/____ (day/month/year)
The official(s) responsible for responding to the questionnaire is (are):	
Ms./Mr.	_____
Title and/or position:	_____

Agency and/or office:	_____

Mailing address:	_____

Telephone number:	_____
Telefax number:	_____
Email address:	_____