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**Intergovernmental expert group
established in accordance with
Conference resolution 9/1**

Vienna, 13–15 July 2020

Item 2 of the provisional agenda*

**Finalization and harmonization of the
self-assessment questionnaires for the review of the
implementation of the United Nations Convention
against Transnational Organized Crime and the
Protocols thereto**

**Draft harmonized self-assessment questionnaire for the
Protocol against the Smuggling of Migrants by Land, Sea
and Air, supplementing the United Nations Convention
against Transnational Organized Crime**

* CTOC/COP/WG.10/2020/1.



General guidance for replying to the questionnaire

- States will be reviewed on the basis of the information that they have provided to the reviewing States parties, in accordance with section V 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 and the Protocols thereto. If they have not yet provided the relevant documents to the Secretariat, States are called upon to upload either any laws, regulations, cases and other documents or brief descriptions of them that are of relevance for responding to the questionnaire to the knowledge management portal known as Sharing Electronic Resources and Laws on Crime (SHERLOC).
- Links to the information uploaded to SHERLOC can be then provided as part of the replies to each question.
- In addition to providing links to the information uploaded to SHERLOC, States are called upon to specify the applicable legislation and relevant provisions under each question to which the answer is “Yes” and, where appropriate, under any other questions.
- States are requested to refrain from attaching any annexes, including hard copies of documentation, to the completed questionnaires.
- When responding to the self-assessment questionnaires, States parties may also refer to information provided in the context of other relevant review mechanisms of instruments to which they are parties. States parties shall bear in mind that any update since previous submissions of information under other review mechanisms should be appropriately reflected in the responses. In particular, when reviewing the same legislation for obligations that are identical or similar to those under the United Nations Convention against Corruption, a State party under review may refer to responses and additional documentation that it has submitted under the Mechanism for the Review of Implementation of the United Nations Convention against Corruption.
- The provisions of the Organized Crime Convention and the Protocols thereto contain various degrees of requirements. In accordance with the procedures and rules, the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto shall progressively address all articles of the Convention and the Protocols thereto. The different nature of each provision should therefore be taken into account in formulating the responses to the related questions and when reviewing them in the following phases of the country review.
- Article 1, paragraph 2, of each of the Protocols states that the provisions of the Convention shall apply *mutatis mutandis* to the Protocols unless otherwise provided therein. Paragraph 19 of the procedures and rules for the functioning of the Mechanism states that provisions of the Convention that apply to the Protocols, *mutatis mutandis*, will be reviewed under the Convention only. In answering the questions related to the implementation of the Convention, States are requested to take into account the application of the relevant provisions of the Convention, as appropriate, to the subject matter of each Protocol to which they are a party. National experts are therefore reminded to include in their answers reference to the application of such provisions of the Convention to the Protocols to which their country is a party. For example, in answering the questions on the scope of application of article 10 on the liability of legal persons, national experts should take into account the applicability of article 10 to the offences covered by the three Protocols and answer accordingly.
- [In the questionnaire, some questions are introduced by the words “States are invited”. In such cases, national experts may provide information on a voluntary

basis.] [National experts are invited to use their best judgment and discretion when answering those questions.]

One delegation expressed the need to further distinguish in their formulation questions covering non-mandatory provisions from questions that are beyond the scope of application of the instruments.

One delegation expressed the opinion that there was no need to reopen this issue.

Cluster I: criminalization and jurisdiction (arts. 3, 5 and 6 of the Protocol)

Article 3, Use of terms, article 5, Criminal liability of migrants, and article 6, Criminalization

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

Yes No

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

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

2. Is in particular the purpose of obtaining a “financial or other material benefit” a constituent element of the offence, in accordance with article 6, paragraph 1, in conjunction with article 3, paragraph (a), of the Protocol?

Yes No

3. Can the presence of a “financial or other material benefit”, when appropriate, constitute an aggravating circumstance of the crime?

Yes No

(a) Please cite the applicable laws and/or other measures, including the applicable sanctions for this offence.

4. Does your country’s legal framework make a distinction between the smuggling of migrants and trafficking in persons?

Yes No

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

5. Is producing, procuring, providing or possessing a fraudulent travel or identity document (as defined in art. 3, para. (c)) for the purpose of smuggling migrants

¹ The draft self-assessment questionnaires for the review of the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto organised by cluster (CTOC/COP/WG.10/2020/2, CTOC/COP/WG.10/2020/3, CTOC/COP/WG.10/2020/4, CTOC/COP/WG.10/2020/5) have a consistent consecutive numbering. The numbering of this draft self-assessment questionnaire and the others which are organised per instrument (CTOC/COP/WG.10/CRP.2, CTOC/COP/WG.10/CRP.3, CTOC/COP/WG.10/CRP.4, CTOC/COP/WG.10/CRP.5) corresponds to the numbering per cluster and thus is not consecutive.

criminalized under your country’s legal framework (art. 6, para. 1 (b)), or as a related offence or offences?

Yes No

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

6. 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 54 or any other illegal means, criminalized under your domestic legislation (art. 6, para. 1 (c))?

Yes No

7. Does your country’s legal framework establish as a criminal offence the attempt to commit the offences referred to in questions 50, 54 and 55 (art. 6, para. 2 (a), in conjunction with art. 6, para. 1)?

Yes No

(a) If the answer is “Yes”, please cite the applicable laws and/or other measures, including the applicable sanctions.

8. Is participating as an accomplice in the offences referred to in questions 50, 54 and 55 criminalized under your country’s legal framework (art. 6, para. 2 (b), in conjunction with art. 6, para. 1)?

Yes No

(a) If the answer is “Yes”, please cite the applicable laws and/or other measures, including the applicable sanctions.

9. Is organizing or directing other persons to commit the offences referred to in questions 50, 54 and 55 criminalized under your country’s legal framework (art. 6, para. 2 (c), in conjunction with art. 6, para. 1)?

Yes No

(a) If the answer is “Yes”, please cite the applicable laws and/or other measures, including the applicable sanctions.

10. 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 50, 54, 55, 57 and 58, 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, in conjunction with art. 6, paras. 1 and 2)?

Yes No

(a) If the answer is “Yes”, please cite the applicable laws and/or other measures, including the applicable sanctions.

Criminalization: cases and judgments

11. [If possible, provide examples, relevant cases or judgments of successful implementation and enforcement for each of the criminal offences reviewed above. (To be addressed by member States under general guidance.)]

Difficulties encountered

12. Does your country encounter difficulties or challenges in implementing any provisions of the Smuggling of Migrants Protocol relevant to cluster I?

Yes No

(a) If the answer is “Yes”, please explain.

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

Need for technical assistance

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

Yes No

(a) If the answer is “Yes”, please indicate the type of assistance required to implement the Protocol:

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

15. In which areas would border, immigration and law enforcement officials in your country need more capacity-building?

16. In which areas would criminal justice institutions in your country need more capacity-building?

17. Is your country already receiving technical assistance in those areas?

Yes No

(a) If the answer is “Yes”, please specify the area of assistance and who is providing it.

Cluster II: prevention, technical assistance, protection measures and other measures (arts. 8, 9, 14, 15 and 16 of the Protocol)

Article 8, Measures against the smuggling of migrants by sea, and article 9, Safeguard clauses

1. Has your country adopted specific legislative, administrative and other measures against smuggling of migrants at sea (art. 8, in conjunction with arts. 7 and 9)?

Yes No

(a) If the answer is “Yes”, please specify. Please also include information on operational challenges, successes and best practice.

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

- Review of or amendment to legislation, strategies or national action plans to provide basic assistance to smuggled migrants
- Review of or amendment to 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 all allegations of failure to assist smuggled migrants whose lives and safety are endangered
- Other measure (please specify)

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

Yes No

(a) If the answer is “Yes”, please include relevant information.

Article 14. Training and technical cooperation

4. Has your country built the capacity of border, immigration and law enforcement officials, diplomatic and consular representatives, to prevent, combat and eradicate the smuggling of migrants while respecting the rights of smuggled migrants as set forth in article 14, paragraphs 1 and 2, of the Protocol?

Yes No

(a) If the answer is “Yes”, please specify which of the topics below were covered by the capacity-building activities:

- International and domestic legal framework to combat the smuggling of migrants
- Protecting and assisting smuggled migrants
- Assisting and rescuing smuggled migrants whose lives are in imminent danger
- Preventing the smuggling of migrants
- International law enforcement cooperation (e.g., joint investigation teams and information-sharing)
- Other topics (please specify)

(b) Please also provide details on the following types of capacity-building activities:

- Improving the security and quality of travel documents (art. 14, para. 2 (a))
- Recognizing and detecting travel or identity documents that have been produced fraudulently (art. 14, para. 2 (b))
- Gathering criminal intelligence, relating in particular to the identification of organized criminal groups known to be or suspected of being engaged in the smuggling of migrants, the methods used to transport smuggled migrants and the means of concealment (art. 14, para. 2 (c))
- Improving procedures for detecting smuggled migrants at conventional and non-conventional points of entry and exit ((art. 14, para. 2 (d))
- The humane treatment of migrants and the protection of their rights (art. 14, para. 2 (e))

(c) Please provide more details on the aforementioned types of capacity-building activities that are provided and their frequency.

5. Has your country built the capacity of criminal justice institutions to prevent, combat and eradicate the smuggling of migrants while protecting the rights of smuggled migrants?

Yes No

(a) If the answer is “Yes”, please specify which of the topics below were covered by the capacity-building activities:

- International and domestic legal framework to combat the smuggling of migrants
- Investigation methods and techniques in migrant smuggling cases
- The prosecuting and sentencing of migrant smuggling cases

- Financial investigations and prosecutions
- Witness protection
- The humane treatment of migrants and the protection of their rights (art. 14, para. 2 (e))
- Improving judicial cooperation and mutual legal assistance
- Other topics (please specify)

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

6. In which areas would diplomatic and consular representatives need more capacity-building?

7. Does your country cooperate, as appropriate, with international and regional organizations, civil society and other relevant stakeholders to develop and deliver training on combating the smuggling of migrants and protecting the rights of migrants who have been smuggled (art. 14, para. 2)?

Yes No

Article 15. Other prevention measures

8. Has your country carried out awareness-raising campaigns on the dangers of migrant smuggling (art. 15, para. 1)?

Yes No

(a) If the answer is “Yes”, please indicate below for which target audience they were:

- Law enforcement officials, such as the 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
- Other (please specify)

9. Has your country taken measures to reduce the vulnerability of communities to the smuggling of migrants by combating the root socioeconomic causes of such smuggling (art. 15, para. 3)?

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

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

Article 16. Protection and assistance measures

10. 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 subjected to torture or other cruel, inhuman or degrading treatment or punishment (art. 16, para. 1, and art. 19, para. 1)?

Yes No

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

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

11. Has your country taken any appropriate measures to afford smuggled migrants protection against violence that may be inflicted upon them by individuals or groups, by reason of being the object of conduct set forth in article 6 of the Protocol (art. 16, para. 2)?

Yes No

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

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

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

Yes No

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

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

13. 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, with particular regard to access to education for children (art. 16, para. 4)?

Yes No

(a) 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.

14. 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)?

Yes No

Difficulties encountered

15. Does your country encounter difficulties or challenges in implementing any provisions of the Smuggling of Migrants Protocol relevant to cluster II?

Yes No

(a) If the answer is “Yes”, please explain.

Need for technical assistance

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

Yes No

(a) If the answer is “Yes”, please indicate the type of assistance required to implement the Protocol:

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

17. In which areas would border, immigration and law enforcement officials in your country need more capacity-building?

18. In which areas would criminal justice institutions in your country need more capacity-building?

19. Is your country already receiving technical assistance in those areas?

Yes No

(a) If the answer is “Yes”, please specify the area of assistance and who is providing it.

Cluster III: law enforcement and the judicial system (arts. 11, 12 and 13 of the Protocol)

Article 11. Border measures

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

Yes No

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

2. 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)?

Yes No

(a) 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 cases of violation of such obligation (art. 11, paras. 3–4).

3. Does your country’s legal framework 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, in conjunction with art. 6)?

Yes No

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

4. 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)?

Yes No

Article 12. Security and control of documents

5. 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)?

Yes No

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

Article 13. Legitimacy and validity of documents

6. 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)?

Yes No

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

Difficulties encountered

7. Does your country encounter difficulties or challenges in implementing any provisions of the Smuggling of Migrants Protocol relevant to cluster III?

Yes No

- (a) If the answer is “Yes”, please explain

Need for technical assistance

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

Yes No

- (a) If the answer is “Yes”, please indicate the type of assistance required to implement the Protocol:

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

9. In which areas would border, immigration and law enforcement officials in your country need more capacity-building?

10. In which areas would criminal justice institutions in your country need more capacity-building?

11. Is your country already receiving technical assistance in those areas?

Yes No

(a) If the answer is “Yes”, please specify the area of assistance and who is providing it.
