

Violence against Migrants, Migrant Workers and their Families: Crime Prevention as a Global Challenge

The issue of violence against migrants, migrant workers and their families has surged to the fore increasingly in recent years, precisely because it is a pervasive phenomenon of gravity and complexity, impacting upon all regions of the globe. The violence may regrettably start at home; it may be interlinked with the community; it may be aggravated by criminal elements seeking to abuse and exploit people as they are pushed and pulled from their immediate settings; it may spread across borders and continents through transnational crime. It may be concurrently local and global. Several countries are simultaneously source, transit and destination countries in the globalization of migration. The violence may be both systemic and endemic.

The victims call out for effective protection worldwide, and preventive strategies are a pivotal consideration in the chain of migration and displacement - in the pre-flow, flow and post-flow of people in their hundreds of millions. In advocating preventive strategies on this front, a number of considerations come into play as follows:

First, it should be recognized that violence is a multidimensional phenomenon. It has both physical and psychological ingredients. It may emerge from those close to oneself, from a variety of non-State actors, particularly criminal entities, and/or from State actors where they fail to protect their populations but collude in crime and corruption. It may lead to multiple victimization – such as where the migrant is doubly abused because she is a women, or multiply abused because she has a disability, is seeking asylum, and is a child.

Second, the term “migrants” covers both people on the move within a country and those who cross borders, while the term “migrant workers” refers internationally to those people who cross borders in search of work. The environment behind their displacement is multifarious; there may be social, economic, political and/or environmental reasons for the exodus. Some movements are forced, and in this respect, the term “refugees” covers migrants who are forced across borders in search of safety or in the escape from persecution, for whom international protection is essential. Meanwhile, the category of “internally displaced persons” encompasses those who are forced to move within a country for a variety of reasons ranging from development deficits to dire economic deprivations, natural disasters and/ or man-made disasters, including armed conflicts.

Third, the notion of “prevention” in anti-crime strategies is catalysed by the need to strengthen not only “primary prevention” but also “secondary and tertiary prevention”. While primary prevention is targeted to preventing the violence from happening altogether, secondary prevention implies action to contain or mitigate the harm in its early stages (to prevent further damage), while tertiary prevention deals with action to tackle chronic situations. A key concern is that once a person is saved from a situation of violence, he/she should be prevented from falling into another situation of violence. A case in point is to access victims, ensure their reintegration into safe havens, and prevent reversion or

relapse into another violent situation. Thus prevention should not be seen as a static affair but a dynamic process.

Fourth, there are already many international standards concerning the treatment of migrants, migrant workers and their families. Today there are nine core international human rights treaties which interrelate directly or indirectly with migrants, migrant workers and their families. They range from the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights to the Convention on the Rights of Migrant Workers and their Families. On women and children, the Convention on the Elimination of All forms of Discrimination against Women and the Convention on the Rights of the Child. With regard to forced migrants, various treaties concern the rights of refugees, while the United Nations (UN) has also evolved a set of Guiding Principles to protect internally displaced persons. A range of International Labour Organization Conventions , in the context of migrants as workers, also come into play.

On another front, the most immediate international anti-crime instrument is the UN Convention against Transnational Organized Crime (“The Palermo Convention”), complemented by its three Protocols (“the Palermo Protocols”) – on human trafficking, human smuggling and trafficking of firearms. The UN Congresses on Crime Prevention and Criminal Justice and their constituents also act as a constant reminder of the need to strengthen anti-crime measures, including their prevention. Yet, often the issue is not the need for norms and more standards but effective implementation and enforcement of those standards, particularly at the national and local levels.

Fifth, despite the pervasiveness of violence steeped in crime and crime steeped in violence in several settings, a number of constructive developments are visible in terms of lessons learned and preferred practices. There has been increased cooperation on many fronts to tackle the crime factor on the basis of “prevention is better than cure”. Awareness raising , education and training to counter crimes have emerged locally and internationally as part of the preventive strategy. Increasingly there are reforms of national criminal laws and other laws to tackle crime and improve preventive measures. Global and regional networks have expanded to address the issue of migration and related crimes.

Of note is that in the Association of Southeast Asian Nations (ASEAN), there is a periodic Forum on Migrant Labour which helps to promote humane strategies to help migrant workers. At the 4th ASEAN Forum on Migrant Labour 2011, the message from the conclusions included: 1) promotion of positive image, rights and dignity of migrant workers, including pre-departure education in sending countries about the culture and working conditions in the receiving countries; orientation programmes in receiving countries; awareness raising of public and private recruitment agencies and stakeholders; 2) promotion of strategies for effective return and reintegration, as well as sustainable alternatives for migrant workers, including avoidance of mass deportation, and sustainable economic reintegration strategies, access to legal support and essential services, including consular services, and retraining opportunities upon return, decent wages and safe working conditions.

In Southeast Asia, to counter human trafficking, there is now also increased cooperation between countries of Southeast Asia and China in the form of the Coordinated Mekong Initiative against Trafficking (COMMIT) which calls for awareness-raising, legislative framework and procedures to differentiate between victims of trafficking and other groups, as well as safe return to their homes and reintegration. These are complemented by various bilateral Memorandums of Understanding.

Many countries have adopted new laws/policies against violence, ranging from new elements of the Criminal Code to specific laws and policies against domestic violence and on human trafficking. Guaranteeing access to basic services to all migrants is also essential as part of their human rights. For instance, today, birth registration is compulsory for all children born in Thailand – including the children of migrant workers, whether or not the parents are documented. Likewise, access to primary education is guaranteed to all children, even when they are in an irregular migration situation. In the progression towards universal health care in the country, irregular or undocumented migrant workers can also benefit from assistance, such as in regard to HIV/AIDS related services. Innovative programming in recent years includes special police units to deal with children and the issue of trafficking; improvement in criminal procedure such as the provision of women police officers to interview women victims; interdisciplinary teams (law enforcer, social worker, psychologist and the child's friend) to interview child victims; and victim-sensitive procedures such as videotaping of evidence to prevent re-traumatization of victims.

Universally, more needs to be done to promote preventive measures. From the perspective of cooperation with the UN and anti-crime measures , more attention is invited to the following orientations :

- Ratification and implementation of human rights Treaties and anti-crime Conventions, complemented by global processes and guidelines, emphasizing the nexus between prevention of violence and protection of human rights and interlinked with the national and local levels;
- Support for multifaceted action to prevent violence, premised on the principle of non-discrimination: a person has the right to be protected irrespective of his/her status and origin;
- Strengthening of the juncture between law, policy, programmes and enforcement from a victim and gender-sensitive angle, and capacity-building and incentives for quality-based, transparent and accountable law enforcement, with well-selected personnel;
- Adoption of humane migration policies and management that provide safe channels for the regulation of people's movement (such as Orderly Departure Programme and Memorandum of Understanding between countries on migrant flows/labour exchange), thus preventing resort to clandestine routes and criminality, and reflecting international standards;
- Establishment of accessible victim identification procedures, for example inter-agency process to differentiate between victims of human trafficking/smuggling and illegal immigrants, with

effective inter-agency teams to cross-refer victims to welfare and assistance facilities, coupled with effective hotlines, shelters and follow-up and follow-through support;

- Promotion of effective and sustainable development for all, with adequate resource commitment and equitable distribution, so that people have the choices to stay in their localities rather than be pushed and pulled from their homesteads;
- Enabling of broad public participation, including the participation of migrant workers, in activities to prevent violence and to offer protection, such as through multilingual programmes catering to their needs and projecting positive role models from the migrant community;
- Reinforcement of cooperation locally and transnationally to trace and track criminal elements, and promote measures to pre-empt crimes, including by means of inter-police networks and community vigilance, assisted by modern technology;
- Improvement of monitoring of risk situations which may lead to violence, with early warning to trigger responses and early interventions, and support for the role of national and international monitors, including national human rights commission and UN rapporteurs , to assess these situations and mobilize action, complemented by disaggregated data collection and processing;
- Expansion of educational programmes and media coverage to counter violence, xenophobia and intolerance, and introduction of inter-cultural and inter-community programmes as part of “learning by doing”, such as community service programmes and pro bono, voluntary work, to nurture empathy between different communities and cultures, bearing in mind that violence has to be countered both physically and psychologically, both materially and spiritually, and that it is best to “START YOUNG”.

Vitit Muntarbhorn is a Professor of Law at Chulalongkorn University, Bangkok, Thailand. He has helped the UN in a variety of capacities including as former UN Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography; former UN Special Rapporteur on the human rights situation in the DPRKorea (North Korea); Chairman of the UN Commission of Inquiry on the Ivory Coast 2011. He is currently a member of the Committee of Experts (on Conventions and Recommendations), International Labour Organization. He is the recipient of the 2004 UNESCO Human Rights Education Prize.

This draft paper is for the 2012 UN Commission on Crime Prevention and Criminal Justice, Vienna, April 2012.