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**Crime prevention and criminal justice responses to  
violence against migrants, migrant workers and  
their families**

## **Crime prevention and criminal justice responses to violence against migrants, migrant workers and their families**

**Working paper prepared by the Secretariat**

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## I. Introduction

1. As the Secretary-General noted in his message for International Migrants Day on 18 December 2009,<sup>1</sup> “migration is a phenomenon that touches upon every country, either as a place of origin, transit or destination, or as a combination of these. ... Migration can be a positive and empowering experience for migrants themselves, and for both the home and host societies. But for too many migrants, the reality is discrimination, exploitation and abuse.”

2. People move within and across borders in search of opportunities, hoping to improve their lives and those of their families by using their skills productively in the country of destination. There are several reasons to migrate, such as to flee from war, civil unrest and natural disasters, to study, to work or to join family members. Migrants always face contrasts between their home and the new, unfamiliar place; they have to deal with language barriers and developmental and cultural differences. The change associated with migration often puts migrants in a position of vulnerability. Because of the complexity of the migration process, crime and victimization vary greatly depending on who moves where, when and why.

3. At present, there are 214 million international migrants, representing about 3.1 per cent of the world population. Significantly, only 37 per cent of migratory movements are made from developing to developed countries. Most international migratory movements occur between countries at the same level of development: about 60 per cent of migrants move either between developing or between developed countries. The remaining 3 per cent move from developed to developing countries.

4. Violence against migrants and the ensuing victimization are the result of a cycle of vulnerability that is connected with the migrants’ movement from their original home to a new country. Violence can take many forms, ranging from exploitation in the form of trafficking in persons or the risk to life related to the smuggling of migrants, to a combination of racial prejudice and competition for economic and social opportunities between nationals and migrants. It can be found in the form of discrimination in the areas of education, employment and housing and it can culminate in acts of crime and physical violence against migrants. Undocumented and irregular migrants, especially those who are smuggled and trafficked, are particularly vulnerable: not only do they travel in treacherous conditions, but also their rights are often not recognized. Thus they become easy targets for exploitation, crime and violence.

5. Specific violent behaviour against migrants is more likely to occur soon after the migratory movement and when cultural and social differences between migrants and nationals are substantial, while economic differences appear to be more minor. In times of economic crisis and financial hardship, tensions tend to increase, as migrants and nationals are seen to compete for employment, housing and welfare services, and the risk of crime heightens.

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<sup>1</sup> Ban Ki-moon, Secretary-General of the United Nations, message for International Migrants Day, New York, 18 December 2009. Available from [www.un.org/News/Press/docs/2009/sgsm12667.doc.htm](http://www.un.org/News/Press/docs/2009/sgsm12667.doc.htm).

6. In many countries, the current economic crisis and recession have led to an increase in unemployment, underemployment and economic instability, thereby aggravating the conditions that render migrants vulnerable. With businesses closing down, employers requesting fewer foreign workers and Governments halting the recruitment of new foreign labour, many people will take greater risks to migrate as they become more desperate for job opportunities. In destination countries, an increased demand for cheaper goods and services could lead to labour protection being compromised, leaving both regular and irregular migrants more vulnerable to exploitation. Additional vulnerability may arise owing to increased competition with national workers for scarce jobs and less investment in community welfare. National workers may benefit from more support than foreign workers. Even under difficult conditions, however, the rights of migrants, migrant workers and their families must be upheld and the victims of violence must be appropriately identified and supported.

7. It is in such circumstances that the delicate subject of migration is frequently politicized as “the subject of shrill debate ... as a wedge to provoke social tensions, drive political extremes, fan the flames of discrimination and hatred”<sup>2</sup> positing migrants as perpetrators of crime. The *Human Development Report 2009: Overcoming Barriers — Human Mobility and Development*<sup>3</sup> indicates that popular beliefs about the negative impacts of migrants on their places of destination are exaggerated and often unfounded. Nevertheless, as the report shows, data on these effects are scarce and their interpretation is highly controversial. Moreover, the fact that violence against migrants as a phenomenon has been seriously underestimated for such a long time emphasizes the need to ensure adequate responses.

8. Responses in this phenomenon include measures aimed at preventing violence and facilitating the integration of migrants and measures to protect migrants’ rights and help migrants to overcome their vulnerability. More specific remedies are outlined at the end of the present paper. National responses could focus on the following areas: (a) improving the knowledge about the phenomenon; (b) guaranteeing basic rights universally; (c) raising awareness among victims; (d) raising awareness among perpetrators; (e) empowering migrant communities; (f) improving relations between migrants and national law enforcement entities; and (g) facilitating access to the criminal justice system.

9. All of the above-mentioned measures are aimed at preventing violence and the victimization of migrants, migrant workers and their families. The national and international responses discussed in the present paper are not confined to criminal justice. Cooperation with civil society plays an important role in addressing this issue, helping to ensure that the cultural patterns of the receiving population can adapt to those of the incoming one.

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<sup>2</sup> Ban Ki-moon, Secretary-General of the United Nations, opening address at the Third Global Forum on Migration and Development, Athens, 4 November 2009. Available from [www.un.org/esa/population/migration/Opening\\_remarks\\_SG\\_Athens.pdf](http://www.un.org/esa/population/migration/Opening_remarks_SG_Athens.pdf).

<sup>3</sup> United Nations Development Programme, *Human Development Report 2009: Overcoming Barriers — Human Mobility and Development* (Basingstoke, Hampshire, Palgrave Macmillan, 2009). Available from <http://hdr.undp.org>.

## II. International legal framework

10. Migration policies and practices can only be effective when they are based on legal norms and the rule of law. International instruments set standards for the protection of the rights of migrant workers and their families, as well as for safeguarding the interests of States. They provide a framework for national legislation, policy and practice and for coordination and cooperation within and between countries.

11. Migrants are protected by the Universal Declaration of Human Rights (General Assembly resolution 217A (III)), the International Covenant on Economic, Social and Cultural Rights<sup>4</sup> and the International Covenant on Civil and Political Rights<sup>4</sup> and the Optional Protocol thereto.<sup>4</sup>

12. Migrants are also protected against degrading treatment, discrimination and exploitation, as established by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>5</sup> the International Convention on the Elimination of All Forms of Racial Discrimination,<sup>6</sup> the Convention on the Elimination of All Forms of Discrimination against Women,<sup>7</sup> the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery,<sup>8</sup> and the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.<sup>9</sup> Their children are further protected by the Convention on the Rights of the Child,<sup>10</sup> the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict<sup>11</sup> and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.<sup>12</sup>

13. There are also conventions protecting specific categories of migrants, such as the Convention on the Reduction of Statelessness,<sup>13</sup> the Convention relating to the Status of Refugees,<sup>14</sup> the United Nations Convention against Transnational Organized Crime,<sup>15</sup> the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime<sup>16</sup> and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.<sup>17</sup>

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<sup>4</sup> General Assembly resolution 2200 A (XXI), annex.

<sup>5</sup> United Nations, *Treaty Series*, vol. 1465, No. 24841.

<sup>6</sup> *Ibid.*, vol. 660, No. 9464.

<sup>7</sup> *Ibid.*, vol. 1249, No. 20378.

<sup>8</sup> *Ibid.*, vol. 266, No. 3822.

<sup>9</sup> *Ibid.*, vol. 96, No. 1342.

<sup>10</sup> *Ibid.*, vol. 1577, No. 27531.

<sup>11</sup> *Ibid.*, vol. 2173, No. 27531.

<sup>12</sup> *Ibid.*, vol. 2171, No. 27531.

<sup>13</sup> *Ibid.*, vol. 989, No. 14458.

<sup>14</sup> *Ibid.*, vol. 189, No. 2545.

<sup>15</sup> *Ibid.*, vol. 2225, No. 39574.

<sup>16</sup> *Ibid.*, vol. 2241, No. 39574.

<sup>17</sup> *Ibid.*, vol. 2237, No. 39574.

14. The Smuggling of Migrants Protocol (ratified, as of 5 January 2010, by 122 States<sup>18</sup>) is notable for being the first legally binding global instrument to contain an agreed definition of smuggling of migrants as distinct from trafficking in persons. This definition lays the foundations for the establishment of harmonized domestic criminal offences, and for support and international cooperation in investigation and prosecution.

15. The Smuggling of Migrants Protocol contains a series of provisions to protect migrants and their rights. Pursuant to article 6, paragraph 3, States parties should establish circumstances that could, inter alia, endanger or entail the exploitation of the migrants as aggravating circumstances to the offences established in accordance with paragraphs 1 and 2 of article 6. In article 16 of the Protocol, it is specified that States parties must take all appropriate measures to preserve and protect migrants' internationally recognized rights.

16. Another important document is the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.<sup>19</sup> It is the most comprehensive international treaty on protecting the rights of both regular and irregular migrant workers. It includes their basic freedoms (articles 1, 9, 10-13 and 15), including their freedom of movement (article 39), their right to due process (articles 16-20 and 22), to privacy (article 14), to information (article 33), to transfer their earnings (article 32) and their equality with nationals (articles 25, 27, 28, 43, 45 and 54). The Convention also addresses the responsibilities of both a migrant's State of origin and the State of destination, and it contains a reporting mechanism to monitor how States comply with their obligations (article 73). It calls for cooperation between States (articles 64, 67 and 68), establishing the common definitions that make cooperation possible (articles 58-63), laying the groundwork for bilateral and multilateral agreements and providing guidance on migration policy formulation. However, the Convention has been ratified by only 42 States, most of which are more countries of origin for migrants than countries of destination.

17. There is, furthermore, a series of International Labour Organization conventions and recommendations aimed at protecting migrants in the realm of employment. These include the following conventions and recommendations of the International Labour Organization: Convention No. 97 concerning Migration for Employment (Revised 1949); Recommendation concerning Migration for Employment (Revised 1949); Recommendation concerning Migrant Workers (1975); Convention No. 143 concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (1975); Convention No. 111 concerning Discrimination in respect of Employment and Occupation (1958); Convention No. 29 concerning Forced or Compulsory Labour (1930); Convention No. 105 concerning the Abolition of Forced Labour (1957); and Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999).

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<sup>18</sup> The latest status of ratification of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, is available from: [www.unodc.org/unodc/en/treaties/CTOC/signatures.html](http://www.unodc.org/unodc/en/treaties/CTOC/signatures.html).

<sup>19</sup> United Nations, *Treaty Series*, vol. 2220, No. 39481.

18. In order to bring together the normative principles, policy guidelines and practical measures related to regulating or managing migration, two global efforts were initiated. The first is the Berne Initiative process,<sup>20</sup> launched by the Government of Switzerland in 2001 and managed by the International Organization for Migration, which has produced the International Agenda for Migration Management. The second includes the report and recommendations of the Global Commission on International Migration.<sup>21</sup> Additionally, there have been several regional efforts to increase cooperation in addressing migration. Examples include the European Union Global Approach to Migration adopted in 2005, which sets out to strengthen partnerships in addressing all areas of migration.<sup>22</sup> Other examples include the Bali Process,<sup>23</sup> the Budapest Process,<sup>24</sup> the Colombo Process,<sup>25</sup> the

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<sup>20</sup> The Berne Initiative was launched during the International Symposium on Migration held in Bern from 14 to 15 June 2001 to address the need to institute inter-State dialogue and cooperation on migration management at the global level. It is a consultative process consisting of national migration authorities, involving relevant stakeholders such as intergovernmental organizations, non-governmental organizations and migration experts, to identify a common language on migration as a basis for a non-binding reference system and policy framework for migration management. This framework, known as the International Agenda for Migration is the most important outcome of the Berne Initiative process, facilitating cooperation between States in planning and managing migratory movements. For more information, consult the page on the Berne Initiative on the International Organization for Migration website ([www.iom.int/jahia/Jahia/cache/offonce/pid/1491](http://www.iom.int/jahia/Jahia/cache/offonce/pid/1491)).

<sup>21</sup> The Global Commission on International Migration was launched by Secretary-General Kofi Annan and a number of Governments (the core group) in 2003 as an independent commission mandated to provide the network for the formulation of a comprehensive global response to migration through its 2005 report and recommendations. The Commission has also published a series of thematic papers and reports on migration issues in different regions. The core group now acts as an informal consultative body for the Commission; it is open-ended and currently comprises Algeria, Australia, Bangladesh, Belgium, Brazil, Canada, Egypt, Finland, France, Germany, the Holy See, Hungary, India, Indonesia, Iran (Islamic Republic of), Japan, Mexico, Morocco, Netherlands, Nigeria, Norway, Pakistan, Peru, Philippines, the Russian Federation, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Turkey and the United Kingdom of Great Britain and Northern Ireland, as well as the European Union, and is chaired by Sweden and Switzerland. For more information on the Commission and for the 2005 report *Migration in an Interconnected World: New Directions for Action*, see the Commission website ([www.gcim.org/en/](http://www.gcim.org/en/)).

<sup>22</sup> The Global Approach to Migration can be defined as the external dimension of the migration policy of the European Union. It is based on genuine partnership with third countries, is fully integrated into the other external policies of the European Union and addresses all migration and asylum issues in a comprehensive and balanced manner. Adopted in 2005, it illustrates the ambition of the European Union to establish an intersectoral framework to manage migration in a coherent way through political dialogue and close practical cooperation with third countries. For more information on the Global Approach to Migration, consult <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/07/549&format=HTML&aged=1&language=EN&guiLanguage=en>.

<sup>23</sup> The Bali Process brings actors together to work on practical measures to help combat the smuggling of persons, trafficking in persons and related transnational crimes in Asia and the Pacific and beyond. The Steering Group of the Bali Process (comprised of the Governments of Australia, Indonesia, New Zealand and Thailand, as well as the International Organization for Migration and the Office of the United Nations High Commissioner for Refugees) guides the monitoring and implementation of regional policy initiatives and law enforcement cooperation in respect of irregular migration phenomena, especially trafficking in humans and the smuggling of migrants. For more information about the Bali Process, see the website ([www.baliprocess.net](http://www.baliprocess.net)).

Puebla Process,<sup>26</sup> the Migration Dialogues for Southern and West Africa<sup>27</sup> and the Southern American Conference on Migration,<sup>28</sup> which aim to foster greater coordination on migration issues.

19. In the United Nations Millennium Declaration (General Assembly resolution 55/2), Member States resolved to take measures to ensure respect for and protection of the human rights of migrants, migrant workers and their families, to eliminate the increasing acts of racism and xenophobia in many societies and to promote greater harmony and tolerance in all societies.

20. In its resolution 59/194, on the protection of migrants, the General Assembly, encouraged by the increasing interest of the international community in the effective and full protection of the human rights of all migrants, underlined the need to make further efforts to ensure respect for the human rights and fundamental freedoms of all migrants; and underlined the importance of the creation of conditions fostering greater harmony, tolerance and respect between migrants and the rest of society in the States in which they resided in order to eliminate manifestations of racism and xenophobia against migrants. In its resolution 60/139, on violence against women migrant workers, the Assembly urged Governments to strengthen their national efforts to protect and promote the rights and welfare of women migrant workers and called upon Governments to put in place penal and criminal sanctions to punish perpetrators of violence against women migrant workers and to provide victims of violence with the full range of immediate assistance and protection.

<sup>24</sup> The Budapest Process is a consultative forum of more than 50 Governments and 10 international organizations aimed at developing comprehensive and sustainable systems for orderly migration.

<sup>25</sup> The key objective of the Colombo Process (also known as the Regional Consultative Process on the Management of Overseas Employment and Contractual Labour for Countries of Origins in Asia) is to promote improved management of labour migration. This includes the protection of, and the provision of services to, migrant workers to optimize the benefits of organized labour, as well as capacity-building and data collection to meet labour migration challenges and inter-State cooperation on labour migration.

<sup>26</sup> The Puebla Process (or Regional Conference on Migration) involves Belize, Canada, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama and the United States of America, together with observer States in the region. The three main areas of interest to the Puebla Process are migration policy and management, human rights of migrants, and migration and development.

<sup>27</sup> The Migration Dialogue for Southern Africa and the Migration Dialogue for West Africa are both aimed at promoting peace and stability in those subregions, protecting migrants' rights and prioritizing intra- and interregional cooperation.

<sup>28</sup> The South American Conference on Migration comprises Argentina, Bolivia (Plurinational State of), Brazil, Chile, Colombia, Ecuador, Guyana, Paraguay, Peru, Suriname, Uruguay and Venezuela (Bolivarian Republic of), together with observer States within the region and beyond, as well as several international organizations, including the International Organization for Migration, which provides technical cooperation and logistical support. A key priority of the South American Conference on Migration is respect for human rights of migrants — irrespective of their status.

### III. Emerging trends of violence against migrants, migrant workers and their families

#### A. Crime and violence

21. Measuring the victimization of migrants is a daunting task for several reasons. The ever-changing international legislation and national legal frameworks that create new or redefine criminal offences relating to migration make it particularly difficult to measure any trends in crimes against migrants. Differences in legislation between countries make international comparison difficult. Official statistics often underestimate the victimization of migrants. In general, migrants do not have a high propensity to report the crimes they suffer. Underreporting is also often connected with the absence or inadequacy of existing criminal justice data collection mechanisms to record crimes against migrants. Data on migrants as victims of crime often tend to lump together such diverse categories as “migrants”, “minorities”, “ethnicities” and “nationalities” as if these were somehow similar.

22. Victimization surveys are also blighted by serious limitations when it comes to measuring the victimization of migrants. Firstly, they often focus on the citizens living in the country in question, thus excluding foreigners and migrants. Secondly, most victimization surveys use such categories as “minority groups”, “foreigners”, “migrants”, “aborigines or natives”, and “ethnic groups”, which, while different, tend to overlap and are occasionally used interchangeably; and that leads to confusion concerning definitions. For example, “ethnic” may be used to refer to both those born within and those born outside their country of residence. The lack of clear definitions makes findings hard to interpret and comparisons virtually impossible. Thirdly, while irregular migrants are most likely to be victimized, by definition they are not officially recorded and therefore “undocumented”. As a result, they are unlikely to be included in victimization surveys where samples are extracted from official public sources such as lists of registered voters or citizens. Fourthly, even when surveys do sample migrants, the migrants may be ill-informed about such surveys and consequently regard them with suspicion, or they may lack the language skills to respond to the surveys. While victimization surveys are an important tool for gaining information about crimes suffered by the public, their goals and methodology should be adjusted to ensure better research into the crimes suffered by migrants.<sup>29</sup>

23. The little research and few statistics available on the victimization of migrants<sup>30</sup> present one unequivocal finding: members of minorities, whether

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<sup>29</sup> For further information on victimization surveys, consult the Economic Commission for Europe *Manual on Victimization Surveys* (ECE/CES/2009/12/Add.1).

<sup>30</sup> See, for example, Samuel Perreault, *Immigrants and Victimization, 2004*, Statistics Canada, Canadian Centre for Justice Statistics Profile Series (Ottawa, December 2008); Krista Jansson, *Black and Minority Ethnic Groups' Experiences and Perceptions of Crime, Racially Motivated Crime and the Police: Findings from the 2004/05 British Crime Survey*, Home Office Online Report 25/06 available from [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk); Holly Johnson, “Experiences of crime in two selected migrant communities”, *Trends and Issues in Crime and Criminal Justice*, No. 302, Australian Institute of Criminology, 2005; and European Union Agency for Fundamental Rights, *EU-MIDIS European Union Minorities and Discrimination Survey: Main Results Report* (Vienna, 2009).



nationals or members of an ethnic minority, or of foreign origin or non-nationals, are currently overrepresented in the criminal justice system, both as offenders and victims. When data are available, they suggest that migrants fall victim to a wide variety of crimes that often go unreported.

24. Victimization rates are usually higher among migrants than among nationals (sometimes disproportionately higher, by a factor of six or more) for both property crimes and violent crimes. For example, in the 27 member States of the European Union, one in every four persons belonging to a minority group was a victim of crime at least once in 2008. In Europe, migrants from sub-Saharan Africa are the most victimized. On average, minorities in general are victims of personal theft, assault or threats of violence more often than the majority population.<sup>31</sup>

25. Migrant victims frequently identify a racial motive in incidents involving threats, insults, vandalism or other personal crimes. In Europe, for example, 18 per cent of Roma people and 18 per cent of sub-Saharan African migrants have indicated that they had experienced at least one “racially motivated” incident in the preceding 12 months — they considered that the perpetrators of assaults or threats targeted them because of their foreign or ethnic minority background.

26. The risk of victimization is strongly associated with the areas where migrants live. This is partly because migrant populations are concentrated in areas with high crime rates affecting inhabitants of all origins. In addition, certain groups experience a higher incidence of certain types of crime. In the United States, for example, persons of Hispanic origin experience higher rates of violent and household crime than persons of other origins, while persons from a South-East Asian background experience higher rates of theft than other ethnic groups.

27. Some crimes also appear to be perpetrated by one ethnic or minority group against another; in other cases, violence may occur among members of the same group. For instance, there seems to be a high level of domestic violence within some ethnic groups in certain countries. In the United States, for example, street crime often involves perpetrators and victims from the same ethnic group. In some countries, second-generation migrants appear to be at greater risk of being victims of violent crime than the general population.

28. Furthermore, migrants are less likely than nationals to report crimes to the police and they express lower levels of confidence and faith in the police’s ability to respond effectively to crime, manifesting an overall lack of trust in law enforcement personnel. In Europe, research on the victimization of migrants and ethnic groups shows that 57-74 per cent of incidents of assault or threat, most of which were regarded as serious, were not reported to the police. On average between 75 and 90 per cent of incidents of harassment were not reported to the police even though most of them were regarded as serious by the victims.<sup>32</sup>

29. Migrants appear also to be more anxious about crime than nationals. High proportions of migrants feel unsafe walking alone in their local areas after dark. Paradoxically, however, in some countries, foreign residents express more positive views about the police than nationals. This might be owing to a criminological

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<sup>31</sup> *EU-MIDIS European Union Minorities and Discrimination Survey.*

<sup>32</sup> *Ibid.*

phenomenon known as downgrading, where migrants who have been accustomed to abusive law enforcement in their countries of origin have a more favourable impression of the police in their countries of residence.

## **B. Violence against migrant workers**

30. According to the Special Rapporteur on contemporary forms of slavery, “domestic workers, who are overworked, underpaid and subject to abuse — whether physical, emotional or sexual in nature — are effectively being treated as slaves. This form of slavery takes place in households all across the world.”<sup>33</sup>

31. In many countries in Western Europe, foreign-born persons account for about 10 per cent of the workforce. That proportion is also substantial (and growing) in several countries in Africa, Asia and the Americas, reaching as high as 60-80 per cent in certain Gulf States.<sup>34</sup>

32. Violence and discrimination in the area of employment are often associated with abuse. Such abuse might include low-paid (or unpaid) work; short-term contracts or no contracts at all; long working hours for the minimum wage or less; dirty, dangerous and difficult (“3-D”) jobs; poor working environment; lack of compliance with safety regulations, leading to higher rates of injury among working migrants; or the use of physical and psychological violence to control the workers.

33. All over the world, migrant workers suffer violence. In Asia, for example, research shows that the exploitation of migrant workers takes place in numerous sectors, including agriculture, construction, fishing, domestic work, factory work and manual labour. The exploitation ranges from non-payment and reduced salaries to debt bondage practices; often it also includes violence, both physical and psychological, such as threats of bodily harm, beatings, withholding of food or rape.<sup>35</sup>

34. In many countries in Latin America, migrant workers, both foreigners and non-foreigners, face slavery-like conditions in the mining, agricultural and other sectors. Workers are deceived by false promises of good jobs and wage advances; because of the cost of the travel, they find themselves subject to substantial debt and are thus prevented from leaving those jobs. Coercion and violence are also used to prevent workers from leaving.<sup>36</sup>

35. In Africa, migrants in search of employment face persecution at the hands of local people who blame them for taking their jobs. Child migrants are exploited in

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<sup>33</sup> Gulnara Shahinian, Special Rapporteur on contemporary forms of slavery, statement on the occasion of the International Day for the Abolition of Slavery, Geneva, 1 December 2009. Available from [www.ohchr.org](http://www.ohchr.org).

<sup>34</sup> Patrick Taran, Senior Migration Specialist, International Labour Organization, “Globalization and migration: the imperative for a rights-based approach”, statement presented to the eighth session of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Geneva, 18 April 2008.

<sup>35</sup> André Olivie, *Identifying Cambodian Victims of Human Trafficking Among Deportees from Thailand* (Phnom Penh, United Nations Inter-Agency Project on Human Trafficking, 2008).

<sup>36</sup> E. Bedoya, A. Bedoya and P. Belser, “Debt bondage and ethnic discrimination in Latin America”, in *Forced Labor: Coercion and Exploitation in the Private Economy*, Beate Andrees and Patrick Belser, eds. (Boulder, Colorado, Lynne Rienner Publishers, 2009).

mining, agricultural and domestic work. In Europe, migrant workers in the agricultural sector often work without the protection of labour laws, living in abandoned structures and facing intolerance and violence.

### C. Violence against women migrant workers

36. While many migrant workers are men, the international community has recently been focusing its attention on women migrant workers. Over the past 50 years, nearly as many women have migrated as men. In 2005, about 94.5 million women migrated, accounting for 49.6 per cent of migrants worldwide.<sup>37</sup> In the past, most women migrated as dependants of working husbands or other relatives; during recent decades, however, an increasing number of women have migrated independently as the main income earners.

37. While migration offers new employment opportunities to many women, due to their dual vulnerability (as migrants and as women), they are often disproportionately affected by the risks arising from their mobility. Women often find work at the low-paid end of the job market, in the service or entertainment sectors, which are usually unregulated and not covered by national labour laws. This increases the vulnerability of migrant women, who often lack access to social services and legal protection. They also suffer abuse such as harsh working and living conditions, low wages, illegal withholding of wages and premature termination of employment. Migrant domestic workers are in particular danger of having their working rights violated. In addition, the risk of losing their job might also mean losing their legal status, which forces them to accept lower wage rates with less security just to avoid deportation.

### D. Discrimination

38. Crime aside, there are many other forms of violence directed at migrants which could be categorized as discrimination. Migrants usually suffer high levels of discriminatory treatment. A European study, for instance, shows that discrimination, in the areas of education and employment is particularly problematic for some groups, hindering their access to opportunities in those areas.<sup>38</sup> This is a significant finding in that education and paid employment hold the key to successful integration and social inclusion.

39. Societal discrimination consists of arbitrary barriers to the advancement of minorities; the social system discriminates against individuals because they belong to a certain minority group. It is easy to see how discrimination resulting in lack of integration may lead to victimization. Moreover, discrimination in the area of education hinders the attainment of basic levels of education and consequently the language and cultural skills needed for proper integration in the receiving country.

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<sup>37</sup> Office of the United Nations High Commissioner for Human Rights, International Steering Committee for the Campaign for Ratification of the Migrants Rights Convention, *Guide on Ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)* (Geneva, 2009).

<sup>38</sup> *EU-MIDIS European Union Minorities and Discrimination Survey* (see footnote 30).

For young migrants, that could diminish their self-esteem, reinforce negative stereotypes and hinder their search for employment opportunities.

40. There is considerable research documenting how repeated discrimination leads to depression, apathy, resignation and marginalization. People confined to poor neighbourhoods; having limited access to educational and training opportunities; denied employment opportunities; perceiving the criminal justice system as providing little protection; and faced with discrimination in other aspects of social, economic and cultural life — all those factors combined are a recipe for exclusion, vulnerability and violence.

## **E. The vulnerability of migrants**

41. By and large, the data show that migrants' vulnerability is conditioned by a considerable number of variables: gender, age, race, education, language knowledge, socio-economic conditions, occupation, duration of residence, lifestyle and leisure behaviour. In other words, newly arrived, young, male migrants who have a low level of education and poor knowledge of the language, who live in poor areas and are unemployed, and who exhibit risky behaviour are more vulnerable than migrants who have been residing in the country for a long time, who are mature, whose level of education is medium or high, who have a good knowledge of the language and who live in decent neighbourhoods and have decent jobs.

42. Mobility itself can make people vulnerable to violence. As a result of strict migration policies, those willing to move to another country might find it difficult to migrate through legal channels. As a result, they may turn to criminals who promise to smuggle them into the destination country, sometimes at a very high price. This usually makes the migrants dependent on smugglers, which leaves them vulnerable to abuse. Moreover, if migrants are in debt to the smugglers for the cost of their travel, they are vulnerable to traffickers, since debt bondage prevents trafficking victims from leaving their exploiters. Many cases involving trafficking in persons start with persons desiring to migrate to another country to seek a better life.

43. Exceptions are worth mentioning. Depending on the variables and the time frame considered, findings show that in some countries,<sup>39</sup> the differences between nationals and various migrant groups in terms of victimization may be minor or even non-existent.<sup>40</sup> Where such variables as gender, family type, geographical region and type of housing are the same for both migrants and nationals, the levels of property and personal crime experienced may be similar. The situation varies considerably from country to country and even within the same country and from one migrant group to another. Furthermore, different findings may be gleaned within the same country and migrant group depending on the time of the research. This might be owing to different legislation and integration policies, types of migrants, services for migrants, methodology of research and other variables.

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<sup>39</sup> Australia, Canada, Sweden, Switzerland and the United Kingdom.

<sup>40</sup> *EU-MIDIS European Union Minorities and Discrimination Survey* (see footnote 30).

## F. Victimization in the criminal justice system

44. In many countries, migrants face unequal or even discriminatory treatment by the criminal justice system. Members of minority groups were stopped by the police significantly more often than members of the majority group in some countries in the European Union. They also often felt that the behaviour of the police towards them was fairly or very disrespectful.<sup>41</sup>

45. Migrants are more likely than nationals to end up in detention because, unlike nationals, they cannot count on the support of a social structure, which would be indispensable for them to obtain a non-custodial sanction. Alternatives to detention are still a privilege of those who are well integrated.

46. Foreign detainees are more vulnerable than nationals due to social exclusion, language difficulties and cultural differences. Moreover, crimes committed by migrants might be more likely to be reported to the police than crimes perpetrated by nationals. Foreigners may be more exposed to biased law enforcement and differential treatment within the criminal justice system, including in terms of harsher sentencing, custodial segregation and discriminatory decision-making. Police forces may be biased in making arrests and in stop-and-search activities. Within the criminal justice system, nationals may fare better than foreigners in terms of the outcomes of decisions including arrests, rates of non-prosecution, adjudication rates, sentencing, correctional decision-making and sentences involving alternatives to detention.

47. These factors all contribute to the overrepresentation of migrants in the detained population. In most Western countries, foreigners appear to be increasingly overrepresented in the penal system; in some places they make up more than 30 per cent of the overall detained population.<sup>42</sup> In many countries, evidence suggests that there is differential or biased treatment of migrant detainees.<sup>43</sup>

<sup>41</sup> Ibid.

<sup>42</sup> According to the World Prison Brief of the International Centre for Prison Studies at King's College London ([www.kcl.ac.uk](http://www.kcl.ac.uk)), there are currently 176,868 foreigners detained in European countries, that is 9.5 per cent of the prison population in Europe (1,855,877). In just two years the number of foreigners has risen by 25 per cent. Furthermore, in almost every European country, and in Southern European countries in particular, incarceration rates for migrants tend to exceed those of the national population. As of September 2009, in Austria 43.6 per cent of the prison population is foreign (3,622 out of 8,308); in Belgium 42.1 per cent (4,211 out of 10,159); in France 19.2 per cent (11,454 out of 59,655); in Germany 26.3 per cent (19,335 out of 73,592); in Greece 43.9 per cent (5,400 out of 12,300); in Italy 37.1 per cent (21,740 out of 58,597); in Malta 40.1 per cent (200 out of 499); in the Netherlands 30.5 per cent (5,007 out of 16,416); in Spain 35.5 per cent (27,164 out of 76,771); in Sweden 27.5 per cent (1,885 out of 6,853); in Switzerland 69.7 per cent (4,029 out of 5,780); and in the United Kingdom 13.6 per cent (11,419 out of 84,647).

<sup>43</sup> The findings on these issues are controversial and vary from country to country. In Germany, for instance, there seems to be little evidence of biased treatment, even though differential treatment may be encountered in prison regimes. In England, bias against migrants has been witnessed at various stages. In the Netherlands, the evidence suggests that the police are less respectful of migrants and there is some indication of unequal treatment in the criminal justice system. In Canada and in the United States, evidence of discrimination has been found, but many variables should be considered (Michael Tonry, ed., *Ethnicity, Crime and Immigration: Comparative and Cross-National Perspectives*, Crime and Justice Series, vol. 21 (Chicago, University of Chicago Press, 1997)).

Another aspect is that the situation of foreign detainees is a difficult issue in many countries, in terms of both the overcrowding of correctional facilities and the treatment of foreign detainees. National prison systems and detaining or related authorities do not always address this issue satisfactorily. Foreign detainees often have no access to or inadequate legal aid, less access to psychological and medical care, poor contact with their families and the outside world (and hence less material support) and fewer opportunities for early or conditional release and resettlement programmes.

## **IV. Responses**

### **A. Responses at the national level**

48. Responses can be implemented at two levels: national and international. The possible national responses to reduce victimization among migrants can be divided into the seven categories described below. The specific circumstances of migrants' vulnerability should be taken into account in each case, and priority should be given to the most significant issues in connection with their legal status.

#### **1. Improving knowledge about the phenomenon**

49. There is a clear need to develop quantitative and qualitative techniques to estimate the extent and nature of violence against migrants, migrant workers and their families. The issue cannot be addressed effectively in the absence of sufficient data.

50. Since significant numbers of incidents involving violence against migrants, migrant workers and their families do not come to the attention of the police, current data collection is poor. Current research has shown that the overwhelming majority of migrants experiencing violence and discrimination, including assaults, threats and serious harassment, do not report their experiences to any organizations or to the authorities. This means that thousands of cases of discrimination and violence are invisible, as they are not officially recorded by criminal justice systems.

#### **2. Guaranteeing basic rights universally**

51. The basic rights of migrants should be recognized, whether they are regular migrants or not. Irregular migrants frequently do not make use of basic health services or schools for fear of being reported to the police and deported.

52. To encourage irregular migrants to have greater confidence in health services and education systems, it is necessary to enact legislation that allows staff working within the social, health and education systems to ensure confidentiality. This action should be combined with a systematic approach to implementing human rights that includes a wide variety of measures, such as: promoting community participation; supporting entrepreneurship within minority communities and counteracting labour market exploitation; focusing on the role of local authorities as human rights actors; promoting human rights education among those who have a duty to protect human rights and among those who are entitled to them; and providing training in human rights for service providers such as nurses, social workers and carers of the elderly.

### **3. Raising awareness among victims**

53. The groups who are usually the most vulnerable to discrimination are also the least informed about their rights and the legislation addressing discrimination on the basis of ethnicity. In order for this legislation to function, it should be backed up by awareness-raising among vulnerable minorities. Incentives are needed to encourage victims to report crime and to improve the services offered to them by the police. Consideration should be given to establishing independent mechanisms for recording complaints about discrimination on the basis of ethnicity or migrant background and to investing resources to raise awareness about sources of support and advice among those who are vulnerable to discrimination.

54. Particular attention should be given to reducing accidents at work. Interventions aimed at increasing the culture of safety on the job, the level of employees' training and the quality and quantity of information could improve working conditions for both migrants and employed nationals. Specific health and safety training courses, especially when attended on a regular basis, have proved to be a determining factor in reducing the frequency of injuries. Providing migrant workers with ongoing training on hazards and safety practices is the best way to decrease the likelihood of injuries in the workplace.

55. Language is another important factor: the frequency of injuries decreases as the level of proficiency in the local language increases. Younger and less experienced workers are at a higher risk of injury because they lack specialization in the tasks and consequently confidence, and they are less able to identify and react appropriately to dangerous situations. For all these reasons, ad hoc training, especially on the job, is needed for workers with limited experience.

56. At the same time, employers should be made aware that safety measures are mostly their responsibility. Employers should comply fully with safety rules and regulations, ensuring that those are respected by all workers, regardless of their national origin. Severe sanctions should be enforced against employers who do not comply with or ensure compliance with safety regulations, especially those employers who take advantage of migrant workers and do not provide them with contracts and a safe working environment.

### **4. Raising awareness among perpetrators**

57. With regard to raising awareness among the perpetrators, two paths could be explored. The first is legislation providing for sanctions in the event of discrimination. Criminalizing racism and xenophobia would send a clear message to society. The second course of action could be a public awareness campaign to combat discrimination, informing nationals how and why discrimination against migrants has a negative impact on society as a whole, and emphasizing that the most severe forms of discrimination are crimes.

### **5. Empowering migrant communities**

58. To empower migrant communities, community involvement and evidence-gathering could be used to inform policy development, implementation and evaluation. Migrants should be given a voice to express their real needs to report the problems they experience with the health, police or justice systems.

59. A first step towards empowering marginalized groups is to train them to understand and use the legislation that protects them. Those who have been discriminated against or harassed should be supported and encouraged to report their experiences to a competent authority in the knowledge that their complaints will be taken seriously. Allocating resources to organizations that offer assistance to people who have been discriminated against could be a good way to start. Moreover, community associations could support migrants by increasing their awareness of their rights, thereby increasing their willingness to report crimes, and by providing them with legal assistance and social services.

#### **6. Improving relations between migrants and the police**

60. In order to improve relations with police forces, several working initiatives involving the police, local authorities and civil society organizations should be developed in an effort to encourage the reporting of crimes and to provide appropriate assistance to victims.

61. There is an urgent need to identify and address potentially discriminatory police treatment. Some work needs to be done to improve police relations and interactions with migrant communities. Trust in the police needs to be shaped by respectful and non-discriminatory treatment. Better relations between migrants and the police and justice systems should be promoted by means of training and educational programmes. Cooperation with the authorities involved and civil society organizations should be sought.

#### **7. Facilitating access to the criminal justice system**

62. Facilitating migrants' access to justice is the key to preventing discrimination and encouraging the reporting of crime. Justice institutions also need help in using language that is easy to understand.

63. Criminal justice system professionals should be made aware of the linguistic, social and cultural barriers that migrants face. Reducing those barriers will help increase people's understanding of legal proceedings. Furthermore, studies should be conducted to evaluate possible police or judiciary discrimination and bias suffered by migrants when involved with the criminal justice system.

64. More attention should be paid to the treatment of migrant offenders in the prison system. Measures should be adopted to improve the conditions of migrant detainees from a religious, social, cultural and individual point of view and in terms of access to media, such as television, newspapers and books. Special programmes should be implemented to address the disadvantages that foreign detainees may experience in their daily prison life.

### **B. Responses at the international level**

65. Countries could be supported in minimizing the victimization of migrants, migrant workers and their families through the provision of innovative models of anti-discrimination legislation, best practices for the implementation of such legislation and technical assistance.



### **1. Innovative models of anti-discrimination legislation**

66. Not many States have specific anti-discrimination legislation. Model anti-discrimination legislation should both provide for sanctions against discrimination (or incentives for inclusive treatment) and support migrants in exercising their human and civil rights. Such legislation should cover education, employment, housing, relations with the police and access to the criminal justice system making it clear that discrimination or violence against migrants will not be tolerated in any of those areas.

### **2. Best practices for implementing anti-discrimination legislation**

67. Few of the existing anti-discrimination laws are fully or widely implemented. When not supported by specific incentives to educators, employers, landlords and law enforcement and criminal justice personnel, the laws too often become merely symbolic or obsolete. Sanctions should also address the specific areas where discrimination is practised. An anti-discrimination body should be created to administer the system of incentives and sanctions swiftly and effectively to ensure the legitimacy of the system.

### **3. Technical assistance**

68. Drafting laws and developing best practices are not the only focus of technical assistance activities. Specific activities could be developed to improve relations between migrants and law enforcement personnel. Ethical codes with anti-discrimination practices should be implemented at all levels of law enforcement. Special training to combat racial prejudice should be provided for law enforcement personnel. Migrant communities should receive support so that they can provide legal assistance to their members, and migrants should have full access to legal aid.

## **V. Conclusions and recommendations**

69. The international framework to protect the rights of migrants, migrant workers and their families is well established; however, its full implementation remains a challenge. Migrants, migrant workers and their families continue to suffer exclusion, discrimination, victimization and violence all over the world. Migrant women in particular often face multiple forms of discrimination throughout the migration process because of their nationality, legal or social status and gender. Preventing violence against migrants, migrant workers and their families requires a policy framework that guarantees respect for migrants' rights, dignity and equality of treatment in the law and practice of different countries. That requires coordinated and complementary action by all concerned, including Member States, the international community, criminal justice and law enforcement actors, civil society and local communities. In view of these elements and taking into account the recommendations of the regional preparatory meetings, the Twelfth Congress may wish to consider the following recommendations:

(a) Member States should be encouraged to ratify, or accede to, and fully implement all relevant conventions dealing with violence against migrants, smuggling of migrants, trafficking in persons, human rights, forced labour, refugees

and children and should ensure that those conventions are fully implemented also in cases involving violence against migrants, migrant workers and their families;

(b) Member States should review their legislation with a view to implementing all relevant legal instruments facilitating:

(i) Prosecution of smugglers of migrants; those engaged in trafficking in persons; and others who commit violence against migrants, migrant workers and their families;

(ii) Identification of victims of violence;

(iii) Protection of the rights of the victims of such acts, paying particular attention to vulnerable groups;

(c) Member States should strengthen the skills and capacity of criminal justice agencies responsible for combating violence against migrants, migrant workers and their families, increasing the training (and manpower, if needed) for national and local officials. All actors involved in countering violence against migrants, migrant workers and their families, including criminal justice agencies and social welfare agencies, should have the capacity to identify victims of violence and to ensure that the victims' rights are protected, taking into account the special vulnerabilities of children. Social welfare agencies responsible for protecting the rights of migrants and victims of crime should also be strengthened to ensure they are equipped to proactively detect the involvement of criminals and/or organized criminal groups and can take appropriate measures;

(d) Member States should tailor support to migrant communities to address the different aspects and needs of the specific communities, encouraging the participation of migrant communities in the development and implementation of anti-discriminatory policies and policies to prevent violence and facilitating access to the justice and support systems;

(e) Member States should foster cooperation at the national, regional and interregional levels to combat violence against migrants, migrant workers and their families;

(f) Member States should not target smuggled migrants with criminal measures solely because they were smuggled;

(g) Member States should identify and share good practices in the design of crime prevention and criminal justice responses to the problems posed by violence against migrants, migrant workers and their families;

(h) Member States should ensure that the technical assistance capacity of the United Nations entities to address violence against migrants, migrant workers and their families is supported by adequate resources;

(i) The Conference of the Parties to the United Nations Convention against Transnational Organized Crime should be provided with the support necessary to allow it to realize its full potential and to perform its challenging mandated functions. In that connection, the United Nations Office on Drugs and Crime should be provided with adequate resources to fully accomplish its assigned functions as the secretariat of the Conference.