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## Commission on Crime Prevention and Criminal Justice

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Item 4 of the provisional agenda\*

**Thematic discussion on the theme “Violence against  
migrants, migrant workers and their families”**

## **Discussion guide for the thematic discussion on violence against migrants, migrant workers and their families**

### **Note by the Secretariat**

#### *Summary*

The present note has been prepared by the Secretariat as a discussion guide for the thematic discussion of the Commission on Crime Prevention and Criminal Justice at its twenty-first session, pursuant to Commission decision 18/1. In its decisions 2010/243 and 2011/257, the Economic and Social Council decided that the prominent theme for the twenty-first session of the Commission would be “Violence against migrants, migrant workers and their families”. In the present document, a series of questions are proposed on the relevant subthemes for discussion by the Commission, some issues are outlined for shaping the discussion and further background information is provided. The document contains a description of the main challenges with regard to violence against migrants, migrant workers and their families, and suggestions are made for consideration by the Commission.

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\* E/CN.15/2012/1.



## **I. Introduction**

### **A. Guidelines for the thematic discussions of the Commission on Crime Prevention and Criminal Justice**

1. The Economic and Social Council, in its decision 2010/243, entitled “Report of the Commission on Crime Prevention and Criminal Justice on its nineteenth session and provisional agenda and documentation for its twentieth session”, decided that the prominent theme for the twenty-first session of the Commission would be “Violence against migrants, migrant workers and their families”, bearing in mind paragraph 38 of the Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World (General Assembly resolution 65/230, annex). The Council reaffirmed that in its decision 2011/257, entitled “Report of the Commission on Crime Prevention and Criminal Justice on its twentieth session and provisional agenda and documentation for its twenty-first session”.

2. The Commission, in its decision 18/1, entitled “Guidelines for the thematic discussions of the Commission on Crime Prevention and Criminal Justice”, decided that the discussion on the prominent theme would be based on a discussion guide including a list of questions to be addressed by participants, such guide to be prepared by the Secretariat in the six official languages of the United Nations, not later than one month in advance of the session. In that resolution, the Commission also:

(a) Urged Member States and regional groups to put forward their nominations for panellists not later than two months in advance of each session of the Commission and decided that the panellists would be selected one month in advance of the session, bearing in mind that five seats on the podium would be allocated to the regional groups;

(b) Decided that independent experts, such as private sector representatives and academics, might be invited, pursuant to the rules of procedure of the Economic and Social Council, to contribute to the thematic discussions of the Commission, taking into account, inter alia, regional considerations and legal frameworks;

(c) Decided also that the guidelines for the thematic discussions of the Commission would be as follows:

(i) Each thematic discussion should be moderated under the authority of the Chairperson and the bureau of the Commission and should be conducted under the Chairperson’s authority as set out in the rules of procedure of the functional commissions of the Economic and Social Council;

(ii) Introductory presentations by panellists should be brief, not exceeding 10 minutes, and panellists should be encouraged to share their presentations in advance;

(iii) Participants should be prepared to focus on the theme and subthemes agreed upon by the Commission in order to allow for a dynamic and interactive exchange during the thematic discussion;

- (iv) In their statements, speakers should touch upon national experiences of their Governments in relation to the subthemes. Within the framework of the rules of procedure applicable to the Commission, the views of intergovernmental and non-governmental organizations (NGOs) would be welcome;
- (v) Statements by participants should be limited to a maximum of five minutes;
- (vi) The moderator should intervene to enforce time limits and should keep a list of speakers but may use his or her discretion to select speakers according to the thrust of the discussion;
- (vii) At the end of the thematic discussion, the Chairperson should prepare a summary including the most salient points discussed.

## **B. Topic and subthemes for the thematic discussion**

3. At its reconvened twentieth session, on 13 December 2011, the Commission endorsed the following subthemes agreed in the course of informal consultations:
  - (a) Morning meeting: subthemes related to prevention of the problem:
    - (i) Victimization and exploitation of migrants, migrant workers and their families, where it occurs and best practices to address their vulnerabilities, taking into account the special needs of migrant women and children;
    - (ii) Improvements in reporting and collecting crime and victimization data, to better understand trends, forms, causes and consequences of violence against migrants, migrant workers and their families;
    - (iii) Crime prevention strategies, measures, mechanisms and tools, including raising awareness of violence against migrants, migrant workers and their families and the role of coordination across law enforcement, labour, immigration, consular officials, health and social welfare agencies and civil society;
  - (b) Afternoon meeting: subthemes related to possible responses:
    - (i) The implementation of legislative, including criminal law, and operational, including law enforcement, strategies to prevent and respond to xenophobia, racism and other related forms of intolerance and violence against migrants, migrant workers and their families, including undocumented migrants;
    - (ii) Measures aimed at assisting and protecting migrants, migrant workers and their families, including the promotion and protection of their rights regardless of their migratory status;
    - (iii) International cooperation, extradition and mutual legal assistance, including legal assistance for cases involving labour migrants.
4. The present note has been prepared by the Secretariat as a discussion guide. A series of questions are proposed for discussion by the Commission, and background information is provided to support the discussion.

## **II. Violence against migrants, migrant workers and their families**

### **A. Issues for discussion**

5. It is suggested that Member States consider including in their delegations to the Commission at its twenty-first session experts on violence against migrants, migrant workers and their families to address the issues proposed for discussion.

#### **1. Victimization and exploitation**

6. Questions on victimization and exploitation of migrants, migrant workers and their families, where it occurs and best practices to address their vulnerabilities, taking into account the special needs of migrant women and children, might include:

(a) What circumstances and conditions render migrants, migrant workers and their families vulnerable to violence and to exploitation?

(b) What types of violence and related crime are migrants, migrant workers and their families subjected to? What are the special vulnerabilities of migrant women and children in this regard?

(c) Who inflicts the violence on migrants, migrant workers and their families? Do organized criminal groups exercise specific types of violence against migrants, migrant workers and their families?

(d) What specific measures have been (or can be) taken to ensure that migrant women and women migrant workers are protected from violence?

(e) What specific measures have been (or can be) taken, in line with Convention on the Rights of the Child,<sup>1</sup> to ensure that migrant children, including unaccompanied minors, are protected from violence?

(f) What measures have been (or can be) taken to ensure that the rights of migrants are upheld when dealing with cases of smuggling of migrants and that victims of trafficking in persons are identified?

(g) What is the role of the general public in the prevention of violence and exploitation of migrant workers and their families?

(h) Are criminal justice practitioners, including first-line officers, trained on the rights of migrants, migrant workers and their families, as well as on smuggling of migrants and trafficking in persons?

(i) What measures can be taken to prevent secondary victimization of migrant workers and their families when in contact with law enforcement and justice institutions?

#### **2. Data to enhance understanding of trends, forms, causes and consequences**

7. Questions on improvements in reporting and collecting crime and victimization data, to enhance understanding of trends, forms, causes and

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<sup>1</sup> United Nations, *Treaty Series*, vol. 1577, No. 27531.

consequences of violence against migrants, migrant workers and their families, might include:

(a) What kind of data and information-gathering exist to measure the prevalence of crimes against migrants, migrant workers and their families at the national level? Are those data disaggregated? If so, according to which categories?

(b) Is information on “migrant background” collected in ongoing efforts to collect data on crime, both from administrative sources and sample surveys? For example, is information on the citizenship, country of birth and/or residence status of victims collected when a crime is reported to the police?

(c) Do victimization surveys or other tools to record crime include information on the migration status of respondents?

(d) In addition to victimization from conventional crime, has any study or survey been conducted to explore the motivation of crimes against migrants, in particular if they have been targeted because of racial, ethnic or religious motivations?

(e) Which authorities are involved in the data collection? Is there one authority responsible for migrant workers’ issues that also ensures data collection?

(f) Are the results of research on crime against and victimization of migrants, migrant workers and their families published? If so, how often?

(g) Have States participated in international, regional or sectoral research or technical assistance projects to examine the prevalence of violence against migrants, migrant workers and their families? What were the outcomes and/or lessons learned?

(h) What measures are necessary to improve reporting of crimes against migrants, migrant workers and their families? Are harmonized technical specifications needed at the international level to support countries in their data collection on violence against migrants?

(i) Are the results of research on crime and victimization, in order to better understand trends, forms, causes and consequences of violence against migrants, migrant workers and their families, used as a basis to develop evidence-based strategies to prevent and combat violence against migrants, migrant workers and their families?

(j) What measures have been taken to research the link between smuggling of migrants and trafficking in persons on the one hand and violence against migrants, migrant workers and their families on the other?

(k) Do States collect information on the victims of trafficking in persons officially detected by the criminal justice system or by other national authorities? Is that information disaggregated per year or fiscal years? Are the gender, age and nationality of the trafficking victims registered?

(l) What kind of information is collected by States to assess where victims have been trafficked to? Do States record information concerning their own nationals repatriated from third countries?

(m) What kind of information is collected to assess the forms of exploitation victims suffer as a result of trafficking?

(n) Do States collect information on the offenders of trafficking in persons prosecuted and/or convicted? Is that information disaggregated per calendar year or fiscal year? Are the gender and nationality of the offenders of trafficking officially registered?

### **3. Crime prevention strategies, measures, mechanisms and tools**

8. Questions on crime prevention strategies, measures, mechanisms and tools, including raising awareness of violence against migrants, migrant workers and their families and the role of coordination across law enforcement, labour, immigration, consular officials, health and social welfare agencies and civil society, might include:

(a) What measures have been taken to ensure that violence against migrants, migrant workers and their families is prevented? What measures specifically target migrant women, women migrant workers, children of migrants and unaccompanied minors?

(b) What measures have been taken to ensure that migration policies have a positive impact on the prevention of trafficking in persons and smuggling of migrants?

(c) What measures have been taken to prevent violence against marginalized migrant communities or groups? What are the benefits and shortcomings of measures that target groups (e.g. migrant drug addicts, sex workers or homeless people) and of measures that target places (e.g. neighbourhoods, train stations or red-light districts)?

(d) What measures have been taken to engage the police and migrant communities in outreach programmes, sports and development of positive media relations and to increase the presence of community police?

(e) Is the development of prevention strategies evidence-based? Do strategies reflect research relating to crime and social science, as well as risk analyses and human rights impact assessments?

(f) Are adequate human, institutional and financial resources allocated for implementation of measures to prevent violence against migrants, migrant workers and their families?

(g) Is there regular independent monitoring of the effectiveness of policies to prevent violence against migrants, migrant workers and their families by international and national NGOs?

(h) Is there capacity-building for personnel likely to be in contact with migrants, migrant workers and their families (e.g. border guards, police, social workers, medical services or education services), including as far as languages are concerned?

(i) Are international organizations, NGOs and civil society actors involved in developing and delivering training on prevention of violence against migrants,

migrant workers and their families at the local, national and international levels on a regular basis?

(j) Are migrants, migrant workers and their families involved in the design and implementation of awareness-raising campaigns? Are the content and form of materials tailored to those target groups?

(k) Are government and non-governmental actors, local communities and civil society groups cooperating in designing and implementing campaigns?

(l) What measures have been taken to identify vulnerable groups and communities within the migrant community to develop targeted prevention strategies?

(m) What measures have been successful in preventing secondary and repeated victimization of migrants, migrant workers and their families?

#### **4. Legislative and operational strategies**

9. Questions on the implementation of legislative, including criminal law, and operational, including law enforcement, strategies to prevent and respond to xenophobia, racism and other related forms of intolerance and violence against migrants, migrant workers and their families, including undocumented migrants, might include:

(a) To what extent does the national legislation of Member States include provisions on criminalizing violence against migrants, migrant workers and their families? Is criminal law used to address xenophobia, racism and other related forms of intolerance?

(b) What other provisions exist in national laws to prevent xenophobia, racism and violence against migrants, migrant workers and their families? Are legislative guarantees against racial discrimination in place and do they apply to non-citizens regardless of their immigration status? What kind of measures are foreseen by domestic legislation to ensure respect for and protection of migrant workers and their families?

(c) To what extent does the national legislation of Member States include specific provisions relating to migrant women, women migrant workers, children of migrants or unaccompanied minors?

(d) What institutional measures have been taken to ensure implementation of relevant legislation? How can Member States create or improve their legislative response to those issues?

(e) To what extent do domestic laws guarantee rights to migrants, migrant workers and their families? What types of resources and institutions exist to help migrant workers who have been affected by violence understand and claim their rights?

(f) What is the role of law enforcement agencies in responding to violence against migrants, migrant workers and their families? What best practices of law enforcement responses to such acts of violence can be identified?

(g) What kind of measures have been taken in order to prevent recidivism in cases of violence against migrants, migrant workers and their families? Are there

measures in place to ensure that groups who have attacked migrant workers or their families are prosecuted? In what ways do States ensure that migrants, migrant workers and their families who have been affected by violence are not revictimized by the criminal justice system?

(h) Have any practical measures been taken to protect unaccompanied minors from violence?

## **5. Assistance and protection**

10. Questions on measures aimed at assisting and protecting migrants, migrant workers and their families, including the promotion and protection of their rights regardless of their migratory status, might include:

(a) What measures have been (or can be) taken to ensure that the rights of migrants, migrant workers and their families are protected irrespective of their status?

(b) What measures have been taken to ensure that migrants, migrant workers and their families have access to assistance and protection services irrespective of their status? What measures have been taken to ensure their access to justice for violations of their human and labour rights?

(c) What measures have been taken to ensure that protection and assistance provided to migrants, migrant workers and their families, including smuggled migrants and victims of trafficking in persons, are based on respect for human rights, migration, refugee and humanitarian law? Are those measures sensitive to special needs and not contingent on cooperation with the criminal justice process where applicable?

(d) What measures have been taken to uphold the best interests of the child in protection and assistance measures concerning migrants, migrant workers and their families, including smuggled migrants and victims of trafficking in persons?

(e) Are there national human rights institutions and/or ombudspersons mandated to monitor, promote and protect the rights of migrants, migrant workers and their families?

(f) What measures have been taken to increase the capacity of law enforcement and criminal justice personnel in dealing with violence against migrants, migrant workers and their families? Are such measures sensitive to their human rights and special needs, including those of women and children?

(g) What measures have been taken to increase the identification of migrants, migrant workers and their families who have experienced violence, including during smuggling, as well as to increase investigations and prosecutions resulting from allegations of violence against migrants, migrant workers and their families?

(h) What measures have been taken to ensure that migrants, migrant workers and their families, including smuggled migrants, can report violence and lodge complaints against employers and other perpetrators of violence?

(i) What measures have been taken to ensure that sanctions are imposed for acts of violence committed against smuggled migrants and that acts of violence are treated as aggravating circumstances in smuggling of migrants cases?

(j) Are there appropriate standards of conduct in place for law enforcement officials in relation to migrants, migrant workers and their families?

## **6. International cooperation, extradition and mutual legal assistance**

11. Questions on international cooperation, extradition and mutual legal assistance, including legal assistance for cases involving labour migrants, might include:

(a) In what ways have national authorities used international cooperation in their investigations and prosecutions of crimes involving violence against migrants, migrant workers and their families?

(b) Do national authorities share information to facilitate the prevention, identification and investigation of those crimes?

(c) Do Member States have measures in place to enable joint investigations of violence against migrants, migrant workers and their families?

(d) Do Member States have an adequate legal framework to allow for extradition, mutual legal assistance and international cooperation for purposes of confiscation of proceeds of crime where applicable?

(e) Have Member States effectively used extradition, mutual legal assistance or international cooperation for purposes of confiscation of proceeds of crime in appropriate cases of violence against migrants, migrant workers and their families?

(f) Have Member States effectively used international cooperation in cases involving the smuggling of migrants by sea?

(g) Have Member States concluded bilateral, regional or multilateral treaties or agreements to facilitate international cooperation in relation to cases of violence against migrants, migrant workers and their families?

(h) Is there cooperation between countries of origin and destination to develop mutually beneficial approaches to migration and development and the prevention of migrant smuggling and trafficking in persons?

(i) What types of information regarding legal assistance are provided to potential migrant workers in their countries of origin (e.g. in consulates or through work agencies)?

## **B. Background**

### **1. Overview**

12. The problem of violence against migrants, migrant workers and their families was discussed at the Twelfth United Nations Congress on Crime Prevention and Criminal Justice, held in Salvador, Brazil, in 2010. In the Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World, endorsed by the

General Assembly in its resolution 65/230, Member States affirmed their determination to eliminate violence against migrants, migrant workers and their families, and called upon Member States to adopt measures for preventing and addressing effectively cases of such violence and to ensure that those individuals received humane and respectful treatment from States, regardless of their status. Member States were also invited to take immediate steps to incorporate into international crime prevention strategies and norms measures to prevent, prosecute and punish crimes involving violence against migrants, as well as violence associated with racism, xenophobia and related forms of intolerance. The Commission on Crime Prevention and Criminal Justice was invited to consider the issue further in a comprehensive manner.

## **2. International legal framework**

13. At the normative level, human rights, including the rights of migrants, are protected by relevant international instruments. These include the Universal Declaration of Human Rights (General Assembly resolution 217 A (III)), the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights (resolution 2200 A (XXI), annex) and the Optional Protocol thereto (resolution 63/117, annex). In particular, migrants are protected against degrading treatment, discrimination and exploitation, as established by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>2</sup> Further relevant provisions are contained in the International Convention on the Elimination of All Forms of Racial Discrimination,<sup>3</sup> the Convention on the Elimination of All Forms of Discrimination against Women,<sup>4</sup> the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery,<sup>5</sup> and the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.<sup>6</sup> Migrant children are further protected by the Convention on the Rights of the Child and the Optional Protocols thereto on the involvement of children in armed conflict<sup>7</sup> and on the sale of children, child prostitution and child pornography.<sup>8</sup> Other conventions are also relevant, such as the Convention on the Reduction of Statelessness<sup>9</sup> and the Convention relating to the Status of Refugees.<sup>10</sup>

14. With regard to migrant workers and their families, specific provisions are contained in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families<sup>11</sup> which is the most comprehensive international treaty on protecting the rights of both regular and irregular migrant workers. Under that Convention, migrant workers and members of their families shall be entitled to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private

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<sup>2</sup> United Nations, *Treaty Series*, vol. 1465, No. 24841.

<sup>3</sup> *Ibid.*, vol. 660, No. 9464.

<sup>4</sup> *Ibid.*, vol. 1249, No. 20378.

<sup>5</sup> *Ibid.*, vol. 266, No. 3822.

<sup>6</sup> *Ibid.*, vol. 96, No. 1342.

<sup>7</sup> *Ibid.*, vol. 2173, No. 27531.

<sup>8</sup> *Ibid.*, vol. 2171, No. 27531.

<sup>9</sup> *Ibid.*, vol. 989, No. 14458.

<sup>10</sup> *Ibid.*, vol. 189, No. 2545.

<sup>11</sup> *Ibid.*, vol. 2220, No. 39481.

individuals, groups or institutions (article 16, paragraph 2); and States parties shall take measures to impose effective sanctions on persons, groups or entities which use violence, threats or intimidation against migrant workers or members of their families in an irregular situation (article 68, paragraph 1 (c)). However, the Convention has been ratified by only 45 States (as at 24 January 2012), most of which are countries of origin for migrants.

15. A series of International Labour Organization conventions and recommendations aim to protect migrants in the realm of employment, including the following: the Migration for Employment Convention (Revised), 1949 (No. 97); the Migration for Employment Recommendation (Revised), 1949 (No. 86); the Migrant Workers Recommendation, 1975 (No. 151); the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); the Discrimination (Employment and Occupation) Convention, 1958 (No. 111); the Forced Labour Convention, 1930 (No. 29); the Abolition of Forced Labour Convention, 1957 (No. 105); the Worst Forms of Child Labour Convention, 1999 (No. 182); and the Domestic Workers Convention, 2011 (No. 189).

16. Relevant instruments in the area of transnational organized crime include the United Nations Convention against Transnational Organized Crime<sup>12</sup> and the Protocols thereto, including the Protocol against the Smuggling of Migrants by Land, Sea and Air<sup>13</sup> and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.<sup>14</sup>

17. The Smuggling of Migrants Protocol (ratified, as at 24 January 2012, by 129 States) is the first legally binding global instrument to contain an agreed definition of smuggling of migrants as distinct from trafficking in persons. It contains a series of provisions to prevent and combat the smuggling of migrants and to protect the rights of migrants. Thus, when criminalizing smuggling and related offences, States parties are required to establish as aggravating circumstances situations that endanger, or are likely to endanger, the lives or safety of the migrants concerned or that entail inhuman or degrading treatment, including for exploitation, of such migrants (article 6, paragraph 3). Article 16 of the Protocol obliges States parties to preserve and protect the internationally recognized rights of smuggled migrants, to take appropriate measures to protect them against violence and to afford them appropriate assistance if their lives or safety are endangered. In that regard, States parties are required to take into account the special needs of women and children.

18. The Trafficking in Persons Protocol (ratified, as at 24 January 2012, by 147 States) applies to migrants, migrant workers and their families insofar as they are victims of trafficking in persons.<sup>15</sup> States parties are under an obligation to prevent and combat trafficking in persons, paying particular attention to women and children, and to assist and protect victims of such trafficking. In accordance with article 6 of the Protocol, this includes measures to provide for the physical safety and the physical, psychological and social recovery of victims of trafficking.

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<sup>12</sup> Ibid., vol. 2225, No. 39574.

<sup>13</sup> Ibid., vol. 2241, No. 39574.

<sup>14</sup> Ibid., vol. 2237, No. 39574.

<sup>15</sup> For a definition of “trafficking in persons”, see article 3 (a) of the Trafficking in Persons Protocol.

### 3. Political commitments

19. A number of international and regional policy processes have been launched to address migration issues and to strengthen cooperation in that regard.<sup>16</sup> 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 the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century (General Assembly resolution 55/59, annex), Member States took note of the continuation of crime associated with racism, xenophobia and related forms of intolerance, and recognized the importance of taking steps to incorporate into crime prevention strategies and norms measures to prevent and combat those crimes. These provisions were included in the plans of action for the implementation of the Vienna Declaration (Assembly resolution 56/261, annex).

21. In its resolution 66/172, on the protection of migrants,<sup>17</sup> the General Assembly expressed concern about the increase in the activities of transnational and national organized criminal entities and others who profited from crimes against migrants without regard for dangerous and inhumane conditions, as well as the high level of impunity enjoyed by traffickers, their accomplices and other members of organized criminal entities; encouraged States to protect victims of national and transnational organized crime, including by guaranteeing access to medical, psychosocial and legal assistance; and encouraged Member States to combat international trafficking in persons and smuggling of migrants by enacting domestic legislation and strengthening international cooperation, recognizing that those crimes might endanger the lives of migrants or subject them to harm, servitude or exploitation, which might also include debt bondage, slavery, sexual exploitation or forced labour.

22. In its resolution 66/128, on violence against women migrant workers,<sup>18</sup> the General Assembly called upon Governments, in cooperation with international organizations, NGOs, the private sector and other stakeholders, to provide women migrant workers who were victims of violence with the full range of emergency assistance and protection; and also called upon Governments to put in place penal and criminal sanctions to punish perpetrators of violence against women migrant workers and intermediaries, and gender-sensitive redress and justice mechanisms that victims could access effectively, as well as to protect migrant women victims of violence from revictimization, including by authorities.

23. The General Assembly also emphasized the importance of preventing violence against migrant women in its resolution 65/228, entitled “Strengthening crime prevention and criminal justice responses to violence against women”, in which it urged Member States to recognize the needs and special vulnerabilities of migrant women.

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<sup>16</sup> An overview is contained in the working paper prepared by the Secretariat on crime prevention and criminal justice responses to violence against migrants, migrant workers and their families (A/CONF.213/11), para. 18.

<sup>17</sup> See also General Assembly resolutions 54/166, 55/92, 56/170, 57/218, 58/190, 59/194, 60/169, 61/165, 62/156, 63/184, 64/166 and 65/212.

<sup>18</sup> See also General Assembly resolutions 48/110, 49/165, 50/168, 51/65, 52/97, 54/138, 56/131, 58/143, 60/139, 62/132 and 64/139.

#### 4. Mandate and work of the United Nations Office on Drugs and Crime

24. Different entities of the United Nations system are addressing violence against migrants, migrant workers and their families in accordance with their respective mandates. The United Nations Office on Drugs and Crime (UNODC) responds to the problem through its activities promoting United Nations standards and norms in crime prevention and criminal justice and in connection with its mandates relevant to trafficking in persons and smuggling of migrants.

25. Functioning national criminal justice systems are indispensable to prevent and address violence against migrants, migrant workers and their families. UNODC helps strengthen criminal justice systems in accordance with United Nations standards and norms in crime prevention and criminal justice, including those addressing the special needs of children, women or victims of crime in general.

26. Certain standards and norms expressly refer to migrants.<sup>19</sup> They recognize that special groups of women, including migrant women, are particularly vulnerable to violence. They also recognize the need for further development and use of methods of gathering data on victimization. The plan of action for the implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Economic and Social Council resolution 1998/21, annex) contains specific guidance on the extension of methods of gathering data on victimization, such as standardized victimization surveys to cover specific groups of victims such as victims of violence against women, children and migrants.

27. The Guidelines for the Prevention of Crime (Economic and Social Council resolution 2002/13, annex) provide that Governments and civil society should endeavour to analyse and address the links between transnational organized crime and national and local crime problems, including by designing crime prevention strategies, where appropriate, to protect socially marginalized groups, especially women and children, who are vulnerable to the action of organized criminal groups, including trafficking in persons and smuggling of migrants. The United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) (General Assembly resolution 45/112, annex) provide that special attention should be given to children of families affected by problems brought about by rapid and uneven economic, social and cultural change, in particular the children of indigenous, migrant and refugee families.

28. A number of standards and norms relating to children must also be taken into consideration. The Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20, annex) include the principle of non-discrimination<sup>20</sup> and could also be applied to processes in informal and customary systems of justice such as restorative justice and in

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<sup>19</sup> See, for example, the Declaration on the Elimination of Violence against Women (General Assembly resolution 48/104) and the updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice (resolution 65/228, annex).

<sup>20</sup> This principle reads (para. 8 (b)):

*“Non-discrimination.* Every child has the right to be treated fairly and equally, regardless of his or her or the parent’s or legal guardian’s race, ethnicity, colour, gender, language, religion, political or other opinion, national, ethnic or social origin, property, disability and birth or other status.”

non-criminal fields of law, including citizenship, immigration and refugee law. The Guidelines for Action on Children in the Criminal Justice System (Economic and Social Council resolution 1997/30, annex) provide that appropriate action should be ensured to alleviate the problem of children in need of special protection measures, such as children of minorities, immigrants and indigenous peoples and other vulnerable groups of children, and that emphasis should be placed on formulating comprehensive prevention plans, as called for in the Riyadh Guidelines.

29. As depositary of the United Nations Convention against Transnational Organized Crime and its supplementary Trafficking in Persons Protocol and Smuggling of Migrants Protocol, the mandate of UNODC is to assist the international community to prevent and combat those crimes, prosecute the criminals who commit them, protect and assist victims of trafficking in persons, protect the rights of smuggled migrants and promote cooperation to those ends. UNODC also promotes and assists the efforts of Member States to become parties to and implement the Convention and its Protocols. In 2011, the Trafficking in Persons Protocol was ratified by five further Member States and the Smuggling of Migrants Protocol by three more.

30. In order to improve the capacity of national criminal justice systems to implement the provisions of the Protocols, the Office has developed and published several tools, manuals and issue papers. The UNODC *Model Law against the Smuggling of Migrants* has been available to Governments since 2010. An *In-Depth Training Manual on Investigating and Prosecuting the Smuggling of Migrants* was published in 2011. The Office also developed a First Aid Kit for Use by Law Enforcement First Responders in Addressing Human Trafficking and the Victim Translation Assistance Tool, designed to support front-line officers who may come into contact with cases of human trafficking and need to provide a level of basic assistance to victims of human trafficking. Several technical reports and issue papers focus on specific issues, including on the role of organized crime in the smuggling of migrants from West Africa to the European Union and on legal policy responses to human trafficking in Bangladesh, India, Nepal and Sri Lanka.

31. UNODC tools and publications are disseminated through various channels and reach a wide audience. Over 80 countries benefit from technical assistance in the areas of trafficking in persons and smuggling of migrants. The electronic resources on the UNODC website were downloaded over 80,000 times. Relevant materials are also distributed during training activities, official meetings, conferences and through UNODC regional offices.

32. Training is equally important to increase the capacity of criminal justice practitioners to combat trafficking in persons and smuggling of migrants. Through its global training initiative on trafficking in persons, UNODC trained criminal justice practitioners in Egypt, Fiji, Kyrgyzstan, Mali, Portugal and Ukraine to deal effectively with victims of trafficking in persons and related investigations, prosecutions and international cooperation. The Office organized training programmes on preventing smuggling of migrants in Egypt, Ghana and Morocco and continues to assist States in East and South-East Asia in establishing a coordination and analysis unit for data collected on the smuggling of migrants.

33. UNODC is a member of the Global Migration Group and will assume the presidency of the Group during the second half of 2012. The Global Migration

Group is an important forum for inter-agency coordination with regard to migration-related issues. It brings together heads of agencies to promote the wider application of all relevant international and regional instruments and norms relating to migration and to encourage the adoption of more coherent, comprehensive and better coordinated approaches to the issue of international migration. As a member of the Group, UNODC assists Member States in ensuring that the rights of trafficked persons and smuggled migrants are upheld, in accordance with the Trafficking in Persons Protocol and the Smuggling of Migrants Protocol.

34. Among the conclusions reached by the Twelfth Congress was the need for UNODC, in cooperation with relevant partners, to play a role in collecting and disseminating data and information on the root causes of violence against migrants, migrant workers and their families, and on patterns of migration, as well as to continue its technical assistance work in the area of combating trafficking in persons and smuggling of migrants (A/CONF.213/18, paragraph 169).

## 5. Current challenges<sup>21</sup>

35. At present, there are about 214 million international migrants, representing more than 3 per cent of the world population.<sup>22</sup> 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. Only 37 per cent migrate from developing to developed countries, while 3 per cent move from developed to developing countries.<sup>23</sup>

36. Migrants, migrant workers and their families are vulnerable to abuse, violence and exploitation throughout the entire process of migration, from preparation for migration, departure, transit and the entire period of stay to the return to the State of origin or habitual residence. Violence can take many forms, including exploitation in the context of trafficking in persons or the risk to life and safety that may be linked to smuggling of migrants. Particularly vulnerable groups include women migrant workers, who may become victims of abuse, mistreatment and sexual violence by their employers, and undocumented migrants, especially those who are smuggled and trafficked. Racial discrimination, racist crimes and victimization may also result in violence against migrants, migrant workers and their families.

37. Understanding the nature and extent of violence against migrants, migrant workers and their families is difficult. Migrant populations are frequently believed to underreport crime, including violent crime, thus preventing adequate use of policy and law enforcement resources in immigrant communities. Moreover, undocumented migrants are not officially recorded and therefore unlikely to be included in victimization surveys. Even where data on migrants as victims of crime are available, international comparison is difficult. In the absence of internationally accepted definitions, countries use different categories and concepts to collect data.

<sup>21</sup> A more exhaustive overview of the challenges involved is contained in the working paper prepared by the Secretariat on crime prevention and criminal justice responses to violence against migrants, migrant workers and their families (A/CONF.213/11).

<sup>22</sup> International Organization for Migration, *World Migration Report 2010: The Future of Migration — Building Capacities for Change* (Geneva, 2010), p. 115.

<sup>23</sup> *Human Development Report 2009: Overcoming Barriers — Human Mobility and Development* (United Nations publication, Sales No. E.09.III.B.1), p. 21.

Further difficulties are caused by changes in applicable legislation and differences between domestic laws and legal systems.

38. In addition to isolation from law enforcement and criminal justice systems, those who do report victimization to law enforcement authorities may face greater hardship during the investigation or judicial process than non-migrants. Problems can include language barriers, cultural differences and lack of understanding of a foreign criminal justice system. Effective criminal justice responses to violence experienced by migrants, migrant workers and their families may require the establishment of specialized law enforcement programmes, policies or practices, including multilingual assistance and police and victim support outreach in migrant communities. Targeting crime prevention strategies at such groups is a particular challenge and requires innovative approaches, including social-based initiatives. Access to legal aid is often limited. In many cases, in particular for undocumented or irregular migrants, the fear of being deported or detained will prevent reporting of crime.

39. Undocumented or irregular migrants are especially vulnerable and face particular challenges, including the inability to seek protection and relief from the authorities. As highlighted by the Global Migration Group, irregular migrants are more likely to face discrimination, exclusion, exploitation and abuse. In many cases, they are denied basic labour protections, guarantees of due process, personal security and health care. They often face prolonged detention or ill-treatment, and in some cases enslavement, rape or even murder. Irregular migrants are more likely to be targeted by xenophobes and racists, victimized by unscrupulous employers and sexual predators, and can easily fall prey to criminal traffickers and smugglers.

40. Competent authorities investigating offences involving violence against migrants, migrant workers and their families may also face challenges. In cases of crimes connected to racial discrimination and xenophobia it is often difficult to prove the existence of a xenophobic motive. While this may be due to the difficulties that victims face in reporting such cases, the competent authorities require adequate capacity to address the specificities in the investigation and prosecution of such crimes.

## **6. Preventive measures and criminal justice responses**

41. Violence against migrants, migrant workers and their families is a problem affecting many States. Responses to the problem must be multi-sectoral and multidisciplinary, involving all relevant sectors of government and civil society. Responses must also take into account the international legal framework and relevant political commitments outlined above. Relevant measures include both policies, programmes and laws to prevent violence, as well as the use of criminal law and law enforcement to deter and bring perpetrators to justice to effectively implement the legislation and policies.

### *Preventive measures*

42. Legal provisions against discrimination and xenophobia are an important basis for preventing violence against migrants, migrant workers and their families. While constitutional provisions on non-discrimination exist in several Member States, those provisions do not always apply to migrants or their application may

face challenges in practice. Some Member States have adopted specific anti-discrimination laws. In other Member States, specific legal provisions are in force providing that non-citizens shall not be subject to discrimination.

43. The effectiveness of law enforcement responses and the existence of a functioning criminal justice system also play an important role in preventing violence against migrants, migrant workers and their families. However, legal and law enforcement measures alone are insufficient to prevent related crimes, including smuggling of migrants and trafficking in persons.

44. Smuggling of migrants is a complex process, which must be analysed in order to develop effective prevention strategies. Increased border control measures may have the result of diverting routes elsewhere, thus increasing the likelihood of smugglers' using more risky routes that may cause migrants to lose their lives. If migrants are returned to their country of origin without consideration of the broader issues involved in their decision to migrate, they may simply attempt another journey. There are important push and pull factors that cause a person to become a migrant or a migrant smuggler, which must all be addressed in order to prevent smuggling of migrants.

45. The prevention of trafficking in persons also requires coordinated and comprehensive responses. Efforts to deter traffickers by addressing the root causes that led them to become traffickers must go hand in hand with the deterrent impact of criminal justice efforts. Victim assistance efforts to break the cycle of trafficking must be directed at preventing victims both from being re-trafficked and from becoming traffickers. Data collection should take place at every opportunity. As more information about traffickers and their methods becomes available, efforts to prevent trafficking can be better targeted.

46. Prevention of violence against migrants, migrant workers and their families needs to be addressed at multiple levels, including at the policy level. A clear and comprehensive immigration policy, based on sound statistical data, could help to better integrate migrants, making them less vulnerable to violence and crime. Further preventive measures may include awareness-raising campaigns to combat discrimination; access to justice, including removing linguistic, social and cultural barriers to improve access; support and assistance to migrant victims; measures to improve relations between migrants and the police; as well as media relations with migrant communities.

#### *Criminal justice measures*

47. In order to fight violence against migrants, migrant workers and their families, Member States should have in place effective, fair and humane criminal justice systems. Law enforcement and criminal justice responses to the problem should be guided by United Nations standards and norms in crime prevention and criminal justice. National criminal justice strategies, based on human rights and the rule of law, are key instruments in addressing this and related issues in a comprehensive way.

48. Specific measures to address violence motivated by xenophobia or hate crimes may include the provision of resources and training for police, justice and other relevant officials, a stronger response of police and justice authorities to ensure that perpetrators of hate crimes are held accountable, using police and justice statistics

as a means of monitoring trends in relation to such crimes, the establishment of a visible and accessible mechanism to receive reports of cases of violence against foreign nationals or the establishment of a special body to ensure effective coordination of different government department programmes on social cohesion, addressing xenophobia and tackling hate crimes.

49. Criminal law and other measures may be used to more effectively protect migrants, migrant workers and their families against discrimination and violence. While few States have specifically criminalized discrimination based on race, ethnicity or nationality, some States have established aggravating circumstances for crimes against individuals or property on the basis of a person's race, nationality, religion, ethnicity, sexual orientation or gender identity.

50. Some Member States have taken measures to criminalize irregular migration. In specific circumstances, this may affect efforts to address violence against migrants, migrant workers and their families. The Special Rapporteur on the human rights of migrants has repeatedly expressed concern that criminalizing irregular migration makes all migrants, regardless of immigration status, vulnerable to potential racist or xenophobic acts and that many enforcement mechanisms designed to prevent irregular or unauthorized migration may themselves be responsible for violence and may have the side effect of encouraging the expansion of smuggling and trafficking networks.<sup>24</sup>

## **7. International cooperation**

51. International cooperation is crucial in addressing transnational crime issues, including where they involve violence against migrants, migrant workers and their families. The whole range of formal and informal channels for cooperation should be utilized and strengthened by Member States. At an operational level, informal arrangements can help law enforcement agents and investigators to obtain or pass on information quickly across borders. Formal cooperation for purposes of extradition, mutual legal assistance and transfer of convicted persons is equally important. In most cases, it is based on bilateral or multilateral treaties, including relevant or regional agreements.

52. UNODC assists Member States in their efforts to cooperate and implement the Organized Crime Convention and its Protocols,<sup>25</sup> as well as relevant United Nations standards and norms in crime prevention and criminal justice, in accordance with relevant human rights standards. The UNODC international cooperation network web page includes national and regional contact details and enables authorities to establish links with one another. The Mutual Legal Assistance Request Writer Tool and the online directory of competent national authorities facilitate the drafting and processing of requests for mutual legal assistance or extradition. UNODC continues to develop model laws and handbooks on transnational organized crime issues and to train prosecutors and law enforcement and judicial officers on various aspects of international cooperation.

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<sup>24</sup> See, for example, A/65/222 and A/HRC/17/33.

<sup>25</sup> See the report of the Secretary-General on international cooperation in combating transnational organized crime and corruption (E/CN.15/2012/9).

53. To further information-sharing that enhances the effectiveness of international cooperation, UNODC hosts an online legal library, which provides access to officially documented instances of human trafficking, relevant legislation and related case law. It contains details on the nationalities of victims and perpetrators, trafficking routes, verdicts and other information related to prosecuted cases from around the world.

54. The Office continues to support Member States in fostering international cooperation and to provide technical assistance, upon request and within its mandate, in order to promote effective criminal justice responses to violence against migrants, migrant workers and their families, and to address the problem in connection with trafficking in persons and smuggling of migrants.

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