

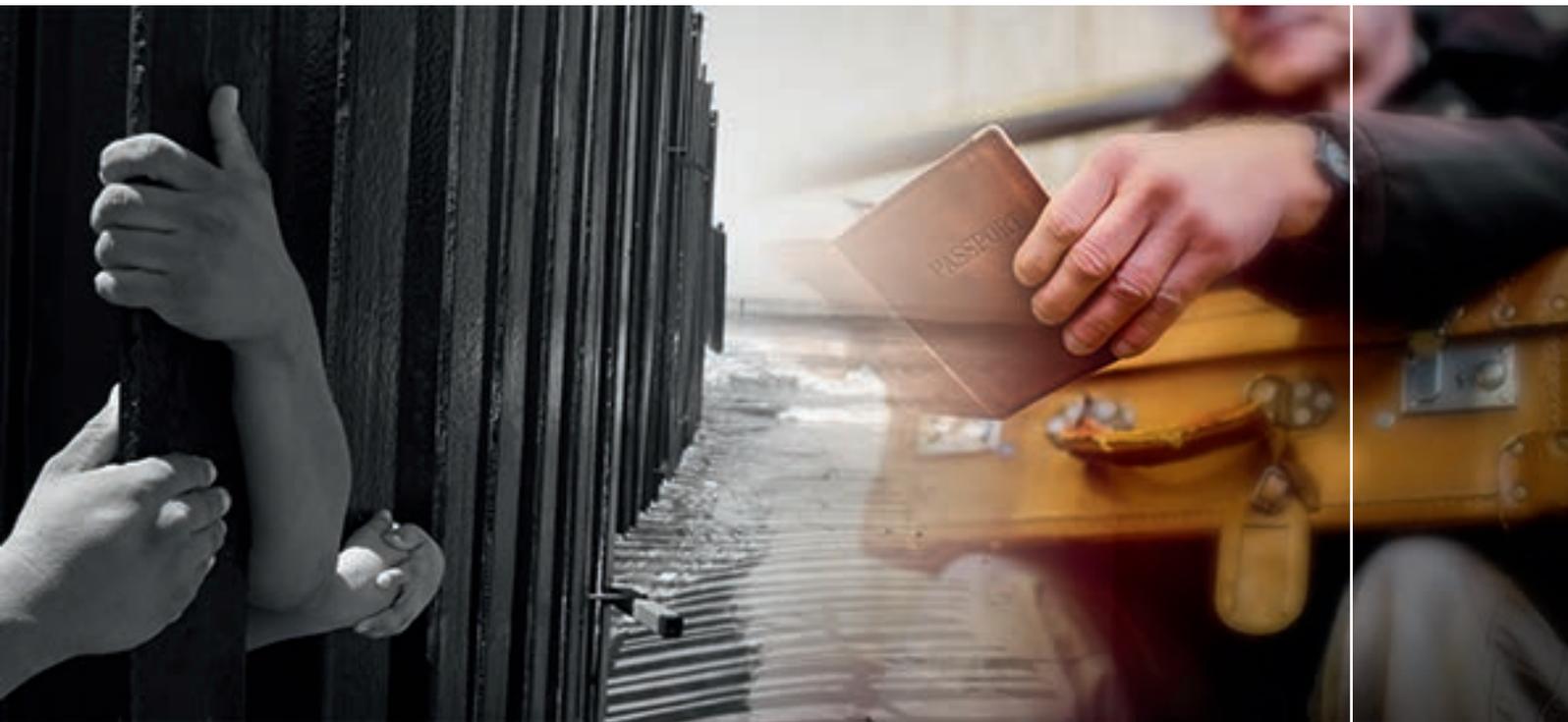


UNODC

United Nations Office on Drugs and Crime



International Federation
of Red Cross and Red Crescent Societies



Combating violence against migrants

Criminal justice measures to prevent, investigate, prosecute and punish violence against migrants, migrant workers and their families and to protect victims

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*Human rights are not reserved for citizens:
they benefit everyone who is on a State's territory
or within its jurisdiction, without discrimination,
whatever their administrative status and circumstances.**

* François Crépeau, United Nations Special Rapporteur on the human rights of migrants, “Mainstreaming a human rights-based approach to migration within the High Level Dialogue”, statement to the PGA Plenary Session — Criminalization of Migrants, New York, 2 October 2013.

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Executive summary

Background and framework

This publication is offered in direct response to General Assembly Resolution 67/185 on “Promoting efforts to eliminate violence against migrants, migrant workers and their families.” That resolution pointed to the continuing instances of criminal acts committed against migrants, migrant workers and their families in all regions of the world, including acts of violence, and called for States to strengthen their efforts to prevent and combat violence, prosecute its perpetrators and protect its victims. The publication is offered as a tool to support States in their efforts to those ends. It offers several measures for legislators, policymakers and criminal justice practitioners and others who encounter migrants in regular and irregular situations in their work.

The normative framework for the measures outlined in this publication, include the international human rights treaties, International Labour Organisation (ILO) Conventions, Protocols and Recommendations, transnational organized crime treaties, and other international instruments which outline a framework for protecting the rights of migrants, regardless of their status. The measures are also informed by United Nations Standards and Norms in crime prevention and criminal justice. The three guiding principles are offered in the interpretation and implementation of the 10 measures outlined in the publication:

- *The primacy of human rights*: underlines the obligation of States to place human rights of migrants above law enforcement and migration management objectives.
- *Non-discrimination*: underlines the obligation States have to protect the rights of all persons in their jurisdiction, without discrimination on any basis of any grounds, including migration or other status.
- *Victim-centred approach*: underlines the need to place the rights and need of all victims, irrespective of their status, at the centre of efforts to combat violence.

Measures

There are 10 measures offered in this publication, all of which must be guided by the principles outlined above. For each measure, there is a narrative description, some suggestions for consideration for practitioners charged with operationalizing measures in practice, and a box containing promising practice examples from various countries.

Measure 1. Establish an effective knowledge base

Underlines the need to effectively collect, gather, analyse, share and use data for the purpose of mounting evidence-based responses to violence against migrants through (a) developing standardized tools and methods of data collection, (b) ensuring appropriate data is collected in relation to violence against migrants, and (c) using results of data collection effectively.

Measure 2. Address root causes of violence in migration processes and responses

Emphasizes the complexity of causes of violence against migrants en route, including responses to irregular migration processes and other phenomena that may increase vulnerability to violence.

Responses to these challenges include (a) providing access to safe migration channels, (b) making responses to irregular migration processes and transnational crimes rights-based, and (c) combating violence during migration processes such as in detention facilities.

Measure 3. Address root causes of violence in transit and destination countries

Outlines the complex causes of violence against migrants in countries of transit and destination, including racism, discrimination, xenophobia and related intolerance that results in violence. The causes of violence within migrant communities is also touched on. The measure calls for (a) prevention of violence in employment of migrants, (b) prevention of violence in host communities, and (c) preventing violence within migrant communities.

Measure 4. Strengthen legislation to combat violence against migrants

Describes the need to ensure that domestic legislation accords with international law, and is robust enough to capture the specific violence that migrants may face, including within migrant communities. Measures outlined to these ends include (a) ensuring legislation does not exacerbate violence, (b) strengthening legislation against racism, discrimination and xenophobia, and (c) strengthening legislation to combat violence within migrant communities.

Measure 5. Investigate and prosecute violence against migrants

Outlines the need to effectively investigate and prosecute violence against migrants by bringing criminal justice apparatus to bear in a way that caters for the particular challenges posed when victims are migrants. Specific measures include (a) strengthening relationships between migrants and police, (b) providing targeted, ongoing and multidisciplinary training to police, and (c) implementing reporting mechanisms for migrants to report violence.

Measure 6. Protect victims and witnesses

Addresses the specific challenges of protecting victims and witnesses of violence who are migrants, who may fear further victimization or have other concerns owing to their irregular migration situations. Measures outlined include (a) informing victims of their right to be protected from violence and to seek redress, (b) protecting victims from further violence and (c) protecting migrant witnesses from retaliation.

Measure 7. Assist migrant victims of violence

Provides for specific assistance measures to be put in place for migrant victims of violence who may face barriers to accessing assistance, owing to their migration status or other challenges. Measures discussed include (a) informing migrants of the availability of assistance services, (b) ensuring migrants have access to those services, and (c) providing services to migrant victims with special needs.

Measure 8. Provide access to justice

Emphasizes access to justice as an essential component in effective investigations and prosecutions, as well in the prevention of further violence against migrants. Measures to strengthen access to justice include (a) supporting migrant victims through the criminal justice process, (b) ensuring their access to legal aid in criminal justice systems, and (c) removing barriers that migrants may face in accessing justice.

Measure 9. Provide restitution and compensation

Stresses the need to provide restitution and compensation to migrant victims of violence to support their recovery, empower them against further violence and to punish perpetrators. Restitution and compensation mechanisms can be made accessible to migrants by (a) securing restitution and compensation from offenders, (b) providing state restitution and compensation, and (c) providing state restitution and compensation where the state perpetrates violence.

Measure 10. Sentence and rehabilitate perpetrators

Emphasizes the need to ensure that sentences imposed for violence against migrants are commensurate to the seriousness of offences, and that sentences imposed on migrant perpetrators are not discriminatory. Rights of victims and offenders can be balanced by (a) ensuring appropriate sentences for crimes of violence, (b) ensuring non-discriminatory incarceration of migrants for violent crimes, and (c) strengthening rehabilitation and reintegration efforts.

I. BACKGROUND AND FRAMEWORK

1. Background

For as long as humans have existed they have migrated, spreading goods, cultures and ideas across the globe. Currently, there are some 232 million international migrants, representing only 3.2 per cent of the world's population. Of those, 136 million live in developed countries, and 96 live in developing countries. Nearly two-thirds of all migrants live in either Europe (72 million) or Asia (71 million).¹

Migration has been recognized as an enabler of human development that has empowered not only migrants and their families, but also the societies they have left and those that have received them. These gains hail the need for effective and cohesive governance of migration, to better harness the social and economic opportunities of human movement.² Yet migration is also a consequence and symptom of lack of development, and related push factors such as violence and lack of opportunity, and its results are not always positive. Countries that are ill prepared to meet the challenges faced by accelerating and diversifying migration do not reap benefits from it, but rather may suffer negative social and economic consequences. Where resources are limited or inadequately allocated to confront influxes of migrants, resources are strained and quickly depleted. Failure to effectively adapt to changing migration realities by proactively, effectively and sustainably integrating migrants perpetuates a destructive cycle in which strained relationships between host societies and migrant communities exacerbates hostility and discord between them. Some marginalized migrants may detract more from host societies than they can contribute, resulting in animosity between host and migrant populations. Left unchecked, this cycle can entrench vulnerability and fuel xenophobia and discrimination that can manifest in violence and other crimes perpetrated by and against migrants.

1.1. Violence committed against migrants

Significant attention has been given to the horrors endured or tragically succumbed to by many people in the process of migrating. Reports of deaths are increasingly common around the world, with the numbers of people victimized en route rising as organized criminals realize the profit to be made from exploiting human hope and desperation.³ Violence perpetrated against migrants by border and police officials may pose additional threats to migrants. Many people become stranded en route, rendered more vulnerable to violence.⁴ Violence can be perpetrated in the course of

¹United Nations Department of Economic and Social Affairs, *Estimates of international migrant stock worldwide*. Available from <http://esa.un.org/unmigration/wallchart2013.htm>.

²United Nations System Chief Executives Board for Coordination, *International Migration and Development: Contributions and Recommendations of the International System* (2013), p. 7.

³For more information on migrant smuggling, visit: www.unodc.org/unodc/en/human-trafficking/publications.html.

⁴In relation to particular risks faced by women migrants, see: European Union Agency for Fundamental Rights, *Fundamental Rights at Europe's Southern Sea Borders* (Vienna, Austria, 2013), available from: <http://fra.europa.eu/en/publication/2013/fundamental-rights-europes-southern-sea-borders>.

individual and collective expulsions.⁵ Repressive policies aimed at curtailing migration mean that migrants may turn to smuggling services for lack of alternatives to migrate.

The violence that migrants face en route is only briefly touched upon in this publication; that issue has been well discussed elsewhere, particularly in the context of human trafficking and migrant smuggling.⁶ Rather, the focus of this publication is the plight of people who have migrated and are living in transit or destination countries. The essentiality of upholding the principle of *non-refoulement* in order to ensure that people are not returned to violent situations, is discussed extensively elsewhere and therefore only briefly touched upon here.⁷ Further, the special needs of women and children are acknowledged, but the publication does not focus on those specifically.

Understanding the nature and extent of violence faced by migrants, migrant workers and their families, is severely hampered by the lack of data available. The fact that migrants in irregular situations may not be officially recorded means that their victimization is unlikely to be reflected in surveys. In many countries migrants are also not categorized specifically in data on crime and violence. Different categorization of migrants and classification of the crimes committed against them means that international comparisons cannot be made. Furthermore, migrants are believed to underreport crimes, including violent crimes committed against them. In particular migrants in irregular situations may fear, and actually face, detention and/or deportation if they approach authorities for help. For many migrants, enduring violence may be the better choice than seeking protection from it, where doing so exposes them to risks of retaliation or return to their countries of origin. Even when migrants do report victimization, criminal justice processes may be ineffective to respond for want of capacity and linguistic and cultural adaptability, and migrant victims of violence may lack access to legal aid and other necessary support.⁸ As a result, criminal justice apparatus may not be brought to bear in response to significant and often rising violence, allowing it to continue with impunity.

Violence in exploitation and labour contexts

Migrants are extremely susceptible to violence in trafficking processes that may have commenced in countries of origin and result in exploitation in countries of destination, or they may be exploited within destination countries after their arrival. The violence that is often used in controlling or exploiting victims of trafficking in sexual and non-sexual forced labour contexts is well documented.⁹ Exploitation in labour contexts is not limited to that which is the end purpose of trafficking, but can occur in the context of regular and irregular employment, whereby unscrupulous employers maximize their profits by preying on the limited opportunities many migrants, including those in irregular situations, have to access the labour market, their lack of knowledge about their rights, and their lack of ability to assert them.¹⁰ Undocumented workers can be threatened with arrest

⁵See the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, *General Comment No. 2 on the rights of migrant workers in an irregular situation and members of their families* (CMW/C/GC/2).

⁶See also GA/RES/67/185.

⁷See United Nations High Commissioner for Refugees, *The Protection Manual* (Geneva), available from: www.refworld.org/protectionmanual.html.

⁸See Twenty-first Session of the Commission on Crime Prevention and Criminal Justice, *Discussion guide for the thematic discussion on violence against migrants, migrant workers and their families* (E/CN.15/2012/5), paragraphs 37-38.

⁹For more information on human trafficking, visit: www.unodc.org/unodc/en/human-trafficking/publications.html.

¹⁰On the particular vulnerability of female migrants, see for example, Human Rights Watch, *Cultivating fear: The vulnerability of immigrant farmworkers in the US to sexual violence and sexual harassment* (2012), pp. 34-36. Also see International Organization for Migration, *Working to Address Violence against Women Migrant Workers* (2009), p. 25.

and deportation if they challenge exploitative working conditions, and have often little possibilities to access legal redress for labour rights violations. When employed in the domestic work sector, the isolated nature and limited regulation of the work exacerbates workers' vulnerability.

Violence resulting from racism, discrimination, xenophobia and related intolerance

Violence against migrants, migrant workers and their families can result from racism, discrimination, xenophobia and related intolerance emanating from private or state actors in transit and destination countries. In this regard, it is important to note that where social, cultural, religious and ideological differences are overlooked in efforts to integrate migrants into societies, the result may be conflicts between them on any or all of those grounds. Moreover, where special needs of individuals within migrant groups are not met, including those who have previously experienced torture or other serious physical, psychological or sexual violence, their risk of violence is heightened. Lack of understanding can aggravate prejudices between migrants and non-migrants, particularly during times of economic hardship, tensions can increase as competition (or perceived competition) for social goods including jobs, houses and welfare may increase. Political leaders may fan those tensions rather than diffuse them, as part of an agenda to divert attention from their own lack of governance and attribute blame to the negative impact of migration.¹¹ As tensions take on racist, discriminatory or xenophobic dimensions, violence can result, impacting migrants more than other groups. In some cases, racism, discrimination and xenophobia may lead to hate crimes, i.e. criminal acts motivated by bias or prejudice towards particular groups of people like migrants.

Violence between and within migrant groups and communities

Violence can occur between and within migrant communities. Ethnic and other tensions may be imported from countries and regions of origin, manifesting in violence in countries of destination. Such tensions may be exacerbated where migrant populations are concentrated in particular areas and result in gangs or other allegiances being formed and divided along ethnic, racial, sectarian or other lines that disproportionately affect migrant populations.¹² Migrants may also migrate to urban environments that place them at a particularly high risk of violence.¹³ Furthermore, violence may occur within certain migrant communities in the form of domestic and gender-based violence that may be more prevalent in some ethnic migrant groups.¹⁴ Particularly in developed countries, persons vulnerable to violent traditional and cultural practices such as female genital mutilation and honour crimes are more likely to be migrants or come from migrant backgrounds than from the non-migrant population. Such persons may be particularly isolated from the information and resources they need to have recourse against such violence and its perpetrators, who may be members of their own family or respected persons within their community.

¹¹See for instance, Twelfth United Nations Congress on Crime Prevention and Criminal Justice, Working paper prepared by the Secretariat, *Crime prevention and criminal justice responses to violence against migrants, migrant workers and their families* (A/CONF.213/11), pp. 2-3, paragraph 5-7. Also European Agency for Fundamental Rights, *Fundamental rights: Challenges and achievements* (Luxembourg, Publications Office of the European Union, 2014), pp. 151-153.

¹²In this context it has been noted that second-generation migrants are at greater risk of being victims of violent crime than the general population. See for example, Twelfth United Nations Congress on Crime Prevention and Criminal Justice, Working paper prepared by the Secretariat, *Crime prevention and criminal justice responses to violence against migrants, migrant workers and their families* (A/CONF.213/11), p. 9, paragraph 26-27.

¹³International Federation of Red Cross and Red Crescent Societies, *No Time for Doubt: Tackling Urban Risk* (Geneva, 2011), p. 23.

¹⁴See for instance, Twelfth United Nations Congress on Crime Prevention and Criminal Justice, Working paper prepared by the Secretariat, *Crime prevention and criminal justice responses to violence against migrants, migrant workers and their families* (A/CONF.213/11), p. 9.

Violence within the criminal justice system

In many countries, migrants face unequal or even discriminatory treatment by the criminal justice system. They 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, non-migrants may fare better 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.¹⁵ Temporary or permanent residence status of migrant perpetrators may be revoked or they may be banned from returning to countries, a practice called “double penalty”. Furthermore, migrants in irregular situations may even be criminalized and penalized for non-criminal conduct owing to their immigration status, including for offences committed in the course of irregularly entering or remaining in a country. Victims of violence in irregular situations may fear that reporting to police will result in their deportation. Once migrants have entered the criminal justice system as victims, witnesses or perpetrators, migrants may be more susceptible to violence than nationals are, not only from other offenders in contact with the criminal justice system, but also from criminal justice practitioners themselves. Police, prosecutors, judges and other state actors are not immune from xenophobic ideas that may exist in society, or may simply lack the tools and skills to accommodate the needs of migrants in a way that protects them from violence in the criminal justice system.

In short, migrants in both regular and irregular situations are acutely vulnerable to violence at the hands of private and state actors within societies. This violence, irrespective of its sources and its causes, must be confronted as a matter of urgent priority.

1.2. Background and scope of this tool

International political commitments have been made to incorporate measures to combat crimes including racism, xenophobia and related forms intolerance into crime prevention strategies.¹⁶ Specifically, in the *Salvador Declaration* of 2010, United Nations Member States made the following declaration:

“We affirm our determination to eliminate violence against migrants, migrant workers and their families, and we call on Member States to adopt measures for preventing and addressing effectively cases of such violence and to ensure that those individuals receive humane and respectful treatment from States, regardless of their status. We also invite Member States 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 (...)”¹⁷

Furthermore, General Assembly Resolution 67/185 on “Promoting efforts to eliminate violence against migrants, migrant workers and their families”¹⁸ calling on Member States, *inter alia*, to:

- Enact national legislation and take appropriate measures to combat criminal acts of racism, discrimination, xenophobia and related intolerance, including steps to reduce the vulner-

¹⁵Ibid., p. 13

¹⁶See Twenty-first Session of the Commission on Crime Prevention and Criminal Justice, *Discussion guide for the thematic discussion on violence against migrants, migrant workers and their families* (E/CN.15/2012/5), paragraph 20.

¹⁷General Assembly resolution 65/230 of 1 April 2011.

¹⁸General Assembly resolution 67/185 of 12 March 2013.

ability of migrants to crime and to increase their engagement with host societies, consistent with national law (paragraph 5).

- Institute measures, as appropriate, to strengthen the entire criminal justice process and to vigorously investigate and prosecute crimes against migrants, including trafficking in persons and other serious offences, especially crimes constituting violations of the human rights of migrants, giving special attention to assisting and protecting victims, in particular women and children (paragraph 7).
- Take measures to ensure that victims of crime, including migrants, migrant workers and their families, have access to the justice system for violations of their rights, irrespective of their immigration status (paragraph 14).
- Incorporate into national criminal justice strategies measures to prevent, prosecute and punish crimes involving violence against migrants, migrant workers and their families (paragraph 16).

In direct response to Resolution 67/185, this publication outlines measures that may assist States in their efforts to combat violence against migrants. It is offered primarily to legislators, policy makers and criminal justice practitioners as well as others working with them to prevent violence against migrants, to investigate and prosecute its perpetrators and assist and to protect migrant victims of violence.¹⁹ For the purpose of this publication, violence is understood broadly, as the use of force or power, either as an action or omission in any setting, threatened, perceived or actual against oneself, another person, a group, a community that either results in or has a high likelihood of resulting in death, physical injury, psychological or emotional harm, mal-development or deprivation.²⁰

2. Framework of norms and standards

Combating violence against migrants requires that legislative, policy and practical measures be taken in accordance with relevant norms and standards governing criminal justice response as well as human rights norms and standards. The United Nations system has arrived at several key messages in relation to migration and human rights, one of which is particularly pertinent.

“States should respect, protect and fulfill the human rights of all migrants, regardless of their legal status. Migrants whose rights are protected are able to live with dignity and security and, in turn, are better able to contribute to their host and origin societies both economically and socially than those who are exploited and marginalized. Migrants in an irregular situation, especially women, children and youth, are particularly vulnerable to abuse and exploitation. Host countries should avoid the criminalization of irregular migration, and prevent and combat discrimination, xenophobia, related intolerance and crimes against migrants and their families. Care should be taken to ensure that all persons in need of protection, including refugees, are identified and assisted within mixed migration flows.”²¹

This key message should be heeded in taking measures to prevent violence against migrants, investigate and prosecute its perpetrators and in assisting and protecting its victims.

¹⁹Throughout this publication, the term “migrant” refers to migrants, migrant workers and their families.

²⁰International Federation of Red Cross and Red Crescent Societies, *High-level meeting on violence* (Geneva, Switzerland, 2008).

²¹Office of the High Commissioner on Human Rights (OHCHR), *Migration and Human Rights: Improving Human Rights-based Governance of International Migration* (2014), p. 46.

2.1. International legal framework

Though violence *per se* is only explicitly mentioned in some international legal instruments,²² those instruments nonetheless offer a rich framework for combating violence against migrants. Article 16(2) of the International Convention on the Rights of Migrant Workers and Members of their Families (ICRMW) states that migrants are entitled to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or private individuals, groups or institutions.²³ Yet, despite the fact that it offers States a framework for combating illegal and clandestine movement of migrants and their employment, the ICRMW suffers from a lack of ratification, with signatories primarily being countries of origin rather than destination for migration.²⁴ Lack of political commitment and failure of the Convention to adequately differentiate between regular migrants and those in irregular situations have been cited as key among reasons for low ratification.²⁵ However, this low ratification does not dilute State obligations to implement measures to combat violence against migrants. Indeed, migrants, irrespective of their status, enjoy the protection of all human rights set out in international instruments with only very limited exceptions.²⁶ Migrants, like all rights holders, are protected by the International Bill of Human Rights, as well as a number of other international instruments, as outlined in the box below.

International Legal Framework

The International Bill of Human Rights

- The *Universal Declaration of Human Rights* (UDHR)
- The *International Covenant on Economic, Social and Cultural Rights* (ICESCR)
- The *International Covenant on Civil and Political Rights* (ICCPR) and its two Optional Protocols.

Other international instruments of relevance include:

- The *Convention on the Rights of the Child* (CRC)
- The *Convention on the Elimination of Discrimination against Women* (CEDAW)
- The *Convention on the Rights of Persons with Disabilities* (CRPD)
- The *Convention against Torture or other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT)
- The *Convention on the Elimination of All Forms of Racial Discrimination* (ICERD)
- The *International Convention on the Protection of the Rights of All Migrant Workers and their Families* (ICRMW)

²²See the inserted textbox on the Legal Framework below, in particular ICERD Articles 4(a) and 5(b); ICCPR Article 20(2); CRC Article 19; ICRMW (Articles 13(3)(d), 16(2), 68(1)(c); CRPD preamble paragraph (1), Article 16; Smuggling of Migrants Protocol, Article 16.

²³General Assembly resolution 45/158 of 18 December 1990

²⁴As at July 2014, the ICRMW has only 37 Signatories and 46 Parties. See: the United Nations Treaty Collection, available from https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&lang=en

²⁵B. Opeskin, United Nations Development Programme, Human Development Research Paper, *The Influence of International Law on the International Movement of Persons* (2009), p. 15.

²⁶See *International Covenant on Civil and Political Rights* (ICCPR), article 25, as adopted by General Assembly resolution 2200A (XXI) of 16 December 1966, recognizing the right of citizens to take part in the conduct of public affairs, to vote and be elected and have access to public service.

- *The Convention Relating to the Status of Stateless Persons*

Also relevant to protect migrants from violence that may occur in the context of exploitation are:

- *The Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery*
- *The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of others.*

Additionally, the following International Labour Organisation (ILO) Conventions and recommendations protect migrants in employment situations:

- *P092, Protocol of 2014 to the Forced Labour Convention* (June 2014)
- *Recommendation No. 203 Forced Labour (Supplementary Measures)* (June 2014)
- *ILO Convention No. 97 concerning Migration for Employment* (Revised 1949)
- *Recommendation concerning Migration for Employment* (Revised 1949)
- *Recommendation No. 151 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)
- *Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour* (1999).
- *Convention No. 189 concerning Domestic Workers* (2011).

Where violence against migrants occurs in the context of organized crime, key instruments include:

- *The United Nations Convention against Transnational Organized Crime*
- *The Protocol against the Smuggling of Migrants by Land, Sea and Air* (Smuggling of Migrants Protocol)
- *The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (Trafficking in Persons Protocol).

Other instruments of general relevance to migration include:

- Geneva Conventions (1949)
- Convention on Consular Relations (1963)
- International Convention for the Safety of Life at Sea (1974)
- International Convention on Maritime Search and Rescue (1979)
- Convention on the Law of the Sea (1982)
- Rome Statute of International Criminal Court (1998)

2.2. United Nations standards and norms in crime prevention and criminal justice

In strengthening criminal justice responses specifically to violence against migrants, criminal justice systems must be strengthened generally in accordance with United Nations standards and norms in crime prevention and criminal justice, including by addressing the special needs of victims of crime in general.²⁷ Among the several United Nations standards and norms relevant to crime prevention and criminal justice, those of key relevance in responding to violence against migrants are:

- Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)
- Plan of action for the implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1998)
- Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Violations of International Human Rights and Humanitarian Law (2000)
- Guidelines for the Prevention of Crime (2002)
- Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (2005)
- Principles and Guidelines on Access to Legal Aid in Criminal justice systems (2013)
- Declaration on the Elimination of Violence against Women (1993)
- Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice (2014)²⁸

2.3. Guiding principles

The following guiding principles emerge from the above international norms and standards, that constitute the foundation for this publication. These principles should also guide the implementation of all legislative, policy and practical measures taken to prevent and combat violence against migrants, investigate and prosecute its perpetrators and protect its victims.²⁹

The primacy of human rights

States have a responsibility under international law to act with due diligence to prevent violence against migrants, migrant workers and their families, to investigate and prosecute perpetrators and to protect and assist migrant victims of violence. Human rights of migrants are to be at the centre of all efforts towards these ends; accordingly, any measures that are put in place to combat violence against migrants should not affect the human rights enjoyment and dignity of migrants, migrant workers and their families. In practical terms, this means ensuring that:

- The right to due process of all migrants, regardless of their status, is protected including their right to legal assistance, their right to an interpreter, the right to judicial remedy, the right to an individual examination and the right to appeal.

²⁷UNODC *Handbook on Effective Police Responses to Violence against Women* (2010), pp. 25-31.

²⁸General Assembly (GA) resolution 40/34, annex; Economic and Social Council (ECOSOC) resolution 1998/21, annex; GA resolution 60/147, annex; ECOSOC resolution 2002/13, annex; ECOSOC resolution 2005/20, annex; GA resolution 67/187, annex; GA resolution 48/104; GA resolution 69/104.

²⁹See for instance, Committee on Migrant Workers, *General Comment No. 2 on the rights of migrant workers in an irregular situation and members of their families* (CMW/C/GC/2) of 28 August 2013.

- The best interests of the child are the primary consideration in all situations involving children, regardless of the migration status of their parents and ensuring that the best interests of the child take priority over all other considerations including migration and criminal justice considerations.³⁰
- All crime prevention and criminal justice responses to violence against migrants, particularly against migrant women, are human rights-based, manage risk and promote victim safety and empowerment while ensuring offender accountability, in consideration for the particular vulnerability of migrant women to violence.³¹

The primacy of human rights requires that States protect and assist migrants in their jurisdiction, irrespective of their status. Obligations to protect and assist take primacy over law enforcement and other objectives, including any migration-related objectives. The fact that human rights supersedes other objectives is made clear for instance, in both the Trafficking in Persons and Smuggling of Migrants Protocols, the savings clauses of which both state:

“Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.”³²

Human rights of all migrants should be protected, including when rights are threatened as a result of irregular migration, irregular activities or criminal activities.

Non-discrimination

The principle of non-discrimination with respect to rights is contained in several instruments mentioned in section 2.1 of this report, including the ICCPR, ICESCR, ICERD, ICRMW and the CRC. The general principle that can be asserted is that human rights attach to all humans on the basis of their humanity; where rights are distinguished for reason of a person’s immigration or status, such a distinction must be reasonably justifiable at law, serve a legitimate purpose and be proportional to the achievement of that purpose.³³

The principle of non-discrimination must be at the centre of all measures taken to combat violence against migrants.³⁴ In practical terms, this principle means that criminal justice personnel are to

³⁰Special attention for children of migrants is flagged in General Assembly resolution 45/112, *Guidelines for the Prevention of Juvenile Delinquency* (the Riyadh Guidelines) of 14 December 1990; special protection measures for children of immigrants as vulnerable groups of children is noted in Economic and Social Council resolution 1997/30, *Guidelines for Action on Children in the Criminal Justice System* of 21 July 1997.

³¹See Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, General Assembly resolution 65/228 of 21 December 2010, annex paragraph 13. Also note that in the Preamble of the *Declaration on the Elimination of Violence against Women*, the General Assembly expresses concern that “some groups of women, such as... migrant women are especially vulnerable to violence.”

³²The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (UNTOC), Article 19(1), United Nations. *Treaty Series*, vol. 2241, No. 39574.

³³See also Committee on Migrant Workers, *General Comment No. 2 on the rights of migrant workers in an irregular situation and members of their families* (CMW/C/GC/2), paras 18-20. For more on human rights of non-citizens, see OHCHR, *Commentary: Recommended Principles and Guidelines on Human Rights and Human Trafficking* (New York and Geneva, 2010), pp. 57-60. Also see the *Guidance Note of the Secretary General on Racial Discrimination and Protection of Minorities* (United Nations, March 2013), available at: <http://www.ohchr.org/Documents/Issues/Minorities/GuidanceNoteRacialDiscriminationMinorities.pdf>

³⁴See Kalt, A., Houssain, M., Kiss, L., and Zimmerman, C., “Asylum seekers, violence and health: a systematic review of research in high income host countries”, *American Journal of Public Health*, 2003; 103(3): 30-42. In this context it is important to note that migrants who are discriminated against have a higher risk of suicide.

respect and protect the human rights of all migrants, without discrimination on the basis of their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, including nationality, migration status, ethnicity, disability, age, statelessness, marital and family status, sexual orientation or gender identity, health status, place of residence, residence status or economic and social situation, and regardless of whether they have been smuggled or trafficked. States must not only refrain from discriminating, but should also take positive steps to combat all forms of discrimination by both private actors and State actors.

Victim-centred approach

The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)³⁵ was a landmark achievement towards victim-centred justice. That declaration outlines principles that offer a foundation for human rights of victims of crime—including migrant victims of violence—providing them with:

- Compassionate treatment and respect for their dignity
- Access to justice to obtain redress
- Information about the status of their case and their role in it
- Opportunities to present their views and concerns at appropriate proceedings
- Assistance through the legal process
- Protection of their privacy and safety
- The option to use informal mechanisms for dispute resolution
- Fair restitution from offenders
- State compensation if offenders cannot provide restitution
- Social, health and other relevant assistance.

The victim-centred approach to criminal justice recognizes that victims are persons who are harmed by crime. A victim-centred approach is not only a fundamental aspect of the Declaration but also empowers victims to assist the criminal justice system in bringing criminals to justice.

The Declaration defines “victim” as follows:

1. “Victims’ means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.
2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term “victim” also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

³⁵General Assembly (GA) resolution 40/34, annex.

This definition of “victim” is expressly noted as being “applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.”³⁶ It is clear from this universally acknowledged understanding that migrants, migrant workers and their families can be victims of crime, irrespective of their status, and regardless of whether perpetrators of violence against them are identified.³⁷

³⁶See General Assembly resolution 40/34, 29 November 1985, paragraph 3.

³⁷United Nations Centre for International Crime Prevention, *Guide for Policy Makers on the Implementation of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (1999) notes that “victims” are broadly construed in some jurisdictions (e.g. Finland) to include those who have suffered physical or mental harm.

II. MEASURES

Effective, fair and humane criminal justice systems play a crucial role in upholding and implementing human rights. They are essential to prevent and combat the violence that is a root cause of migration as well as that committed against people for the fact of being migrant.³⁸ If law enforcement responses are deficient in protecting citizens from violence, they are unlikely to rise to the challenge of preventing violence against migrants, migrant workers and their families. However, as has been noted elsewhere, legal and law enforcement measures alone are insufficient to prevent violence against migrants. UNODC has noted that:

“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 preventative 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.”³⁹

Clearly, criminal justice responses must be embedded in a wider comprehensive approach to combating violence against migrants. Exploring all aspects of a comprehensive criminal justice system is beyond the scope of this publication. Rather, the sections that follow focus on strengthening aspects of criminal justice system responses specifically in relation to preventing and combating violence against migrants, investigating and prosecuting its perpetrators and protecting and assisting its victims. The measures proposed are not mutually exclusive, but are offered as components of a wider, comprehensive response towards addressing violence against migrants.

Ten key measures in responding to violence against migrants are offered below:

1. Establish an effective knowledge base
2. Address root causes of violence in migration processes and responses
3. Address root causes of violence in transit and destination countries
4. Strengthen legislation
5. Investigate and prosecute violence against migrants
6. Protect victims and witnesses
7. Assist migrant victims of violence
8. Ensure access to justice
9. Provide restitution and compensation
10. Sentence and rehabilitate perpetrators

³⁸See UNODC, *Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice* (New York, 2006).

³⁹See Twenty-first Session of the Commission on Crime Prevention and Criminal Justice, *Discussion guide for the thematic discussion on violence against migrants, migrant workers and their families* (E/CN.15/2012/5), paragraph 46.

Under each key measure specific measures are offered with recommendations provided under each in accordance with international norms and standards. Additionally, good practice examples of legislative, policy and institutional measures from around the world and useful resources are offered in boxes supporting each section.

1. Establish an effective knowledge base

Without an effective knowledge base, responses to combat violence against migrants will not be meaningfully targeted. There are several challenges to establishing a knowledge base on violence against migrants, migrant workers and their families. These include underreporting of crime by migrants, the fact that undocumented migrants are not officially recorded and therefore may not be included in victimization surveys, and the differences in definitions used to collect data making international comparisons difficult.⁴⁰

Notwithstanding these challenges, collecting and disseminating crime and victimization data is necessary to better understand trends, forms, causes and consequences of violence against migrants, migrant workers and their families.⁴¹ Data and information is particularly required on the root causes of violence against migrants and their families and on patterns of migration.⁴² That data and information should be used to effectively guide the development of prevention strategies targeting vulnerable groups (including unaccompanied and separated children), and to empower them against violence.

1.1. Developing standardized tools and methods of data collection

The Plan of action for the implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, invites Member States and intergovernmental and non-governmental organizations to give consideration to “the further development and use of methods of gathering data on victimization, such as standardized victimization surveys, including their extension to cover groups of victims such as victims and witnesses of organized crime, terrorism, economic and environmental crime or bias or hate crimes and victims of violence against women, children and migrants.”⁴³ The Secretary General of the United Nations further recommends that States urgently develop “relevant, valid, and reliable knowledge on migration and human rights issues, including through the collection of data disaggregated on the basis of sex, age and legal status, while ensuring that such data collection activities are in accordance with international standards on data protection and the right to privacy.”⁴⁴

Quantitative and qualitative techniques are required to estimate the nature and extent of violence against migrants.⁴⁵ To strengthen data collection tools and methodologies in relation to violence against migrants, States should consider designating an authority to be responsible for data collection on violence against migrants, migrant workers and their families. Where possible, States should also participate in international, regional or national research or technical assistance projects to examine the prevalence of violence against migrants. Their efforts to collect complementary and comparable data will be further strengthened if technical specifications are harmonized at the national, regional and international level.

⁴⁰Ibid., p. 15, paragraph 37.

⁴¹Ibid., p. 3, paragraph 3(ii).

⁴²Ibid., paragraph 34. For several examples of participatory research on violence against women migrants, see Platform for International Cooperation on Undocumented Migrants (PICUM), *Strategies to End Double Violence against Undocumented Women: Protecting Rights and Ensuring Justice* (Brussels, 2012), pp. 29-44.

⁴³Economic and Social Council (ECOSOC) resolution 1998/21, annex.

⁴⁴See General Assembly resolution, 68/292 of 9 August 2013, paragraph 95(m).

⁴⁵See Twelfth United Nations Congress on Crime Prevention and Criminal Justice, Working paper prepared by the Secretariat, *Crime prevention and criminal justice responses to violence against migrants, migrant workers and their families* (A/CONF.213/11), 5 February 2010, paragraph 49.

Suggestions for consideration:

- Allocate sufficient financial support for research on violence against migrants, and remove barriers to research involving migrants in irregular situations for both academics, civil society organizations and service providers.
- Designate an authority responsible for data collection on violence against migrants.
- Establish mechanisms for systematic and coordinated data collection on violence against migrants, including through use of population-based surveys such as crime surveys and victimization surveys, to assess the nature and extent of such violence.
- Strengthen use of existing data collection tools to gather relevant data and effectively use it to combat violence against migrants.
- Ensure that data collection tools are designed and data is collected and used in accordance with best ethical research practice. Any research or data collection surveys should do no harm to researchers and research subjects. Specifically, protections should be put in place to ensure that findings from research conducted into violence against migrants is not used for migration control purposes, in accordance with the principle of beneficence.

International research

The United Nations has developed several data collection tools:

- The United Nations Population Division of the Department of Economic and Social Affairs developed the United Nations Global Migration Database. The database offers estimates of international migrant stock disaggregated by age and sex as well as destination and origin, on the basis of population censuses, registers, surveys and other official statistics from more than 200 countries and territories.^a
- UNODC also produces biennial global reports on trafficking in persons, analyzing trafficking flows and patterns across the globe, and maintains a public global database of human trafficking cases in national criminal justice systems.^b
- The United Nations Children’s Fund (UNICEF), the Department of Economic and Social Affairs and the Special Unit for South-South Cooperation have created the United Nations Global Migration Database, which includes all publicly available data on international migrant stocks, separated out by age and sex as well as by country of birth and citizenship in order to facilitate research and policymaking on issues related to children in the context of migration.^c
- The IOM and Gallup joined forces to create the “Gallup World Poll: The Many Faces of Global Migration”, asking migrants and potential migrant about their lives. World Poll surveys take place in more than 150 countries, territories and regions and include more than 750,000 interviews since 2005, offering insight into push and pull factors, and experiences of migrating temporarily or permanently, and implications for governments, inter-governmental and non-governmental organizations and other stakeholders.^d

“The Migrant Files” is a database produced and managed by European Journalists in 2013 with the purpose of people who die trying to reach Europe. It is partly funded by the nonprofit journalismfund.eu. The database gathers different sources of publicly-available information in a bid to shed light on the situation of migrants seeking refuge in Europe. It reports that more than 25,000 people have died trying to reach Europe since 2000 both en route and in detention.^e

Regional research

Participants of the *Sana'a Declaration* that emerged from the *Regional Conference on Asylum and Migration* (11-13 November 2013)^f resolved to study the establishment of a regional research centre on issues related to asylum migration with effective cooperation between countries in the region and international organizations; to develop national databases through statistical surveys and networking; and providing regional data in accordance with international standards and mechanisms of data exchange.^g

The Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Cooperation in Europe (OSCE) releases an annual hate crime report bringing together information from participating States, civil society organizations and inter-governmental organizations on hate crimes. In 2014, the ODIHR launched an accompanying website to support participating States in combating hate crime.^h

National research

The Pew Research Centre's Hispanic Trends Project was launched in 2001 to improve public understanding of the Hispanic population in the United States. It conducts opinion surveys to capture the views of Latinos on a range of social and public policy issues, including through a National Survey, and publishes demographic studies and other research on a range of issues including immigration trends, youth, work, employment and undocumented immigration. The Hispanic Trends Project takes no positions on the issues it researches. In August 2014, the project surveyed Hispanic confidence in the legal system, exploring issues including race, use of force, rates of violent crime victimization, and protection from violence.ⁱ

^a See data on the international migrant stock available from: www.un.org/en/development/desa/population/migration/data/index.shtml

^b www.unodc.org

^c See United Nations Global Migration Database, available from: <http://esa.un.org/unmigration/>

^d See Gallup World Poll: The Many Faces of Global Migration, available from: http://publications.iom.int/bookstore/index.php?main_page=product_info&cPath=57&products_id=1343

^e See www.detective.io/detective/the-migrants-files/

^f The regional conference was called by the Government of the Republic of Yemen and attended by the Kingdom of Bahrain, the Republic of Djibouti, the State of Eritrea, the Federal Democratic Republic of Ethiopia, the State of Kuwait, the Sultanate of Oman, the State of Qatar, the Kingdom of Saudi Arabia, the Federal Republic of Somalia, the United Arab Emirates, as well as the Arab League, the Cooperation Council for the Arab States of the Gulf, the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM).

^g See UNCHR *Sana'a Declaration, Regional Conference on Asylum and Migration* of 11-13 November 2013, paragraph 9.

^h Information available from: <http://hatecrime.osce.org>.

ⁱ See: www.pewresearch.org/fact-tank/2014/08/28/latino-confidence-in-local-police-lower-than-among-whites/.

1.2. Ensuring appropriate data is collected in relation to violence against migrants

In collecting data specifically on violence against migrants, appropriate information must be gathered and meaningfully disaggregated to understand trends, forms, causes and consequences of violence against migrants, migrant workers and their family. One measure in this respect is to ensure that information on migrant victims' background, including citizenship, country of birth and/or residence status of victims is collected when a crime is reported to the police. Victimization surveys and other data collection tools should also record information on the migration status of respondents. Surveys and studies should be conducted that explore the motivation of violence

against migrants, in particular, to determine whether they have been targeted because of racial, ethnic or religious motivations. Where migrants are victims of violence perpetrated within migrant communities, causes must also be studied as a means to informing preventative efforts. Information collected on migrant victims of violence should be disaggregated according to year, gender, age and nationality.

Suggestions for consideration:

Collect, analyse and publish data and information, including data disaggregated by nationality, national origin, migration status, ethnicity, religion and gender, for use in carrying out assessment needs and developing policy in crime prevention and criminal justice.

Ensure that data collected addresses different forms of violence, causes and consequences; patterns, trends and indicators; relationships between victims and offenders; the effect of various types of interventions on victimization and exposure to violence.

Mapping and acknowledging racist crimes of violence (Sweden)

Authorities in Sweden refer to racism and discrimination against black persons as Afrophobia. Little is known yet about the phenomenon, but the Swedish National Council for Crime Prevention (Brottsförebyggande rådet) shows that the number of recorded Afrophobic crimes in the country is increasing steadily, with about one in five of such crimes recorded in 2012 being of a violent nature. Acknowledging the issue, the Swedish government commissioned an NGO (Mångkulturellt Centrum) to map racism and discrimination against persons of African descent in Sweden. This mapping exercise reviews official hate crime data and highlight examples of good practice to counter Afrophobia, with a particular focus on awareness-raising activities for children and youth.^a

Understanding severe forms of migrant labour exploitation (Fundamental Rights Agency)

The European Union Agency for Fundamental Rights (FRA) began research in 2013 into criminal forms of work exploitation of migrants across the EU, involving fieldwork in 21 EU Member States. The project focuses on: (a) Access to justice for migrants who have become victims of labour exploitation, including the punishment of offenders and victims' claims under civil and labour law. (b) Risk factors contributing to labour exploitation of migrants, and preventative measures as a means of reducing risk. (c) The type and frequency of incidents of labour exploitation and the framework in place to tackle it. The project is linked to other FRA research, in particular to work on migrants in an irregular situation employed in domestic work and on child victims of trafficking, as well as the victim support services project.^b

^a See Arbetsmarknadsdepartementet, Mångkulturellt centrum ska kartlägga afrofofi (2013) available from: www.regeringen.se/sb/d/17988/a/229303.

^b European Union Agency for Fundamental Rights, *Fundamental rights: Challenges and achievements* (Luxembourg, 2014), p. 224.

1.3. Using results of data collection effectively

Data that is collected on violence against migrants and victimization of migrants is not valuable unless it is used effectively in the development of evidence-based strategies and policies to prevent and combat violence. Research on violence against migrants, migrant workers and their families

should also be disseminated through publishing and other channels to ensure that those involved in responding to violence against migrants are equipped to do so. No names or identifying information about anyone who is the subject of research on violence against migrants should be released in any disseminated information, without their full and informed consent.

In order to ensure that criminal procedures are effective in situations where migrants are involved in instances of violence, procedures and strategies should be evaluated according to international standards. A stronger police response to crimes against migrants can be achieved by using police and justice statistics to monitor trends, design strategies and allocate resources appropriately on the basis of evidence, in accordance with international standards.

Suggestions for consideration:

- Publish annual reports on the number of cases of violence against migrants reported to police and other criminal justice agencies, including arrest rates, prosecution and case disposition of offenders and prevalence of violence against migrants. In doing so, use should be made of population-based surveys, victimization surveys and crime surveys.
- Use statistical data as a basis for designing approaches to combat violence against migrants.
- Ensure that data collection systems and methods, and all information released on the basis of collected data, respects the confidentiality and privacy of migrants.

Surveying discrimination and victimization (European Union)

EU-MIDIS is the first ever EU-wide survey of immigrant and ethnic minority groups' experiences of discrimination and victimization in everyday life. This survey, carried out by the EU Agency for Fundamental Rights, asks whether certain immigrant and ethnic minority groups have been victims of discrimination and racist violence; why they may or may not have reported these crimes; and whether they know and trust the organizations and officials that are tasked to help them. EU-MIDIS involved face-to-face interviews with 23,500 persons from selected immigrant and ethnic minority groups in all 27 member States of the European Union. 5,000 persons from the majority population were also interviewed in 10 EU member States to compare some of the key results. The survey examines immigrant and ethnic minority groups' experiences of discriminatory treatment, racist crime victimization, awareness of rights and reporting of complaints. In order to assess developments and trends, FRA intends to repeat the survey at regular intervals, with the results of the second EU-MIDIS survey expected in 2016.^a

^a European Union Agency for Fundamental Rights, "Police Stops and Minorities", *EU-MIDIS Data in Focus*, Report 4 (Luxembourg, 2010), p. 11. Available from http://fra.europa.eu/fraWebsite/eu-midis/eumidis_details_en.htm

2. Address root causes of violence in migration processes and responses

The causes of violence against migrants are complex and varied, ranging from factors that leave people with no choice but to migrate irregularly, often in unsafe and violent situations, through to the responses that may be mounted to combat irregular migration and the transnational crimes that take advantage of peoples' need to migrate, including human trafficking and migrant smuggling. Where responses to migration phenomena and related challenges do not accord with international law including human rights norms and standards, the result may be that rather than protecting migrants from harm, they instead expose migrants to more violence en route at the hands of criminals or others, including State actors.

2.1. Preventing violence in migration processes through safe migration channels

People migrate for many reasons, whether in search of opportunities for education and employment, to join family members, or to flee violence.⁴⁶ Development efforts that make countries of origin viable places for people to remain are clearly an essential, long-term means of reducing violence and other victimization that motivates people to migrate. Criminal justice practitioners play a vital role in addressing causes of irregular and unsafe migration, by strengthening public safety in countries that people migrate from. In countries of origin, research should be conducted to understand the reasons that migrants migrate from their homes to increase meaningful social and economic opportunities for them to stay.

Migrants can be exposed to violence during migration journeys, particularly where they involve human trafficking or migrant smuggling, or where people are migrating in situations of crisis and disaster.⁴⁷ The Trafficking in Persons and Smuggling of Migrants Protocols supplementing the Convention against Transnational Organized Crime (UNTOC)⁴⁸ are offered against this background. The preamble of ICRMW calls on States to take appropriate action “in order to prevent and eliminate clandestine movements and trafficking in migrant workers, while at the same time assuring protection of their fundamental human rights”. Article 68 of that instrument also encourages States to collaborate with a view to preventing and eliminating illegal or clandestine movements.⁴⁹ Acting to combat transnational organized crime and irregular movements are therefore essential to prevent violence that occurs in the context of migration processes.⁵⁰

⁴⁶See for instance UNHCR, *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection* (Washington, 2014), pp. 23-29, reporting on violence that minors experienced in their home communities, including from organized crime groups, that motivated them to migrate.

⁴⁷See the “Migrants in Countries in Crisis Initiative”, a State-led undertaking resulting from calls made at the 2013 United Nations High-Level Dialogue, to improve the ability of States and other stakeholders to prepare for, respond to, alleviate suffering, and protect the dignity and rights of migrants caught in countries in situations of acute crisis. Information available from www.iom.int/cms/micic. Also see Forced Migration Review, *Crisis*, vol. 45, February 2014, available at <http://www.fmreview.org/crisis>; and UNHCR, *Live, Learn and Play Safe: Regional Initiative 2014-2016, Protecting Children at Risk in Egypt, Ethiopia, Sudan and Yemen* (Geneva, 2014).

⁴⁸Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and Protocol against the Smuggling of Migrants by Land, Sea and Air, both supplementing the United Nations Convention against Transnational Organized Crime General Assembly resolution 55/25 of 15 November 2000, annexes.

⁴⁹General Assembly resolution 45/158 of 18 December 1990. See also Article 3, of Part I of the International Labour Organisation Convention No. 143 requesting States to adopt measures to suppress clandestine movements of migrant workers.

⁵⁰See GA/RES/67/185, paragraph 3. Also see International Labour Organisation, *Fair Migration: Setting an ILO Agenda* (2014), p. 12, paragraph 67 and UNODC *International Frameworks for Action on Smuggling of Migrants and Trafficking in Persons* (New York, 2011).

Beyond criminal justice responses, making more safe migration channels available to persons wishing to migrate reduces the likelihood that they will fall into the hands of migrant smugglers or human traffickers who directly or indirectly expose them to violence. Restrictive migration channels may force people to travel irregularly. Any migration models introduced to provide avenues for migration must be designed not only in consideration for economic gains for destination countries and the development gains for origin countries, but also taking into consideration the safety and human rights impacts on migrants themselves.⁵¹

Awareness raising campaigns in countries of origin can be undertaken to inform migrants and potential migrants of the risks of falling victim to violence and their vulnerability to criminals, and to inform migrants of safe migration options.⁵²

Suggestions for consideration:

- Research the reasons that people are forced to migrate from countries of origin, and explore ways of giving them viable opportunities and meaningful choices to remain in their countries.
- Undertake national and regional measures to address violence and insecurity as a root cause of forced displacement and onward movement of vulnerable populations, with a particular emphasis on children and their best interests.
- Target development efforts to populations at risk (including youth and groups with high employment rates) of migrating unsafely and/or into situations in which they are vulnerable to violence, including by creating opportunities for employment in origin countries.
- Provide avenues for safe migration to persons wishing to migrate, taking into consideration labour market needs and demographic trends.
- Explore existing avenues of safe migration and establish channels to communicate information about them to migrants and potential migrants.
- Intervene to prevent the dissemination of misleading information relating to emigration and immigration.
- Raise awareness of the risks of falling victim to violence in the course of existing migration channels, and where to seek help.

⁵¹Global Migration Group, *Exploitation and Abuse of International Migrants, particularly those in irregular situations: A human rights approach* (2013), p. 54.

⁵²See GA/RES/67/185, paragraph 13; the UNTOC Smuggling of Migrants Protocol (2000), Article 15; and the International Labour Organisation, *ILO Multilateral Framework on Labour Migration, Non-binding principles and guidelines for a rights-based approach to labour migration* (Geneva, 2006), Principle 5, p. 12.

Addressing root causes of migration

Participants of the *Sana'a Declaration that emerged from the Regional Conference on Asylum and Migration* (11-13 November 2013) resolved to address root causes of mixed migration, particularly the conflicts, economic and social challenges, as well as deceptive information through, inter alia: (a) supporting the peace and stability process in Somalia as well as other conflict-affected areas; (b) addressing economic and social challenges through concrete support to countries of origin in their efforts at fostering comprehensive and equitable development thus helping people to overcome poverty, achieve resilience and settle in their own countries; (c) redoubling efforts to create conditions conducive to safe and sustainable voluntary return; and (d) ensuring accurate information about the realities of irregular migration is available, including in curricula. The Declaration also speaks to the need for anti-poverty programmes in countries of origin, including safety nets and job creation to address root causes of irregular migration.^a

Development programme targeting vulnerability migration

In the former Yugoslav Republic of Macedonia, IOM implemented an income generating and self-employment assistance project to address human trafficking and irregular migration of women aged 18 to 35 residing in impoverished border communities. The project supported the establishment of 40 small enterprises through vocational training and micro grants assistance.^b

Research into violence as a root cause of migration

In 2014, the United Nations High Commissioner for Refugees Regional Office for the United States and the Caribbean released a report on the reasons that children from Central American countries and Mexico migrate to the United States. The report, titled *Children on the Run: Unaccompanied Children leaving Central America and Mexico and the Need for International Protection*, identified that some 58 per cent of the 404 children interviewed were forcibly displaced as a result of harms indicating a need for international protection. Violence in society was key among harms identified including violence at the hands of organized criminal gangs including drug cartels, gangs and state actors (mentioned in 48 per cent of cases), or in Mexico at the hands of migrant smuggling gangs seeking to recruit young people (10 per cent of cases), as well as violence and abuse at home at the hands of caretakers (mentioned in 21 per cent of cases).^c

Facilitating safe migration

In Zambia, IOM supports individuals seeking information on the validity of jobs and educational opportunities with a Talk Line in operation 24 hours a day and 7 days a week. In Kenya, with IOM's support, the Ministry of Labour now provides information on employment agencies on its website. Ensuring that aspiring migrants have access to valid and official travel documents is also an important step in encouraging legal migration. In Zimbabwe, IOM builds the capacity of key government departments responsible for the provision of birth certificates, ID, passports, emergency travel documents and visas to ensure Zimbabweans, including women, have access to official travel documents. In addition, women and girls have received information on procedures to obtain these documents.^d

^a See UNCHR *Sana'a Declaration, Regional Conference on Asylum and Migration*, 11-13 November 2013, paragraph 1.

^b Reported in International Organization for Migration (IOM), *Working to Address Violence against Women Migrant Workers* (Geneva, 2009), p. 15.

^c UNHCR, *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection* (Washington, 2014).

^d IOM, *Working to Prevent and Address Violence against Women Migrant Workers* (Geneva 2009), p. 17.

2.2. Preventing violence in responses to migration-related challenges

States have a right to govern migration and an obligation to combat transnational organized crime. Migration governance must comply with human rights and other international law. Significant violence occurs at borders particularly where border officials are required by the State to address irregular migration as a crime, and may even be called upon to contravene international law in engaging with migrants.⁵³ Ensuring that irregular migration is not criminalized is a key measure to reduce violence that has been flagged in this context (see 4.1), as is ensuring that international borders are managed in accordance with international standards.⁵⁴

Measures to prevent state actors from perpetrating violence include putting in place standards of conduct for law enforcement officials in relation to migrants, migrant workers and their families, in accordance with the United Nations Code of Conduct for Law Enforcement Officials and the International Code of Conduct for Public Officials.⁵⁵ Mechanisms should also be introduced whereby colleagues of perpetrators of such violence can report instances without fear of reprisals.

Of key note, in respect to responses at sea, are the 1982 United Nations Convention on the Law of the Sea (UNCLOS), the 1974 International Convention Safety of Life at Sea (SOLAS) and the 1979 International Convention on Maritime Search and Rescue (SAR) that contain a duty to render assistance and rescue persons in distress at sea, and bring such persons to a place of safety. The principle of *non-refoulement* also provides that States must not expel or return (“*refouler*”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. This is an absolute principle that must be upheld in all efforts to respond to migration challenges.⁵⁶

Suggestions for consideration:

- Ensure that migration policies are non-discriminatory in purpose and effect and take an evidence and rights-based approach to the entire migration process.
- Review and revise policies and approaches to determining who is granted or denied access to territory, that contravene human rights, humanitarian and other international law.
- Ensure that migration policies and migration-related discourse avoids stigmatizing language and terminology, in particular by ensuring that terms such as “illegal migration” and “illegal migrant” are not used in relation to migrants in irregular situations.⁵⁷

⁵³In relation to children at borders, see for instance, Fifteenth Session of the Human Rights Council, *Study of the Office of the United Nations High Commissioner for Human Rights on challenges and best practices in the implementation of the international framework for the protection of the rights of the child in the context of migration* (A/HRC/15/29), paragraphs 39-41.

⁵⁴See, OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, available at: www.ohchr.org/Documents/Issues/Migration/A-69-CRP-1_en.pdf. See also Twenty-third Session of the Human Rights Council, Report of the Special Rapporteur on the human rights of migrants, François Crépeau, *Regional study: Management of the external borders of the European Union and its impact on the human rights of migrants* (A/HRC/23/46) in which the Special Rapporteur calls for a human rights-based approach to border (including sea border) management, whereby the rights of migrants should be the first consideration. See also, the UNHCR, *Global Initiative on Protection at Sea* (Geneva, 2014).

⁵⁵General Assembly resolution, 34/169, annex and General Assembly resolution 51/59, annex.

⁵⁶See 1951 Refugees Convention Article 33(1), United Nations, *Treaty Series*, vol. 189, p. 7,

⁵⁷For more on terminology, see *Human Rights Watch Guidelines for describing migrants* (June 2014), available at: <http://www.hrw.org/node/126818>; Mr. François Crépeau, United Nations Special Rapporteur on the human rights of migrants, “Public consultation—Debate on the future of Home Affairs policies: An open and safe Europe—what next?” (2014), available at: http://ec.europa.eu/dgs/home-affairs/what-isnew/public-consultation/2013/pdf/0027/organisations/special-rapporteur-on-the-human-rights-of-migrants_en.pdf; and PICUM’s *Terminology Leaflet* (2014), available at: http://picum.org/picum.org/uploads/file_/TerminologyLeaflet_reprint_FINAL.pdf.

Jurisprudence on international obligations in migration governance

In the case of *Hirsi Jamaa and Others v. Italy*, in which Italy returned some 200 applicants summarily to Libya without giving them the opportunity to claim asylum, nor ascertaining how Libyan authorities fulfil their international obligations in relation to refugee protection, the European court held that the State was in violation of Article 3 of the European Convention on Human Rights in exposing the applicants to the risk of *refoulement*.^a

In the case of *East African Asians v. The United Kingdom*, the European Commission on Human Rights held that racial discrimination in immigration control is incompatible with the European Court on Human Rights and that differentiation of people on the basis of race fell short of the principle of human dignity and constituted degrading treatment contrary to Article 3 of the European Convention on Human Rights.^b

^a See European Court of Human Rights, *Hirsi Jamaa and Others v. Italy* [GC], Application No. 27765/09, 23 February 2012.

^b See European Commission on Human Rights, *East African Asians v. the United Kingdom*, Applications Nos. 4403/70-4419/70, 14 December 1973, confirmed by European Court of Human Rights, *Cyprus v. Turkey* (GC), 10 May 2001, paragraphs 306-311.

2.3. Preventing violence against migrants in detention facilities

A key example of state measures that exacerbate violence against migrants, are policies and practices of detaining migrants on the basis of their irregular entry or stay in a country. The risk of violence can be high in detention, both between staff and detainees, between detainees themselves, or even in the context of self-harm.⁵⁸ Migrants may be subjected to arbitrary and prolonged detention, inhumane treatment, degrading conditions, violence, extortion and sexual abuse in detention.⁵⁹ The Special Rapporteur on rights of migrant has expressed concern that behaviour of guards in place of detention is not adequately monitored, especially where they are employed by private security companies.⁶⁰

These risks express the need for alternatives to detention, such as reporting conditions or community placement, in particular for vulnerable migrants.⁶¹ Where no alternatives to detention are possible, making detention necessary and unavoidable, conditions must meet international standards by ensuring that detainees are treated in a humane and dignified manner, and that special measures are taken to prevent violence against them from fellow detainees, detention facility staff

⁵⁸ See UNHCR, Association for the Prevention of Torture (APT) and International Detention Coalition (IDC), *Monitoring Immigration Detention: Practical Manual* (2014), p. 129. Also see Twelfth United Nations Congress on Crime Prevention and Criminal Justice, Working paper prepared by the Secretariat, *Crime prevention and criminal justice responses to violence against migrants, migrant workers and their families* (A/CONF.213/11), paragraph 45, where it is noted that migrants are more likely than nationals to be detained owing to lack of social structures to allow them pursue non-custodial sanctions.

⁵⁹ See for instance, *Report of the United Nations High Commissioner for Human Rights, The situation of migrants and asylum-seekers fleeing recent events in North Africa* (A/HRC/18/54), paragraph 10.

⁶⁰ See Twentieth Session of the Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants* (A/HRC/20/24), paragraph 30.

⁶¹ International Detention Coalition, *There are Alternatives: A handbook for preventing unnecessary immigration detention* (2011); International Detention Coalition, *There are Alternatives: Supplementary Policy Guide* (2013); UNHCR, *Beyond Detention: A Global Strategy to support governments to end the detention of asylum-seekers and refugees* (Geneva, 2014), pp. 19-21; European Fundamental Rights Agency, *Annual Report 2012* (Vienna, 2013), p. 53.

and others.⁶² Migrants cannot be detained in prisons pending their removal, but at specialized facilities only.⁶³

It is also a clear principle that children should not be detained on the basis of their migratory status or irregular entry or stay in a country;⁶⁴ legal and policy frameworks must ensure that children are not detained;⁶⁵ and that all respects in dealing with children, the best interests of the child prevail.⁶⁶

Suggestions for consideration:

- Ensure that detention is approached as a measure of a last resort after all other possibilities have been exhausted. Specifically, work towards ending immigration detention by implementing non-custodial alternatives to detention for migrants in irregular situations and reviewing detention periods in order to avoid excessive detention.
- In the interim, put measures in place to ensure that detention does not put migrants at risk of violence, ill-treatment or physical, mental or sexual abuse by ensuring that detention procedures and conditions are safe, with specific consideration given to the special needs of people in detention. Detention should be regularly and independently monitored.
- Ensure that international organizations, non-governmental organizations, and civil society organizations have access to detention facilities and migrants in detention, and ensure that individuals who have access to migrants in detention are equipped to advocate on their behalf, and act as a link between those organizations who may not have access to places of detention, and migrants who may be experiencing or at risk of violence in detention.⁶⁷
- Support detainees to report violence and ensure that allegations of violence at places of detention are investigated. Persons particularly vulnerable (including women and LGBTI individuals) should particularly be supported to report abuse.

⁶²Note that by resolution 20/16, the Human Rights Council has requested the Working Group on Arbitrary Detention to develop “Draft Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of His or Her Liberty by Arrest or Detention to Bring Proceedings Before Court”. The draft basic principles and guidelines are to be presented to the Human Rights Council in September 2015. Also see UNHCR, APT and IDC, *Monitoring Immigration Detention: Practical Manual* (2014); and APT and the Parliamentary Assembly of the Council of Europe, *Visiting immigration detention centres: A guide for Parliamentarians* (2013).

⁶³The Court of Justice of the European Union has clarified that States cannot rely on the fact that there are no specialized detention facilities in part of its territory to justify detaining third-country nationals in prison pending their removal, even if the third-country national consents to such accommodation. See Judgments in Joined Cases C-473/13 and C-514/13 and in Case C-474/13 *Adala Bero v. Regierungspräsidium Kassel, Ettayebi Bouzalmate v. Kreisverwaltung Kleve and Thi Ly Pham v. Stadt Schweinfurt* (Luxembourg, 17 July 2014).

⁶⁴General Assembly Sixty-eighth Session, Report of the Secretary-General, *Promotion and protection of human rights, including ways and means to promote the human rights of migrants* (A/68/292), paragraph 95(k).

⁶⁵See Committee on the Rights of the Child, Report of the Day of General Discussion, *The rights of all children in international migration* (2012), urging States to “expeditiously and completely cease the detention of children on the basis of their immigration status.” UNHCR *Beyond Detention: A Global Strategy to support governments to end the detention of asylum-seekers and refugees* (Geneva, 2014), p. 17.

⁶⁶See United Nations Convention on the Rights of the Child Articles 3 and 22; UNHCR *Guidelines on Determining the Best Interests of the Child* (Geneva, 2008); and see the OHCHR *Recommended Principles and Guidelines on Human Rights at International Borders*.

⁶⁷See for instance, Platform for International Cooperation on Undocumented Migrants (PICUM), *Strategies to End Double Violence against Undocumented Women: Protecting Rights and Ensuring Justice* (Brussels, 2012), p. 22, on the role of faith-based organizations and pastors. As well as Council of Europe, *Visiting Immigration Detention Centres: A guide for Parliamentarians* (2013), which addresses the role that parliamentarians can play.

Jurisprudence

In *Rodič and Others v. Bosnia and Herzegovina*, the European Court of Human Rights found a violation of Article 3 ECHR due to the lack of protection of the detainees' physical well-being. In assessing the hardship endured by the applicants, the Court considered not only the actual physical violence they were subjected to, but also the suffering engendered by the constant mental anxiety caused by the threat and anticipation of such violence.^a

Legislation on non-detention of migrants

Argentina's National Immigration Law 25.871 stipulates that migrants (regardless of age) should not be detained during deportation procedures before administrative or judicial bodies. A judicial authority may authorize detention as a last resort measure in exceptional cases.^b

Venezuela's Migration Law 37.944 also prohibits detention of all migrants. It provides several alternatives for the purpose of ensuring the enforcement of a deportation or removal action. The competent authority may impose on a foreigner who is subject to a deportation action, the following precautionary measures:

- (a) Periodic reporting to the competent authority.
- (b) Prohibition from leaving the location in which s/he resides without corresponding authorization.
- (c) Provision of adequate monetary bail, for which the economic conditions must be taken into account.
- (d) Residence during the administrative procedure in a designated locality.
- (e) Any other measure deemed appropriate to ensure compliance with the competent authority's decision, provided that the measure does not involve deprivation or restriction of the right to personal liberty. These measures must not exceed a period of 30 days.^c

Judicial review of detention

In Finland, detention decisions should be notified without delay to a district court. The district court that received the notification should hear the matter no later than four days from the date of detention, in the presence of the official who ordered the detention and the detainee. Any decision to continue the detention is reheard no later than two weeks later by the District Court.^d

Alternatives to detention

In Austria, an alternative to detention is offered through residence requirements. Accommodation is provided in a special facility in Vienna run by an NGO "Verein menschen leben", where residents are required to report daily to the local police officer present at the facility, demonstrating strong cooperation between the NGO and State authorities.^e

^a The Council of Europe, Yannis Ktistakis, *Protecting migrants under the European Convention on Human Rights and the European Social Charter: A Handbook for Legal Practitioners* (2013), pp. 35-36, referring to European Court of Human Rights *Rodič and Others v. Bosnia and Herzegovina*, 27 May 2008.

^b Noted in PICUM, *Human Rights of Undocumented Adolescents and Youth* (2013), p. 33.

^c PICUM, *Human Rights of Undocumented Adolescents and Youth* (2013), p. 33, referring to UNICEF, *Examples of Good Practices in the Implementation of the International Framework for the Protection of the Rights of the Child in the Context of Migration* (2010).

^d The European Commission, *The use of detention and alternatives to detention in the context of immigration policies* (2014), p. 25.

^e *Ibid.*, p. 34.

3. Address root causes of violence in transit and destination countries

Migrants in regular or irregular situations, may experience violence in different contexts. Lack of avenues for migrants to undertake safe work makes many vulnerable to exploitative work conditions even including violence in the workplace, which they have little recourse to escape from. Furthermore, where migrants are not effectively integrated into communities, racism, discrimination and intolerance may flourish and manifest in violence against minority groups including migrants and their families. Xenophobia may result in hate crimes perpetrated against marginalized groups. Finally, the cultural and traditional practices that some migrants may bring with them to transit and host countries may be another cause of violence within migrant communities. Sustainable prevention of violence therefore requires that these complex root causes be carefully confronted.

3.1. Preventing violence in employment of migrants

In receiving countries for migration, migrants are often confined to undertake work in the irregular labour market where they may be exposed to violence. Deficient labour regulations and insufficient monitoring of working conditions also serves to entrench vulnerability of migrants to violence and exploitation. Labour regulation and provision of opportunities to perform regular, safe work are key means of reducing vulnerability to violence in labour contexts.⁶⁸ Domestic workers are particularly vulnerable to violence given that their work is often less regulated than other sectors, and occurs in a less visible context.⁶⁹ Particular attention must therefore be paid to supporting migrant domestic workers understand and access their rights.⁷⁰

Beyond their heightened vulnerability to work that exposes them to violence, migrants often face barriers to enforcing their rights. Providing non-citizens with documentation to access labour markets as well as private and public services is therefore a key means of reducing vulnerability. Awareness raising campaigns can also help migrants understand their rights, including their rights to safe work environments and the right to seek redress in the event of rights abuse.⁷¹ Employers should also be made aware of safety rules and regulations, and the sanctions that apply if they take advantage of or exploit migrant workers.⁷² The right of migrant workers to organize, and express their needs and defend their rights through trade unions is paramount.⁷³ Labour regulations and labour courts should ensure that migrants in irregular situations can seek recourse from violence and exploitation, without fear of reprisal or deportation.

⁶⁸International Labour Organisation, *Good Practice Database on labour migration policies and practices* available at: www.ilo.org/dyn/migpractice/migmain.home

⁶⁹See amongst others, the following Human Rights Watch reports on abuse of domestic worker rights: *I Already Bought You: Abuse and Exploitation of Female Migrant Workers in the United Arab Emirates* (2014); *Hidden Away: Abuses against Migrant Domestic Workers in the UK* (2014); *They deceived us at every step: Abuse of Cambodian Domestic Workers Migrating to Malaysia* (2011); *Domestic Plight: How Jordanian Laws, Officials, Employers and Recruiters Fail abused Migrant Domestic Workers* (2011); *Walls at Every Turn: Abuse of Migrant Domestic Workers through Kuwait's Sponsorship System* (2010); *Slow Reform: Protection of Migrant Domestic Workers in Asia and the Middle East* (2010); *As if I am not human: Abuses against Asian domestic workers in Saudi Arabia* (2008).

⁷⁰See particularly, PICUM, "Raising awareness about the presence, contribution and rights of undocumented women", in *Strategies to End Double Violence against Undocumented Women: Protecting Rights and Ensuring Justice* (Brussels 2012), pp. 45-56.

⁷¹See Twelfth United Nations Congress on Crime Prevention and Criminal Justice, Working paper prepared by the Secretariat, *Crime prevention and criminal justice responses to violence against migrants, migrant workers and their families* (A/CONF.213/11), paragraph 54-55.

⁷²*Ibid.*, paragraph 56.

⁷³See: Committee on Migrant Workers, *General Comment No. 2 on the rights of migrant workers in an irregular situation and members of their families* (CMW/C/GC/2), paragraphs 65-66.

Suggestions for consideration:

- Ensure equality of treatment in conditions of work between nationals and migrants irrespective of their status, including by protecting the rights of migrant workers to join trade unions and engaging migrant worker trade unions in discussions about working conditions.⁷⁴
- Implement programmes to provide information to migrants about their employment rights and recourse in the event that they experience violence in the context of their work.
- Facilitate labour inspection in commercial and domestic settings and equip labour inspectors to identify possible cases of violence and exploitation, and report potential criminal acts perpetrated by employers to law enforcement authorities.
- Allow labour courts to uphold labour standards and sanction violations, irrespective of migration status, by de-linking labour regulation and inspection from migration regulation and inspection.

Facilitating legal employment

Under the EU Common Policy on Legal Migration, the Seasonal Workers Directive (2014/36/EC) is a new legislative instrument setting out rules for entry and stay of non-EU citizen seasonal workers and setting out a common set of rights to which seasonal workers are entitled during their stay in the EU to avoid their economic and sexual exploitation. Under the Directive, seasonal workers are entitled to equal treatment with nationals of the destination State with regards to employment terms, including minimum working age, working conditions including pay and dismissal, working hours, leave and holidays, and workplace health and safety. Seasonal workers also have the right to join a trade union and are entitled to access to social security. Member States are required to provide measures towards preventing possible abuses, and sanctioning infringements, as well as providing seasonal workers with effective mechanisms to lodge complaints against their employer, either themselves or through interested third parties.

In the United States, the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and the US Chamber of Commerce negotiated an agreement that was incorporated into a legislative bill pending before the US Congress, to allow employers to request particular migrant workers (W-visa holders) to work for them, to enable migrants to receive certain protections and to allow them to apply for regular immigrant status after several years. Farm workers' unions and employers have negotiated a similar agreement on the Agricultural Job Opportunities, Benefits and Security Act (AgJOBS).^a

Providing information on employment rights

The ILO Helpdesk provides both workers and employers with answers to questions they may have on workers' rights, practices and other labour issues. Within a day or two, an ILO expert team will respond to queries (submitted by phone, email or fax), drawing guidance from ILO policy documents, tools and normative instruments. This may be helpful in clarifying, for example, the extent to which migrant workers in an irregular situation are covered by certain ILO norms and policies.^b

⁷⁴See General Assembly Sixty-eighth Session, Report of the Secretary-General, *Promotion and protection of human rights, including ways and means to promote the human rights of migrants* (A/68/292) paragraph 95(j).

The Tripartite Action for the Protection and Promotion of the Rights of Migrant Workers in the ASEAN region (ASEAN TRIANGLE Project) aims to reduce exploitation through promotion of safe and legal migration and improved labour protection. The project promotes development of legal and policy frameworks on labour migration in Cambodia, Lao PDR, Myanmar and Viet Nam to reflect good practice, rights, age and gender-sensitivities rooted in international standards in line with the ILO Multilateral Framework on Labour Migration.^c

IOM has launched the International Recruitment Integrity System (IRIS), a voluntary “ethical recruitment” framework to benefit employers, migrants and recruiters in the labour migration process. IRIS aims to develop a voluntary accreditation framework, based on adherence to common ethical principles, for members to be recognized as fair recruiters. IRIS will administer a complaints and referral mechanism to assist victims of unethical or illegal recruiters to file grievances with authorities.^d

Pre and post-departure support to migrants

The Bangladeshi Ovhibashi Mohila Sramik Association (BOMSA) was founded and operated by returned women migrant workers. BOMSA has been working with internal and external women migrants since 1998 to ensure the protection of their rights and offers both pre and post departure support and training to women who migrate abroad.^e

In Ethiopia, under legislation passed in 1998, private employment agencies and brokers must register with the Government before sending Ethiopian agency staff to work abroad. Only those who produce a letter stating that they have gone through a registered agency are issued with exit visas by authorities.^f

The Red Cross Societies of Bangladesh and the Philippines provide pre-departure orientation seminars and information leaflets prepared in coordination with governments and recruitment agencies to domestic migrant women.

Access to information among migrant workers

The importance of mobile phones as a tool for communication and to report abuse is gaining increasing recognition by governments in countries with high rates of out-migration. In 2012, an agreement signed between the Philippines and Saudi Arabia concerning the employment of Filipino domestic workers contained a clause stipulating that workers must be allowed to keep their mobile phones with them during the course of their employment in Saudi Arabia. Similarly, as a condition of employing an Indian domestic worker, the Indian government requires employers in Gulf countries to provide workers with mobile phones and SIM cards. Research would be needed to assess the extent to which these rules are being adhered to.^g

Preventing violence and exploitation of migrant domestic workers, nannies, house-keepers and caregivers

The Migrant Rights Centre Ireland established the Domestic Workers Action Group (DWAG) to support domestic workers with employment-related issues. DWAG responds to exploitation of domestic workers by empowering them to campaign for protections and standards, informing them of their rights and entitlements, supporting them to seek compensation and alternative opportunities and working towards better implementation and improvement of laws to improve conditions of domestic workers.

The Domestic Workers Union (DWU) in New York, comprised of Caribbean, Latina and African nannies, housekeepers and elderly caregivers, campaigned for the signing of the “Domestic Workers’ Bill of Rights” to reform New Law State law improving work standards, in direct response to domestic workers’ vulnerability to abuse and mistreatment, providing for strengthened working protections and the right to organize.^h

Promoting equal treatment for migrant workers

The Dhaka Principles for Migration with Dignity” are a set of rights-based principles to enhance respect for the rights of migrant workers from the moment of recruitment, during overseas employment and through to further employment or safe return to home countries.



Source: Institute for Human Rights and Business, 2014, <http://www.dhaka-principles.org>

^a See also ILO, *Fair Migration: Setting an ILO Agenda* (2014), p. 20, paragraph 109.

^b More information on the services provided by the ILO Helpdesk is available at: www.ilo.org/empent/areas/business-helpdesk.

^c See: www.ilo.org/asia/whatwedo/projects/WCMS_193023/lang-en/index.htm.

^d See: <http://iris.iom.int>.

^e See: <http://bomsa.net>.

^f International Finance Cooperation, *Good Practice Note: Non-discrimination and Equal Opportunity* (2006), p. 17, referring to Emebet Kebede, *Ethiopia: An Assessment of the International Labour Migration Situation The Case of Female Labour Migrants* (Geneva, ILO GENPROM Series on Women and Migration, 2002), pp. 22-36.

^g Open Society Foundations Research Report, *Breaking the Isolation: Access to Information and Media Among Migrant Domestic Workers in Jordan and Lebanon* (2014).

^h www.domesticworkersunited.org.

3.2. Preventing violence in host communities

States must take concrete efforts to combat racism, discrimination, xenophobia and related intolerance that leads to violence, and to integrate migrants into host communities.⁷⁵ The *Guidelines for the Prevention of Crime* stress that Governments should also address risk factors of crime and victimization by promoting non-stigmatizing social and economic development programmes; addressing marginalization and exclusion and promoting positive conflict resolution.⁷⁶ Political rhetoric for example can be stigmatizing, racist and xenophobic, and even incite violence against migrants. Hate speech is a crime, even where it emanates from state actors, and should be treated as such. Additionally, correct and neutral terminology should be used to describe migrants and well-balanced, evidence-based approaches should be taken to migration governance and its challenges.⁷⁷

Education and public awareness strategies are useful tools for fostering a culture of tolerance while respecting cultural identities.⁷⁸ Awareness-raising campaigns can be targeted at the host community to raise awareness of migration and prevent racism, discrimination, xenophobia and other intolerance that can lead to violence. Messages should aim to raise public awareness of the negative consequences of discrimination against migrants and the criminality of violence against them.⁷⁹ The media should also be positively engaged in preventing violence, and be guided by Codes of Conduct that promote accurate, balanced and impartial coverage of the news, do no harm to those affected by the reporting.⁸⁰

Campaigns should also emphasize the positive contributions made by migrants, and mainstream integration policies and measures into all relevant portfolios.⁸¹

Suggestions for consideration:

- Develop and implement public awareness raising initiatives including school programmes, to prevent violence against migrants by promoting respect for human rights, equality and diversity and to increase migrants' engagement and integration into host societies.⁸²
- Develop and disseminate information and materials on different forms of violence perpetrated against migrants, including as a result of racism, xenophobia and discrimination, as well as information about criminal law relevant to violence.

⁷⁵See GA/RES/67/185, paragraph 5. Also see CMW/C/GC/2, para 22.

⁷⁶See *Guidelines for the Prevention of Crime*, Economic and Social Council resolution 2002/13, annex, paragraph 25. and International Federation of Red Cross and Red Crescent Societies, *IFRC Strategy on Violence Prevention, Mitigation and Response 2011-2020* (Geneva, 2011), pp. 23-24.

⁷⁷PICUM, *Recommendations to the European Union to Urgently Address Criminalisation and Violence against Migrants in Greece* (2014), p. 22.

⁷⁸See *Guidelines for the Prevention of Crime*, Economic and Social Council resolution 2002/13, annex.

⁷⁹See Twelfth United Nations Congress on Crime Prevention and Criminal Justice, Working paper prepared by the Secretariat, *Crime prevention and criminal justice responses to violence against migrants, migrant workers and their families* (A/CONF.213/11), paragraph 57.

⁸⁰Reporters without Borders, United Nations Educational, Scientific and Cultural Organization (UNESCO), "Chapter 12, key documents about journalist ethics", *Handbook for Journalists* (2007, updated 2013), pp. 88-93.

⁸¹Dirk Gebhardt, *Building Inclusive Cities: Challenges in the Multilevel Governance of Immigration Integration in Europe* (Migration Policy Institute, 2014). For more guidance on integration measures see European Commission, *Handbook on Integration for Policymakers and Practitioners* (2009); International organization for Migration, *Compendium of Migrant Integration Policies and Practices* (2010); and the European Foundation for Improvement of Living and Working Conditions (Eurofound) research on ethnic entrepreneurship as an integration strategy, at <http://eurofound.europa.eu/areas/populationandsociety/clipethnicentrepreneurship>.

⁸²See GA/RES/67/185, paragraph 5.

- Counter tendencies to target, stigmatize, stereotype or profile members of migrant groups, on the basis of race, colour, descent, and national or ethnic origin, especially by politicians, officials, educators and the media, on the internet and other electronic communications networks and in society at large.
- Engage with the media, media associations and others to develop public awareness campaigns to promote dissemination of accurate information about migrants and promote positive integration of migrants.

Integration and positive migration messages

The Migrant Integration Policy Index (MIPEX) measures integration policies in 31 countries around the world, using 148 policy indicators to create a picture of government commitments to integration and migrant opportunities to participate in society. MIPEX reveals whether migrants are guaranteed rights, responsibilities and opportunities in seven policy areas: labour market mobility, family reunion, education, political participation, long term residence, access to nationality and anti-discrimination.^a

The Polish-based Fundacja Rozwoju “Oprócz Granic” (Foundation for Development “Beyond Borders”, FROG) has worked to develop documented and undocumented women’s engagement with media. They are involved in “Broadcasts radjowe”, a bi-weekly radio initiative informs listeners about migration issues such as the role of undocumented domestic and care workers as Polish women migrate West.^b

In 2014, IOM launched a social media campaign #MigrationMeans, allowing migrants to tell the world what migration means to them.^c

In Costa Rica, the radio programme “People without Borders” broadcast for 9 years for Costa Ricans and migrants, to support strengthening relationships between them and provide accurate information and frank discussions migration and citizenship issues.^d

In Austria, the Austrian Redcross has developed the “Stammtisch APP” to promote discussion and counter misinformation leading to racism, to promote integration of migrants in Austria.^e

Education to fight racism

In Greece, the Information and Documentation Centre on Racism, Ecology, Peace and Non-Violence (ANTIGONE) ran a series of human rights educational workshops to prevent and eliminate racist incidents in schools.

In Australia, the *Racism. No Way!* Project assists Australian school communities and education systems to recognize and fight racism. It provides computer-based learning activities, lesson materials, media links, puzzles, quizzes and comics as well as other resources to support education against racism.^f

Recommended resources

The European Commission hosts a website to share good practices on integration of migrants throughout Europe (<http://ec.europa.eu/ewsi/en/practice/index.cfm>). The positive interactions of migrants are also illustrated by the Migration Policy Index (www.integrationindex.eu).

The International Coalition of Cities against Racism (ICCAR) is an initiative launched by UNESCO in 2004 to establish a network of cities with a common interest to develop and enhance policies related to the fight against racism, discrimination and xenophobia. The ICCAR provides a structure to connect anti-discrimination work on international, national and local levels. The ICCAR published a collection of good practices on fighting racism and discrimination in 2012.^g

The Tolerance and Non-Discrimination Information System (TANDIS) developed by the Organization for Security and Co-operation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) shares and promotes practices and initiatives and provides information on issues related to tolerance and non-discrimination throughout the OSCE region.^h

^a Migrant Integration Policy Index, available at: www.mipex.eu

^b PICUM, *Strategies to End Double Violence Against Undocumented Women—Protecting Rights and Ensuring Justice* (Brussels 2012), p. 46.

^c More information about the #MigrationMeans Campaign is available at: iom.int/cms/en/sites/iom/home/news-and-views/press-briefing-notes/pbn-2014/pbn-listing/iom-launches-social-media-campai.html

^d UN WOMEN, Allison J. Petrozziello, *Gender On the Move. Working on the Migration-Development Nexus from a Gender Perspective* (Santo Domingo, 2013), p. 184, available from: <http://www.unwomen.org/en/digital-library/publications/2013/12/gender-on-the-move#view>

^e http://medienservicestelle.at/migration_bewegt/stammtischapp/

^f For more information, go to: <http://www.racismnoway.com.au>

^g UNESCO, *Fighting Racism and Discrimination: Identifying and Sharing Good Practices in the International Coalition of Cities* (Paris, 2012). Available at: <http://unesdoc.unesco.org/images/0021/002171/217105E.pdf>

^h <http://tandis.odihr.pl/>

3.3. Preventing violence within migrant communities

Societies are enriched by the cultures and traditions of the migrant communities they host. But integration efforts are required to gain the benefit of those goods and are vital to ensure that migrants do not bring violent cultural and traditional practices with them to host communities. Female genital mutilation, witchcraft rituals, “honour” crimes, dowry murders, forced marriage and forced virginity testing and other practices that are intrinsically violent or may lead to violence, occur in many regions of the world, and may be practiced in some migrant communities. Further, violence that can occur more broadly in all sections of the wider community—such as domestic violence—may be exacerbated by the tensions and challenges associated with migrating.⁸³ Crucially, migrant victims of violence within migrant communities—particularly those in irregular situations—may have significant challenges in accessing legal and health services.

Criminal justice measures are required to ensure that such practices are treated as crimes and proactively prevented. Community crime prevention measures should include at-risk individuals and areas, and work to change conditions that lead to offending and victimization. To ensure that messages are appropriately tailored to the target audience, community members should be engaged in awareness raising efforts.⁸⁴ In the context of migrant communities, efforts to prevent such practices should be designed with the engagement of host and migrant communities to change cultural attitudes towards certain practices, taking into consideration any prior victimization that migrants

⁸³Uehling et al, “Preventing partner violence in refugee and immigrant communities”, *Forced Migration Review*, volume 38, October 2011.

⁸⁴See *Guidelines for the Prevention of Crime*, ECOSOC resolution 2002/13, annex, paragraph 6(b)

may have experienced.⁸⁵ Awareness-raising campaigns should stress the illegality of violent practices and empower people to seek help to prevent them.

Suggestions for consideration:

- Establish integration programmes in order to promote non-violent behaviour including by addressing attitudes and respect for equality and the rights of women.
- Engage migrant communities in efforts to combat violent religious, cultural and traditional practices in migrant communities, with a particular focus on gender-based violence perpetrated against women and children.

Empowering migrants against domestic violence

In Vancouver (Canada), an NGO serving minority and immigrant communities has worked with a variety of groups to produce and distribute a DVD aimed at helping women, children and seniors to understand and escape abuse within the home. Released in three languages (Mandarin, Punjabi and Spanish, with English subtitles), by the Vancouver and Lower Mainland Multicultural Family Support Services Society, the DVD depicts a series of culturally specific scenarios involving violence within the home, including child abuse, domestic violence and elder abuse.^a Also in Canada, the Muslim Resource Centre for Social Support and Integration produced a training manual titled *Addressing domestic violence in Canadian Muslim Communities: A training manual for Muslim Communities and Ontario Service Providers*, which includes community engagement best practices.^b

In South Africa, to help promote awareness, encourage dialogue, and urge migrants and refugees in South Africa to seek care, Community Media for Development worked with 20 refugees, migrants, and South Africans to develop three mini-dramas and related discussion guides. The drama, “Change the Story: Migrants and Refugees speak against Gender-based violence” was played on radio in 2013. One episode explores the plight of a migrant woman who is physically and sexually assaulted by her husband and her difficulties seeking help from police.^c

FGM and Forced Marriage Helplines

The United Kingdom’s National Society for the Prevention of Cruelty to Children (NSPCC) provides a free 24-hour helpline for anyone concerned that a child is at risk because of female genital mutilation (FGM) and seeks advice, information or support. Callers details can remain anonymous, but any information that can protect a child is passed to police or social service. The helpline also provides support to professionals working with children—including teachers and doctors—to help them protect children from FGM. The Metropolitan Police supports the FGM as part of its crime prevention work and has provided training to the NSPCC.^d

The United Kingdom’s Forced Marriage Unit (FMU) is a joint Foreign and Commonwealth Office and Home Office Unit that provides assistance to any individual in the UK and British nationals outside the UK. The FMU operates a helpline to support victims and professionals dealing with cases of forced marriage.^e

⁸⁵European Commission, *Recommendation CM/Rec (2011) 1 on interaction between migrants and receiving societies* offers integration measures.

Also in the United Kingdom, Daughters of Eve is a non-governmental organization whose members come from FGM practicing communities. Daughters of Eve works to advance and protect the rights of young people from those communities through awareness raising for prevention and protecting and supporting victims of the practice in the wider context of violence against women and girls.^f

Preventing violence against children with migrant backgrounds

Africans Unite against Child Abuse (AFRUCA) was established in May 2001 as a platform for advocating for the rights and welfare of African children in the UK. It runs the AFRUCA Centre for African Children and Families that provides a range of prevention and early intervention projects, runs a specialist training programme for practitioners who work with the African community, researches FGM in African communities in the UK, campaigns against witchcraft branding and works with families affected by child abuse linked to faith and belief.^g

^a UNODC, *Handbook on Effective Police Responses to Violence against Women* (New York, 2010), p. 81.

^b Muslim Resource Centre for Social Support and Integration, *Addressing domestic violence in Canadian Muslim Communities: A training manual for Muslim Communities and Ontario Service Providers* (2010).

^c For more information, see: www.cmfd.org/what-we-do/radio-drama/change-the-story-refugees-and-migrants-speak-against-gbv.

^d For more information, see www.nspcc.org.uk/news-and-views/media-centre/press-releases/2013/fgm-helpline-launch/female-genital-mutilation-helpline_wdn96859.html

^e www.gov.uk/forced-marriage

^f www.dofeve.org

^g www.afruca.org

4. Strengthen legislation to combat violence against migrants

National legislation to combat violence must be in accordance with international law. It is not enough to assume that legislation as it stands is sufficient to prevent violence and exploitation. Some legislation may serve to exacerbate violence against migrants, for instance where it stigmatizes certain individuals on the basis of their status or other attributes. Other legislation may be deficient to address phenomena that can result in violence, such as racism, discrimination, xenophobia and other intolerance. Finally, existing legislation may not anticipate the types of violence that some migrants may be subject to, including that which occurs within certain migrant communities. Accordingly, domestic legislation needs to be strengthened in line with international standards, to ensure that it captures and prohibits all forms of violence committed against and by migrants, migrant workers and their families.

4.1. Ensuring legislation does not exacerbate violence

Legislation is an important component of a comprehensive response to prevent violence against migrants, migrant workers and their families. However, some legislation can also serve to exacerbate violence against migrants.⁸⁶ For instance, legislation that criminalizes irregular migration can make migrants more vulnerable to potential racism and xenophobia, and the mechanisms put in place to enforce legislation against irregular migration may directly or indirectly result in violence against migrants.⁸⁷ Similarly, legislation that targets those who facilitate irregular entry and stay, without excluding those who do so for non-profit, humanitarian reasons, would be a deterrent from assisting and protecting migrant from violence and thus may further increase those risks.⁸⁸ The Special Rapporteur on the human rights of migrants has noted that while irregular migration may constitute an administrative offence, it is not a crime and should never be considered as such. As noted by the United Nations Working Group on Arbitrary Detention, “criminalizing illegal entry into a country exceeds the legitimate interest of States to control and regulate irregular immigration and leads to unnecessary detention.”⁸⁹

Suggestions for consideration:

- Ratify all relevant international human rights instruments (in particular to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families) and amend legislation in accordance with obligations set out therein.
- Review and amend legislation, to include specific provisions if necessary to ensure that migrants have equal access to justice for violence perpetrated against them.
- Review and amend legislation to ensure that irregular migration is not considered a criminal offence, so as to reduce vulnerability of migrants to violence.

⁸⁶See for example, European Union Agency for Fundamental Rights, *Criminalisation of Migrants in an irregular situation and of persons engaging with them* (Vienna, 2014), available at: http://fra.europa.eu/sites/default/files/fra-2014-criminalisation-of-migrants-0_en_0.pdf

⁸⁷See Twenty-first Session of the Commission on Crime Prevention and Criminal Justice, *Discussion guide for the thematic discussion on violence against migrants, migrant workers and their families* (E/CN.15/2012/5), paragraph 49 and comments of the Special Rapporteur on the Human Rights of Migrants (A/65/222 and A/HRC/17/33). Also see European Union Agency for Fundamental Rights, *Criminalisation of Irregular Migrants and of Persons Engaging with them* (Vienna, 2014), p. 2; and PICUM *Recommendations to the European Union to Urgently Address Criminalisation and Violence against Migrants in Greece* (Brussels, 2014).

⁸⁸The Smuggling of Migrants Protocol only intends to target those who smuggle migrants for financial or other material benefit, as made explicit in Article 3(a).

⁸⁹See Human Rights Council, *Report of the Working Group on Arbitrary Detention* (A/HRC/7/4), paragraph 53.

Non-criminalization of irregular migration

Article 40 of the Ecuador Constitution recognizes the right of all individuals to migrate, and provides that no person shall be identified nor considered as illegal due to his or her migration status.

Article 156 of the *Act on Residence of Foreign Nationals in the territory of the Czech Republic* treats irregular entry and irregular stay, as “minor administrative offences”.

Jurisprudence

The European Court of Justice in the case of C-61/11 PPU concerned proceedings brought against Mr. El Dridi, who was sentenced to one year’s imprisonment for the offence of having stayed illegally on Italian territory without valid grounds, contrary to a removal order made against him by the Questore di Udine (Chief of Police, Udine (Italy)). The Court decided that Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (in particular Articles 15 and 16 thereof) must be interpreted as precluding a Member State’s legislation, to allow for a sentence of imprisonment to be imposed on an illegally staying third-country national on the sole ground that he remains, without valid grounds, on the territory of that State, contrary to an order to leave that territory within a given period.^a

^a See European Court of Justice, Case *Hassen El Dridi* (C-61/11 PPU), 28 April 2011.

4.2. Strengthening legislation against racism, discrimination and xenophobia

Incitement to discrimination, hostility and violence must be criminalized in domestic law.⁹⁰ Legislation can serve to deter violence against migrants when it specifically criminalizes discrimination on the basis of race, ethnicity or nationality, or where aggravating circumstances are provided for crimes against individuals on the basis of such discrimination.⁹¹ To achieve this, some legislation may need to be amended so as to capture forms of violence that occur in practice or that condone, or do not adequately condemn violence.

Article 68(1)(c) of the IMRWC requires States to put in place “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.” In its general recommendation on combating racist hate speech issued in September, the United Nations Committee on the Elimination of Racial Discrimination (CERD) noted as a minimum requirement and without prejudice to further measures, the need for comprehensive legislation against racial discrimination including criminal law.⁹²

Some Members States have adopted specific anti-discrimination legislation, and other States have included specific provisions in legislation to protect non-migrants from discrimination.⁹³ Regardless

⁹⁰See ICCPR Article 20. Also see *United Nations Human Rights Committee (HRC), CCPR General Comment No. 11: Article 20 Prohibition of Propaganda for War and Inciting National, Racial or Religious Hatred*, 29 July 1983, available at: <http://www.refworld.org/docid/453883f811.html> [accessed 14 January 2015].

⁹¹See Twenty-first Session of the Commission on Crime Prevention and Criminal Justice, *Discussion guide for the thematic discussion on violence against migrants, migrant workers and their families* (E/CN.15/2012/5), paragraph 49.

⁹²See International Convention on the Elimination of All Forms of Racial Discrimination, Committee on the Elimination of Racial Discrimination (2013), General Recommendation No. 35, *Combatting racist hate speech* (CERD/C/GC/35), paragraph 9.

⁹³See Twenty-first Session of the Commission on Crime Prevention and Criminal Justice, *Discussion guide for the thematic discussion on violence against migrants, migrant workers and their families* (E/CN.15/2012/5), paragraph 42.

of the approach taken, it is imperative that non-discrimination provisions apply to all migrants. Beyond prohibiting discrimination, legislation can also positively protect the legal equality of all persons before the law, including of migrants, irrespective of their status. Anti-discrimination legislation could provide both sanctions against discrimination, as well as incentives for inclusive treatment, and specify measures to support migrants to access their rights, including through provisions on education, employment, housing, and relations with the police, and specific sanctions for discrimination in specific areas.⁹⁴

Suggestions for consideration:

- Adopt or amend legislation to ensure that definitions of specific crimes of racism and violence are adequately broad. Legislation should also be amended to remove provisions that allow for or condone violence against migrants or that increase their vulnerability.
- Adopt or amend national laws, policies, codes, procedures, programmes and practices, especially criminal laws, on an on-going basis in light of international legal instruments, to ensure and guarantee their comprehensiveness and effectiveness in eliminating violence against migrants.
- Adopt or amend legislation to include higher sentences to be imposed when violence is racially motivated, or motivated by immigration status, or perpetrated by state agents.
- Adopt or amend legislation to support the investigation and prosecution of excessive use of force (including lethal force) and any act of violence against migrants perpetrated by police, immigration officers, border control personnel or other state agents.

Legislation sanctioning incitement to violence or hatred

European Commission Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law aims to ensure that racist and xenophobic offences are sanctioned in all Member States by effective, proportionate and dissuasive criminal penalties. The offences include the public incitement to violence or hatred against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin, which shall also be punishable if committed by public dissemination or distribution of tracts, pictures or other material.

Resource recommendations

The European Commission against Racism and Intolerance (ECRI) adopted *General Policy Recommendation No.7: National legislation to combat racism and racial discrimination* in December 2002. That recommendation explains key elements that should be reflected in legislation to combat racism.^a

The OSCE Office for Democratic Institutions and Human Rights (ODIHR) *Hate Crime Laws: A Practical Guide* discusses the international legal framework, key features of effective legislation, penalties, characteristics to include and other key considerations for legislators.^b

⁹⁴ See Twelfth United Nations Congress on Crime Prevention and Criminal Justice, Working paper prepared by the Secretariat, *Crime prevention and criminal justice responses to violence against migrants, migrant workers and their families* (A/CONF.213/11), paragraphs 66-67.

The United Nations *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, concerning the performance of law enforcers' roles in protecting the right to life, liberty and security of person, are offered to Governments for incorporation into their national legislation and practice.^c

^a European Commission against Racism and Intolerance, General Policy Recommendation No.7: National legislation to combat racism and racial discrimination (13 December 2002), available at: http://www.coe.int/t/dghl/monitoring/ecri/activities/gpr/en/recommendation_n7/Recommendation_7_en.asp.

^b See OSCE/ODIHR, *Hate Crime Laws: A Practical Guide* (Warsaw, 2009), available at: www.osce.org/odihr/36426?download=true.

^c *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990 (United Nations publication, Sales No. E. 91.IV.2), chap. I, sect. B.2, annex.

4.3. Strengthening legislation to combat violence within migrant communities

The widely acknowledged vulnerability of migrant women and children to violence is such that legislation should accordingly consider including specific provisions relating to migrant women, women migrant workers, children of migrants or unaccompanied minors.⁹⁵ Specific forms of violence that may impact on migrants should also be explicitly prohibited in legislation. Notably, harmful traditional practices, in all their forms (including female genital mutilation, honour crimes including killing, violent cultural or religious rituals, dowry murders, and forced virginity testing), should be criminalized as serious offences under law.⁹⁶ Given that the involvement of the community and civil society organizations is an essential part of effective crime prevention both in terms of identifying priorities,⁹⁷ and implementing and evaluation responses, efforts should be made to increase participation of effected migrants in implementing legislation.

Suggestions for consideration:

- Review, evaluate and amend criminal and civil laws to ensure that all forms of violence against migrants are criminalized and prohibited, including harmful traditional practices, in all their forms.

Legislation to ensure protecting of women in irregular migration situations

In Spain, legislation on gender-based violence ensures a non-discriminatory approach by ensuring that legal protections and rights are guaranteed for all women experiencing violence, regardless of their immigration status. Previous legislation protected victims of gender-based violence irrespective of their status, but was in conflict with an immigration law that placed emphasized on the migration status of persons coming to the attention of the police.

⁹⁵On this point see Sixty-first Session of the General Assembly, *Report of the independent expert for the United Nations study on violence against children* (Official Records of the General Assembly (A/61/299)), identifying the vulnerability of children to violence, including children in the context of migration. In particular, the report identified high levels of violence perpetrated by police officials against marginalized groups of children, such as children living on the streets. Also see PICUM, *Strategies to End Double Violence Against Undocumented Women—Protecting Rights and Ensuring Justice* (Brussels, 2012).

⁹⁶ General Assembly resolution 65/228 of 21 December 2010, paragraph 14(v). Also see UNODC *Handbook on Effective Police Responses to Violence against Women* (New York, 2010), pp. 12-16.

⁹⁷*United Nations Guidelines for the Prevention of Crime*, ECOSOC resolution, 2002/13, annex, section IV, principle 16.

Legislative amendments shifted emphasis on protection of victims above their administrative status by removing the obligation for police to open an expulsion file for women in irregular situations who contact them, and suspend any existing expulsion file. This amendment has enabled concrete implementation of their rights.^a

Legislation against Female Genital Mutilation

In the United Kingdom, the *Female Genital Mutilation Act 2003* in England, Wales and Northern Ireland replaced the *Prohibition of Female Circumcision Act 1985*, replacing an earlier 5 year sentence to provide for a maximum penalty from five to 14 years in prison. It also makes it an offence for UK nationals or permanent UK residents to carry out FGM abroad even in countries where it is legal. Under section 1 of the Act a person is guilty of an offence if he excises, infibulates or otherwise mutilates the whole or any part of a girl or woman's labia majora, labia minora or clitoris.

The *Anti-Social Behaviour, Crime and Policing Act 2014* makes forced marriage a criminal offence that can result in sentences of up to 7 years.

^a PICUM, *Strategies to End Double Violence against Undocumented Women: Protecting Rights and Ensuring Justice* (Brussels, 2012), pp. 103-107.

5. Investigate and prosecute violence against migrants

Where violence is not investigated and prosecuted, its perpetrators continue to commit crimes with impunity. States must therefore ensure that investigations are conducted in reported instances of violence, prosecuted and effectively adjudicated.

An effective investigation is one in which the investigator acts in a professional, impartial and objective manner; is diligent in collecting evidence and statements; treats all parties involved with respect and dignity; identifies offenders and collects evidence to prove the case in court; and takes steps to address the safety needs of persons involved. Where violence is committed against migrants, effective responses must include measures to strengthen capacity of criminal justice practitioners to confront linguistic, social, cultural and other barriers that may be present in investigations and prosecutions involving migrants victims and/or perpetrators.⁹⁸ Specific measures to fight impunity might also be required in certain settings/countries.

5.1. Strengthening relationships between migrants and police

Gathering evidence on violence affecting migrants, particularly those in irregular situations, can be particularly challenging, owing to their isolation and disorientation, language difficulties, barriers to accessing medical services and mistrust of police. Many migrants may have negative experiences interacting with police in their home countries and so be reluctant to seek their assistance if they experience violence.⁹⁹ Significantly, migrants may be deterred from reporting to police owing to valid or perceived fears that doing so may lead to their own apprehension on the basis of their migration status, hailing the need to delink the criminal justice work of police from any migration agenda of the destination State.¹⁰⁰

Relationships between police and migrant communities must be strengthened as a means and an end of reducing violence and responding to it. Cooperation with community and civil society organizations should be sought in facilitating efforts to improve relations between criminal justice practitioners and migrants groups.¹⁰¹ Recruitment of persons with migrant background is an effective means building capacity of police to empathize and engage with migrant communities as well as increase trust in the police amongst migrant communities.¹⁰² Additionally, mechanisms can be put in place to receive reports of violence against migrants, for instance through the establishment of a special body to ensure coordination of different agencies.¹⁰³

⁹⁸Twelfth United Nations Congress on Crime Prevention and Criminal Justice, Working paper prepared by the Secretariat, *Crime prevention and criminal justice responses to violence against migrants, migrant workers and their families* (A/CONF.213/11), paragraph 63.

⁹⁹See for example, Robert C. Davis and Edna Erez, *Immigrant populations as victims: Toward a Multicultural Criminal Justice System* (US Department of Justice, National Institution of Justice, 1998), available at: www.ncjrs.gov/pdffiles/167571.pdf

¹⁰⁰Also see: European Union Agency for Fundamental Rights, *Apprehension of migrants in an irregular situation—fundamental rights considerations* (Vienna, 2013), paragraph 9, available from http://fra.europa.eu/sites/default/files/fra-2013-apprehension-migrants-irregular-situation_en.pdf.

¹⁰¹See Twelfth United Nations Congress on Crime Prevention and Criminal Justice, Working paper prepared by the Secretariat, *Crime prevention and criminal justice responses to violence against migrants, migrant workers and their families* (A/CONF.213/11), paragraphs 60-61.

¹⁰²See for instance, UNODC *Handbook on Police Accountability, Oversight and Integrity* (New York, 2011), pp. 101-110, on listening to the public, including marginalized subgroups within it.

¹⁰³See Twenty-first Session of the Commission on Crime Prevention and Criminal Justice, Discussion guide for the thematic discussion on violence against migrants, migrant workers and their families (E/CN.15/2012/5), paragraph 48.

Suggestions for consideration:

- Engage migrant communities and police in collaborative efforts to reduce violence, including in the development and provisions of cross-cultural training modules for police, criminal justice officials and other professionals involved in the criminal justice system.
- Equip police to focus on criminal justice issues by ensuring that they are not mandated to address migration issues, and ensure that migrant communities are able to report to seek police assistance without fear of consequences for their migration status.
- Provide opportunities for police to engage with and learn more about migrant communities they come across in their policing work.
- Increase efforts to recruit people with migrant background into police and other criminal justice services.

Building trust between police and migrants

In the suburb of Dandenong, in the state of Victoria, Australia, a project titled “Sudanese Community Cross Cultural Training for Police” was implemented to break down cultural stereotypes and build better relationships between the Sudanese community and the police. The need for cross cultural training to build trust between the two groups was identified in response to erroneous assumptions of police that socializing groups of Sudanese youth were detrimental to public safety, and negative stereotypes of police based on experiences of Sudanese youth with police in Sudan. The Multicultural Liaison Unit of the Dandenong police force networked with Sudanese community leaders through the Sudanese Community Association of Australia as well as with Sudanese youth, to facilitate open community consultations to develop a training package delivered throughout Melbourne’s south-eastern suburbs.^a The Sudanese community invited representatives of the Victorian police on a study tour to Sudan in 2007 to familiarise them with the emerging Sudanese community and strengthen their capacity to engage with Sudanese in Australia in the course of the law enforcement work.^b

Recruiting migrants and minorities

In the City Police of Brno, in the Czech Republic, police in co-operation with the NGO DROM Romani Centre, established a “Mission Project” aiming to promote trust and confidence in the police, among young Roma and to prevent criminality among young Roma people. Police representatives participated in activities with children between the ages of seven and ten from different schools, seeking to interest them in the work of the police.^c

Efforts have also been undertaken to encourage Roma to apply for police schools in Hungary (through law enforcement career orientation camps for youth, and scholarships for students pursuing a career in the police), in Serbia (through public campaigns), and in the UK (through a Romani language information CD).^d

^a More information is available through the Australian government’s Department of Human Services, at www.dss.gov.au/our-responsibilities/settlement-services/sudanese-community-cross-cultural-training-for-police.

^b Also see information available on the UNHCR website at www.unhcr.org/46cda5684.html.

^c European Commission against Racism and Intolerance, *Practical Examples on Combating Racism and Intolerance against Roma/Gypsies* (Brussels, 2001), p. 59.

^d Examples referred to in: Organization for Security and Co-operation in Europe, *Police and Roma and Sinti: Good Practices in Building Trust and Understanding* (Paris, 2010), pp. 64-65.

5.2. Providing targeted, ongoing, multi-disciplinary training

Police are often the first point of contact that victims have with the criminal justice system, making their role crucial. Guidelines on the implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, emphasize developing suitable training for service providers to develop their skills and understanding and to “overcome bias, where it may exist.”¹⁰⁴ This latter point is particularly pertinent in respect of migrant victims of violence, given that biases existing in society at large may also be present among police and service providers.

Training should stress the importance of treating victims as humans and respecting their rights, rather than treating them as mere sources of evidence. Police must be taught to sympathize with victims and comfort them.¹⁰⁵ Training should also include components on overcoming language and cultural barriers, as well as sensitivity training to increase capacity of criminal justice practitioners to address the special needs of particular groups. International organizations, NGOs and civil society actors as well as health and social service providers should be involved in developing and delivering training to criminal justice personnel.¹⁰⁶ Police should also be trained to make appropriate referrals to such organizations so victims of violence can access assistance and support, and be encouraged to seek NGO testimonies and documentation of injuries in gathering best evidence for trials.

Suggestions for consideration:

- Ensure that criminal justice practitioners receive regular and ongoing training on relevant laws, policies and programmes as well as international legal instruments relevant to violence against migrants. Such training should be human rights and victim-centred and address the causes and consequences of violence against migrants, migrant workers and their families.
- Promote use of specialized expertise in the police and prosecution authorities and other criminal justice practitioners, including through specialized units or personnel to ensure that all criminal justice practitioners receive regular and institutionalized training to sensitize them to violence against migrants and related issues, and to build their capacity with respect to violence against migrants, including in collection of evidence of violence and exploitation.
- Ensure that the exercise of powers by police, prosecutors and other criminal justice officials is undertaken according to the rule of law and codes of conduct and that officials are held accountable for any infringements through appropriate oversight and accountability mechanisms, including when violence is endemic against a certain group or category of migrants.¹⁰⁷

¹⁰⁴ECOSOC resolution 1989/57 of 24 May 1989, paragraph 3(b).

¹⁰⁵UNODC, *Guide for Policy Makers on Victims of Crime and Abuse of Power* (New York, 1999), p. 31.

¹⁰⁶GA/RES/67/185, paragraph 10.

¹⁰⁷See for instance UNODC, *Handbook on Police Accountability, Oversight and Integrity* (New York, 2011).

Rights-based police training manual

The EU Fundamental Rights Agency produced a training manual titled *Fundamental rights-based police training: A manual for police trainers*.^a The Council of Europe offers *Practical guidelines on Police training concerning Migrants and Ethnic Communities*, which suggests that training address subjects including: communicating effectively to avoid misunderstandings in intercultural situations; management of violence and conflict; coping with stress and fear on the part of police officers; unacceptability of discriminatory behaviour and confronting such behaviour among colleagues; professional standards of conduct in multicultural and multiracial situations.^b

Anti-discrimination manual for police

In Poland, a practical guide to anti-discrimination measures for the police defines and describes various forms of discrimination. The manual of good anti-discrimination practices advises on how to deal with hate crime and discrimination cases in a sensitive manner. The manual (published by the National Network of Police Plenipotentiaries for Human Rights Protection and funded by the Polish police) benefited from the input of a number of stakeholders, including the Polish Human Rights Defender, the Government Plenipotentiary for Equal Treatment and several civil society organizations.^c

^a European Union Agency for Fundamental Rights, *Fundamental rights-based police training: A manual for police trainers* (Vienna, 2013), available from <http://fra.europa.eu/en/publication/2013/fundamental-rights-based-police-training-manual-police-trainers>

^b Council of Europe, *Police Training Concerning Migrants and Ethnic Relations: Practical Guidelines* (Strasbourg, 1993), p. 23

^c For more information, see: Plenipotentiary of the Commander Chief of Police for the Protection of Human Rights (Pełnomocnik Komendanta Głównego Policji ds. Ochrony Praw Człowieka), *Human first* (Po pierwsze człowiek) (Warsaw 2013). Available at: <http://isp.policja.pl/isp/prawa-czlowieka-w-poli/aktualnosci/4344.dok.html> and reported in European Union Agency for Fundamental Rights, *Fundamental rights: Challenges and achievements* (Vienna, 2014), p. 221.

5.3. Implementing reporting mechanisms for migrants to report violence

In addition to increasing capacity of law enforcers to identify migrant victims of violence, measures should be put in place to ensure that migrants, migrant workers and their families can report violence and lodge complaints, including against employers and other perpetrators of violence. Mechanisms currently in place for non-migrants to report violence should be made more accessible to migrants. Specifically, such mechanisms should be simplified and made available in relevant languages, and allow for reports to be made anonymously so any concerns about repercussions will not deter migrants (particularly those in irregular situations) from making reports. Migrants, irrespective of their status, should have access to mechanisms to lodge complaints of violence against their employers. States should engage trade unions and NGOs in responses to facilitate access to justice for migrants.

Suggestions for consideration:

- Establish mechanisms to enable and encourage victims and witnesses of violence and other crimes against migrants irrespective of their migration status, to make report by simplify reporting procedures.
- Establish linkages between public and private health and social services, and criminal justice agencies for the purpose of reporting, recording and responding appropriately to

acts of violence against migrants, while protecting the privacy of migrants subjected to violence.

- Ensure that reporting procedures and complaint mechanism are accessible to migrant victims of violence and members of their family without fear of reprisal or discrimination, and without prejudice to any asylum claims.

Multi-language hotlines

In the Republic of Korea, the Ministry of Gender Equality (MOGE) offers shelter, counselling services, and education for immigrant married women, particularly women who are victims of domestic violence. A 24-hour emergency number is available for women in need of immediate help. Assistance is provided in English, Chinese, Russian, Mongolian, Vietnamese and Thai.^a

Reporting hate crime online

The police in the Netherlands developed an online tool in 2013 to enable victims of hate crime to report the incident to the police anonymously. The website explains the concept of hate crimes and encourages reporting. Victims are invited to see a police officer and are informed about their rights and legal proceedings. This tool was inspired by True Vision, a web facility providing information for victims and facilitating the reporting of hate crimes, implemented by the Association of Chief Police Officers in the United Kingdom (England and Wales).^b

Supporting migrants in irregular situations to report violence

In Amsterdam, the anti-discrimination unit of the police has started the “Veilige Aangifte” (Safe Return) initiative, to enable them to report crimes securely. This “free in, free out” approach, allows migrants to report crimes without fear of arrest and visits NGOs to meet with migrants in irregular situations to answer questions and provide information about their rights.^c

Reporting racism and promoting a positive approach to cultural diversity.

In Austria, the NGO “Zivilcourage und Anti-Rassismus-Arbeit” (ZARA), meaning “Civil Courage and Anti-Racism Work”, aims to combat racism and promote civil courage as well as a positive approach to cultural diversity, and provides counselling to victims and witnesses of racism. The ZARA team of counsellors provides information on the legal and other steps to be taken in the event of racist violations and maintains systematic records of all incidents reported by witnesses and victims. The counselling provided by ZARA is free of charge.^d

^a International Organization for Migration, *Compendium of Migrant Integration Policies and Practices* (Geneva, 2010), p. 133.

^b For more information, www.hatecrimes.nl/info-en-links/achtergrond and www.report-it.org.uk/home. Reported in European Union Agency for Fundamental Rights, *Fundamental rights: Challenges and achievements* (Vienna, 2014), p. 221.

^c PICUM, *Strategies to End Double Violence against Undocumented Women: Protecting Rights and Ensuring Justice* (Brussels, 2012), p. 114.

^d www.zara.or.at

6. Protect victims and witnesses

Some jurisdictions require victim cooperation in order for a charge to be brought. Yet some victims of violence may be reluctant to cooperate out of fear of reprisal or community alienation. They also may fear consequences from the state, particularly if their residency status is uncertain. In the context of migrant victims and/or witnesses and their families, police must pay particular attention to addressing victims' concerns and take specific steps to protect them not only from re-victimization at the hands of criminals, but also from re-victimization that may occur in the criminal justice system itself.

The United Nations *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* stresses the importance of “measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation.”¹⁰⁸

6.1. Informing victims of their right to be protected from violence and to seek redress

Victims of crime and their families have a right to understand processes of seeking redress and to be understood throughout those processes.¹⁰⁹ They have a right to participate by sharing their views and concerns during proceedings.¹¹⁰ They can be informed of their rights by being provided with books or brochures that outline procedures and explain victims' rights and being given access to hotlines they can call for support. Such materials should be tailored to the needs of migrants, by being translated into relevant languages and being presented in a way that is culturally appropriate for readers, or otherwise seeks to convey information (for instance, if victims are illiterate).

Efforts should also be made to ensure that information reaches migrants who may be trapped in isolated situations or in the home (for instance, victims of domestic violence and domestic workers who are denied freedom of movement, or people working in agriculture in remote areas). Migrants in irregular situations may face particular barriers in seeking redress in violent situations, fearing that they will be subject to fines or deportation orders. This consideration emphasises the need to ensure that criminal justice objectives of protecting victims, and investigating and prosecuting perpetrators of violence, takes priority over any migration objectives and that measures are taken to protect victims regardless of their immigration status.

Suggestions for consideration:

- Ensure that efforts currently in place to inform victims of violence about their right to be protected from violence are tailored to the needs of migrants, so information reaches them and is in a language they can understand.
- Delink the prosecution of violence from immigration control, so that investigation and prosecution of violence against migrants takes precedence over proceedings concerning the immigration status of victims.

¹⁰⁸General Assembly resolution 40/34 of 29 November 1985, paragraph 6(d).

¹⁰⁹See for instance, Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

¹¹⁰General Assembly resolution 40/34 of 29 November 1985, paragraph 6(b).

Creative awareness raising of migrant domestic worker victims of violence

Ban Ying (House of Women) in Berlin, Germany, designed an innovative campaign to reach migrant women working in private homes, many of whom worked for diplomats who locked them inside. Ban Ying created billboards with writing in Tagalog or Chinese that appeared to advertise soap, but in fact displayed information about domestic workers' rights. Motorbikes drove around areas where live-in migrant domestic workers resided, and delivered boxed bars of soap to houses, containing an information card in eight languages, and telephone numbers.^a

Telephone hotline for women migrant victims of violence

La Cimade in Paris operates a telephone hotline for migrant women experiencing violence. The hotline allows all women to share their experience of violence and obtain advice regarding administrative issues and legal aid. Callers are offered basic advice and information before being orientated towards La Cimade's permanent support services. Efforts are made to communicate with callers in their own language as many volunteers staffing phones are from migrant backgrounds.^b

^a Reported in PICUM, *Strategies to End Double Violence against Undocumented Women: Protecting Rights and Ensuring Justice* (Brussels, 2012), p. 21.

^b *Ibid.*, pp. 18-19

6.2. Protecting victims from secondary and repeat victimization

Among the many norms and standards that emphasize State obligations to protect migrant victims and witnesses,¹¹¹ Article 16(2) of the International Convention on the Rights of All Migrant Workers and Members of Their Families and article 5(b) of the International Convention on the Elimination of Racial Discrimination require States to provide effective police and other criminal justice protection for all persons, including migrants in irregular situations, who are subject to physical or sexual violence, whether inflicted by Government officials or by private individuals, groups or institutions. The Smuggling of Migrants Protocol also requires States to take measures to afford migrants protection against violence that may be inflicted on them because they have been smuggled.¹¹²

Measures must be taken to protect safety of migrants against additional acts of violence by the offender, particularly where there is a close relationship between victims and offenders (in cases of family violence for instance), or when the offender is powerful (for instance, because he or she is part of an organized crime group or is an agent of the State or has connections with the State).¹¹³

Migrant victims of violence and crime may fear consequences for their immigration status if they assist with criminal justice procedures. In some States, this barrier has been overcome by making protection visas available to victims of certain crimes, including violence, to allow them to remain in the country for the purpose of supporting criminal justice processes, avoiding that they will

¹¹¹ See for instance, General Assembly resolution 40/34 of 29 November 1985 (Article 6(d)); *Guidelines on Justice in Matters involving Child Victims and Witnesses* (Nos. 32-34); Articles 24 to 26 of UNTOC; Articles 6 to 8 of the Trafficking Protocol; Article 16(2) of the Smuggling Protocol; and Article 32 of the Convention against Corruption.

¹¹² See Article 16(2) of the Smuggling of Migrants Protocol.

¹¹³ See UNODC, "Victims and Witnesses" in *Criminal Justice Assessment Toolkit* (New York, 2006), p. 14.

become undocumented and left in limbo.¹¹⁴ The principle of *non-refoulement* is also essential to ensuring that people are not returned to violent situations.

Suggestions for consideration:

- Put in place temporary and permanent protection measures to ensure that people are not returned to their places of origin where they are likely to be subject to such violence. Special consideration should be given to the international protection needs of displaced children, in accordance with the best interests of the child.
- Provide appropriate training, oversight and monitoring mechanisms to ensure that victims do not face secondary victimization by criminal justice officials.
- Require law enforcement officials to suspend return or removal directions arising from the status of a victim or witness of alleged violence pending an assessment by a prosecutor of the merits of the complaint, and the risk of re-victimization upon return.
- Ensure the safety, privacy and dignity of migrant victims and their families without prejudice to the victim's migration status, or ability or willingness to participate in an investigation or prosecution.

Protection visas for victims of violence

In the United States, the U non-immigrant status (U visa) is available for victims of certain abusive forms of crimes and the T non-immigrant status (T visa) for victims of trafficking. These visas are helpful to law enforcement officials in the investigation or prosecution of criminal activities, allowing victims and witnesses to participate in criminal justice processes. Both visas were created by the passage of the *Victims of Trafficking and Violence Protection Act* (including the *Battered Immigrant Women's Protection Act*) in October 2000.^a

Japan flexibly applies immigration procedures and offers special residency status to victims of trafficking.^b

^a For more information, see the United States Citizenship and Immigration Services, of the Department of Homeland Security, at <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes>.

^b See Japan, Ministry of Justice, *Victim Support During Trials*, available from www.moj.go.jp/ENGLISH/CRAB/crab-02-4.html.

6.3. Protecting migrant witnesses from retaliation

Witness protection is an essential means of gaining crucial evidence against criminals. There are different means of protecting witnesses of crime, the choice of which depends on the type of witness, the type of crime (crime within the family, sex crime, organized crime etc.) the level of threat and indeed the resources available.¹¹⁵ Measures taken to protect witnesses may be simple and low cost (such as temporarily placing witnesses in safe houses or providing them with a mobile phone so they can call for help), or complex and resource intensive (in extreme cases as a last resort, including relocation programmes). Where criminals are part of organized groups, witnesses must be protected through special measures including procedures for their physical protection and

¹¹⁴ Article 7 of the Trafficking in Persons Protocol for instance, highlights granting residence status to victims of trafficking as a means of encouraging them to come forward to assist in investigations and prosecutions of traffickers.

¹¹⁵ See UNODC, *Good practices for the protection of witnesses in criminal proceedings involving organized crime* (New York, 2008), p. 93.

through evidentiary rules permitting witnesses to give testimony through use of technology such as video links.¹¹⁶

Judges have a key role to play in ordering evidentiary measures to protect identities of witnesses and prevent intimidation by defendants including through use of shields, screens, testimony via video-conferencing or closed circuit television, or allowing the presence of an accompanying person during court hearings. Measures for protecting migrant witnesses may require the use of language interpreters and cross-cultural advisers. Consideration should also be given to protecting migrant witnesses who have returned or been returned to their places of origin.

Publicity of criminal justice processes can also have negative consequences particularly if witnesses are asylum seekers or refugees who fear persecution; attention must be paid to avoiding names or other details that could be used to identify victims of violence.

Suggestions for consideration:

- Adopt legislative or other measures to allow migrant witnesses to remain in the territory for the purpose of providing testimony and allowing testimony to be provided by migrants who have returned or been returned to other jurisdictions.
- Review and amend legislation to ensure that refusal to testify does not constitute a criminal or other offence where witness safety cannot be guaranteed.
- Ensure that any publicity about investigations or prosecutions for violence involving migrant witnesses does not reveal identifying data.

Measures to protect witnesses in court

The *Witness Protection Act* in Portugal allows for witness concealment or testimony via teleconference if the information provided by the witness poses a serious risk to the witness or his or her family. Protective measures may also apply for victims participating as injured parties. Video-linked testimonies or statements are admissible upon request by the public prosecutor, the defendant or the witness. The court can restrict access to the location where it is recorded to technical staff, officials or security personnel. During the testimony, an escort judge must be present.^a

In Japan, persons testifying can be separated from accused persons by a screen or sit in a separate room and testify over a monitor.^b

In Norway, Section 134 of the *Criminal Procedure Act* provides restrictions regarding the questioning of witnesses. Section 136 provides that the court must ensure that the examination is conducted with reasonable consideration for witnesses, and Section 284 allows the court to decide that the defendant or other persons leave the courtroom during the examination of the victim.^c

^a Referred to in UNODC, *Toolkit to Combat Trafficking in Persons* (New York, 2008), p. 254.

^b See Japan, Ministry of Justice, *Victim Support During Trials*.

^c See Council of Europe, Group of Experts on Action against Trafficking in Human Beings, *Report concerning the implementation of Council of Europe Convention on Action against Trafficking in Human Beings by Norway* (GRETA(2013)5), p. 55, paragraph 263.

¹¹⁶United Nations Convention against Transnational Organized Crime, Article 24, United Nations, *Treaty Series*, vol. 2225, No. 39574.

7. Assist migrant victims of violence

Victims of violence should receive necessary material, medical, psychological and social assistance through government, voluntary and community-based means.¹¹⁷ Such assistance should be provided regardless of the migration, residency or other status of victims: migrants must not be excluded from assistance services on any discriminatory grounds.

Police may provide some assistance services (for instance, information provision, outreach and referrals), while criminal justice practitioners (for instance, prosecution and courts) and specialized service providers (for instance, medical practitioners, experts on migrant issues) may provide other services.¹¹⁸ Some assistance services may need to be tailored to ensure that migrant victims have access to them. For instance, adequate geographical coverage for service provision is essential to ensure that victims have access to assistance regardless of where they are; in particular, border regions are not zones of exclusion in this respect.

7.1. Informing migrant victims of the availability of assistance services

Informing migrants of their rights is a key step towards ensuring they have access to them. The United Nations *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* states that “[v]ictims should be informed of the availability of health and social services and other relevant assistance and be readily afforded access to them.”¹¹⁹ States should consider what types of resources and institutions exist to assist migrant workers and their families who have been affected by violence, to understand and claim their rights, including their right to claim asylum.

Different methods to reach victims of violence have been used in different jurisdictions. Drop-in services and helpdesks have been used in some countries.¹²⁰ Brochures and booklets have also served to explain available victim services and how to access them. Referral mechanisms have involved trained crisis counsellors reviewing police reports and select cases for referral; law enforcement officers ask victims if they object to being referred to programmes for further assistance refer victims who have no objections. Regardless of the method, victims should be informed as soon as possible about their rights and the services available to them.¹²¹

Suggestions for consideration:

- Adapt information available to victims of crime to relevant languages spoken by migrant victims.
- Establish services such as multi-language toll-free information lines, professional multidisciplinary counselling and crisis intervention services and support groups in order to benefit migrant victims of violence.

¹¹⁷General Assembly resolution 40/34 of 29 November 1985, paragraph 14.

¹¹⁸See Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA. Also see the UNODC, “Victims and Witnesses”, in *Criminal Justice Assessment Toolkit: Module 3* (New York, 2006), p. 17.

¹¹⁹General Assembly resolution 40/34 of 29 November 1985, paragraph 15.

¹²⁰PICUM, *Strategies to End Double Violence against Undocumented Women: Protecting Rights and Ensuring Justice* (Brussels, 2012), p. 18.

¹²¹UNODC *Guide for Policy Makers on Victims of Crime and Abuse of Power* (New York, 1999), p. 31.

Information for migrant victims

The Texas Association Against Sexual Violence (TAASA) has produced a *Guidebook for Immigrant Victims*, outlining their rights, access to remedies and agencies, associations and resources for service provision.^a

Drop-in advice services for migrants

Latin American Women's Rights Service (LAWRS) in London, offer an open drop-in service so women from the community can obtain advice and assistance once a week without prior appointment. Every Monday morning, these "walk in" sessions allow users to get a prompt response to pressing issues such as domestic violence or elderly abuse. The format enables LAWRS to provide on-going outreach to Latin American women in London and sustain referrals to its other services; such as the therapy service in Spanish and Portuguese for women with experiences of violence.^b

Pre-departure assistance

In Nepal, Pourakhi, the first organization for migrant women, was established by migrant women returnees to advocate the rights of women migrant workers with the Nepal Government and other stakeholders, provide information on foreign employment, act as a pressure group for the implementation of domestic laws and ratification and implementation of international instruments concerned with migrants rights, and raise awareness of safe migration.^c

^a Texas Association Against Sexual Assault, *Guidebook for Immigrant Victims* (Austin, 2006), available from www.taasa.org/publications/pdfs/ImmigrationViolenceGB.pdf

^b PICUM, *Strategies to End Double Violence against Undocumented Women: Protecting Rights and Ensuring Justice* (Brussels, Belgium, 2012), p. 18.

^c UN WOMEN, Allison J. Petrozziello, *Gender On the Move. Working on the Migration-Development Nexus from a Gender Perspective* (Santo Domingo, 2013), p. 175. Also see additional examples at 3.1.

7.2. Ensuring migrants have access to victim assistance

In most States, a framework for assistance exists to support victims of crimes, including violence. Such services include basic medical, psychological and social services and referral mechanisms to ensure that victims can access services they need.¹²² Victim support programmes should be free of charge and provide comprehensive services to migrant victims, including: crisis intervention, counselling, advocacy, support during investigation, support during prosecution and trial, support after case disposition, training for allied professionals on victim issues, violence prevention services, and public education on victim issues. Additionally, emergency and temporary residential accommodation may be needed.

There are several ways that victim services programmes can be strengthened and adapted to ensure that migrants also have access to services when they need them. Representatives from law enforcement, prosecution, the medical sector, the mental health field and local government representatives should be involved in planning such programmes, and include males and females of varying ages, representing different ethnicities, religions, cultures and economic groups so as to best represent

¹²²On migrants' rights to health, see IOM, WHO, OHCHR, *International Migration, Health and Human Rights* (Geneva, 2013).

interests of migrants.¹²³ Governments should also support and engage migrant communities, social networks and organizations as integral to supporting migrant victims and to ensure that cultural and linguistic resources can be brought to bear.

Criminal justice systems should be effectively linked to assistance service providers, to ensure that migrants identified as victims of violence can be effectively referred to them, irrespective of their migration status. At the same time, assistance should be de-linked from migration status; it is crucial that the provision of services is not hampered by the migration status of victims in need of assistance. To this end, service providers should be supported and encouraged to assist migrants, irrespective of their status, and face no repercussions for doing so. Provision of services should also not be contingent on cooperation with criminal justice processes.

Suggestions for consideration:

- Put in place referral mechanisms to ensure that migrants who are identified as victims of violence can be referred to service providers, without risk that their access to justice and assistance will be impeded by their migration status.
- Cooperate with international organizations, non-governmental organizations and migrant organizations to ensure that a coordinated network of facilities and services is accessible to migrant victims of violence who are migrants.
- Strengthen capacity of existing victim service providers to assist victims of violence who are migrants, including by raising their awareness of specific issues facing migrants.
- Adopt or amend laws to ensure that service providers, civil society organizations and individuals that provide legal and other assistance to migrants are not criminalized.¹²⁴ Put in place legislation and other measures to ensure that such actors are not required to report or share personal data of migrants in irregular situations with immigration officials or to withhold services from them on the basis of their status, but are positively required to provide services irrespective of their status.

Providing guidance to those who work with migrants in irregular situations

A group of French NGOs—CIMADE, Emmaus, FEP, FNARS and Secours Catholique—prepared a brochure to provide guidance to those who work with migrants. The brochure, entitled “What should I do? Reception for those without papers and police intervention” (Que dois je faire? Accueil des sans papiers et interventions policières) provides answers to questions relating to the provision of social services to migrants who are in an irregular situation.^a

In the United States, the organization “Futures without Violence” supports victims of domestic violence. It provides information and useful resources for service providers working with migrant women including advice on how to make services accessible to them.^b

¹²³UNODC, *Guide for Policy Makers on Victims of Crime and Abuse of Power* (New York, 1999), p. 29. Also UNODC, “Victims and Witnesses”, in *Criminal Justice Assessment Toolkit: Module 3* (New York, 2006), pp. 17-18.

¹²⁴PICUM, *Strategies to End Double Violence Against Undocumented Women—Protecting Rights and Ensuring Justice* (Brussels, 2012), p. 124. See also European Union Fundamental Rights Agency, *Criminalisation of migrants in an irregular situation and of persons engaging with them* (Vienna, 2014), which examines risks faced by persons who assist migrants or rent accommodation to them, of being punished for migrant smuggling or related offences in EU member States. Based on an analysis of legislation and case law, the paper proposes policy changes to ensure migrant smuggling responses are better aligned with fundamental rights.

Legislation to ensure that migration status is irrelevant to service provision

In the United States, non-profit organizations are explicitly exempt from any requirements to verify immigration status as a condition for providing services. Rather, any non-profit or government domestic violence service programme or shelter that denies assistance to migrants on the basis of their irregular situation is in violation of the Attorney General's order requiring that services "necessary for the protection of life and safety" be provided without regard to immigration status.

Supporting service providers in the provision of assistance to migrants in irregular situations

The Committee for the Rights of Foreigners of the Council for Human Rights (an advisory body to the Czech Government) concluded after a meeting with health professionals in September 2010 that reporting migrants in an irregular situation to the police is unlawful and should not take place. As a follow-up, the Czech Medical Chamber clarified this issue in a newsletter, sent to every doctor.^c

^a Reported in European Agency for Fundamental Rights, *Fundamental rights of migrants in an Irregular Situation in the European Union* (Vienna, 2011), p. 63. The brochure is available from www.cimade.org/publications/29.

^b See: www.futureswithoutviolence.org/section/our_work/women_and_girls/_key_resources_immigrant_women.

^c Reported in: European Agency for Fundamental Rights, *Fundamental rights of migrants in an Irregular Situation in the European Union* (Vienna, 2011), p. 44.

7.3. Providing services to migrant victims with special needs

All aspects of crime prevention strategy must be used in combination, and cater to the specific needs of vulnerable members of society.¹²⁵ The United Nations *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* states that "In providing services and assistance to victims, attention should be given to those who have special needs because of the nature of the harm inflicted..."¹²⁶ In providing services to migrants who are victims, it is important to respect the right of victims to be individually assessed in order to determine their special needs.¹²⁷

Notably, services must be tailored to gender-based considerations and the best interests of children must be upheld in all assistance measures, and the type and nature of the violence inflicted on any victim must be considered. Examples of special programmes for vulnerable victims include sexual assault crisis centres, shelters for women subject to violence, and hotlines to assist victims of "hate crime".

It is also important for service providers to understand that victims of violence who are migrants may have special needs on account of their migration status. Perpetrators of abuse against them threaten their migration status, withhold passports or identify documents or prevent them from learning the language of the country or accessing other services within it. Migrants may have a

¹²⁵ Also see UNODC *Handbook on the Crime Prevention Guidelines: Making them Work* (New York, 2010), pp. 12-16.

¹²⁶ General Assembly resolution 40/34 of 29 November 1985, paragraph 17. Paragraph 3 refers to discrimination of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.

¹²⁷ See Article 22 and Article 24, Directive 2011/36/EU of the European Parliament and the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

heightened risk of violence and be less able to seek assistance where their irregular situation may be used as a means of power or control. Particularly in exploitative labour situations and violent domestic situations, power or control mechanisms can include threats to report migrants for remaining and/or working irregularly in the country and having them deported.

Suggestions for consideration:

- Ensure that services for special groups of victims of violence, such as (unaccompanied) children, women and LGBTI, are also available to migrants and tailored to their particular needs.
- Provide information to specialized service providers about the special needs of migrant victims of violence, particularly those in irregular situations.

Services for specific forms of violence

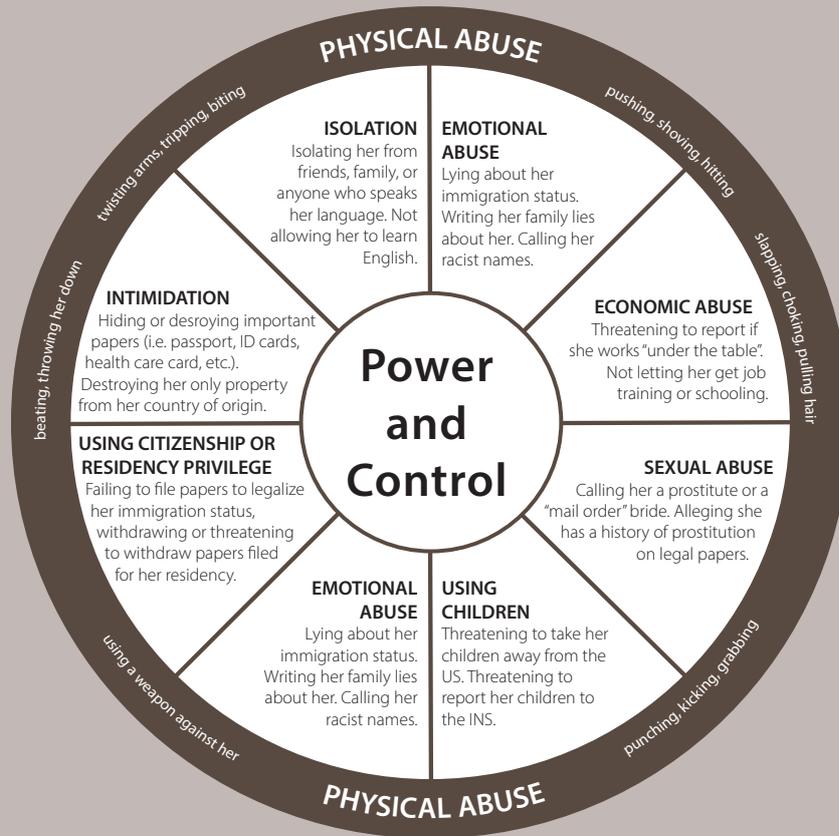
In the United Kingdom, the London Metropolitan Police have adopted a “victim-focused” approach to rape investigation, which includes three “havens”. Services at the havens give victims access to medical treatment, forensic examination and support services. They also provide access to sexual offence investigative technique officers and help victims seek advice anonymously. Where forensic evidence from anonymous reports is established, victims can be contacted by health-care professionals informing them that there is corroborative evidence or evidence to link to other offences. This supportive process can lead to prosecutions of cases that would previously have gone unreported. Any breach of this confidential service by the police or havens would seriously undermine confidence in the havens’ services and the Metropolitan Police.^a

Understanding and catering to the special needs of migrant victims

The United States’ organization “Futures without Violence” works against violence through education programmes, policy development, professional training programmes and advocacy. Among the resources it makes available for providing assistance to migrant women is the *Immigrant Women Power and Control Wheel* that explains the different forms of power and control exercised over migrant women on account of their migration status. The wheel is available in English and Spanish.^b

^a From *UNODC Handbook on Effective Police Responses to Violence against Women* (New York, 2010), p. 58.

^b *Futures without Violence*, see: www.futureswithoutviolence.org



Source: This version of the *Immigrant Power and Control Wheel* was adapted by the Family Violence Prevention Fund (www.endabuse.org) with permission from the Domestic Abuse Intervention Project in Deluth, Minnesota. It is available at: <http://www.futureswithoutviolence.org/content/features/detail/778/>.

8. Provide access to justice

Ensuring that migrant victims of violence and defendants have access to justice is not only a key component in conducting successful investigations and bringing perpetrators to justice,¹²⁸ but is also an important measure to facilitate crime reporting and prevent further violence.¹²⁹

The United Nations *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* states that access to justice requires that victims be treated with compassion and respect for their dignity, and be given access to the mechanisms of justice so as to obtain redress through expeditious, fair, inexpensive and accessible procedures and be informed of these rights.¹³⁰ These same international standards are equally applicable to victims of violence who are migrants, as is emphasized by the United Nations General Assembly calling on States to ensure that victims including migrants, migrant workers and their families have access to justice, irrespective of their immigration status.¹³¹ Irregular status of victims of violence can impact negatively on their ability to access to justice and hold perpetrators to account and pose significant barriers to access shelters and other support services. Accordingly, efforts must be taken to remove barriers to justice and other services for migrants in irregular situations.

8.1. Supporting migrant victims through the criminal justice process

Proper assistance must be provided to victims throughout the legal process.¹³² Criminal justice processes can be complicated to navigate, even for nationals. Migrants may face additional challenges for instance, owing to language issues, and be more vulnerable on account of their status.

In many jurisdictions special victim support programmes bring together law enforcement agencies, social workers, health and mental health officers and others. In some jurisdictions, “support persons” are paid for by the State to accompany victims of serious violent crimes throughout the process through from contact with authorities to implementation of the decision. Interpretation and translation services are essential for migrants who do not speak the language, to ensure they understand the process and can also be understood throughout it.¹³³

It is good practice for victims to be informed of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, and be allowed to express their views and concerns at appropriate stages of proceedings.¹³⁴

¹²⁸General Assembly resolution 40/34 of 29 November 1985, paragraphs 4-7. Also see GA/RES/67/185, paragraph 14.

¹²⁹Twelfth United Nations Congress on Crime Prevention and Criminal Justice, Working paper prepared by the Secretariat, *Crime prevention and criminal justice responses to violence against migrants, migrant workers and their families* (A/CONF.213/11), paragraph 62.

¹³⁰General Assembly resolution 40/34 of 29 November 1985, paragraph 4-5.

¹³¹General Assembly resolution 67/187 of 20 December 2012, paragraph 14 and General Assembly resolution 40/34 of 29 November 1985, paragraph 6(d). Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, also offers a good framework for ensuring that migrants have access to justice; Article 1 of that Directive stresses access to justice for all victims of crime, explicitly stating that such access is irrespective of their residence status. Also see General Conference of the International Labour Organisation, *Recommendation No. 203 Forced Labour (Supplementary Measures)*, paragraph 12 of June 2014, recommending that States should ensure that nationals and non-nationals can pursue appropriate administrative, civil and criminal remedies, irrespective of their presence or legal status in the State, under simplified procedural requirements, when appropriate.

¹³²The *Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power* (A/RES/40/34), paragraph 6(c).

¹³³See for instance, Article 7 of the Directive 2012/29/EU of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, concerning the right to interpretation and translation.

¹³⁴*Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (A/RES/40/34), paragraph 6(a) and (b).

Suggestions for consideration:

- Ensure that migrant victims of violence are provided with relevant information on rights, remedies and victim support services, their role and opportunities for participating in criminal proceedings, and the scheduling, progress and disposition of proceedings as well as any orders against offenders.
- Ensure that migrants subjected to violence have access to qualified personnel who can provide victim advocacy and legal support services throughout the entire criminal justice process, as well as access to any other independent support persons.

Providing information on criminal justice processes

In Somalia, the Ministry of Justice worked together with UNODC to launch the 10-week “know your rights campaign” to address challenges faced by the local justice system. Through images and cartoons drawn by local artists, the campaign engages the population and informs them of their individual rights, including the right to judicial protection for victims and witnesses.^a

In the Republic of Ireland, the Office for the Promotion of Migrant Information offers the “Victims Charter” and “Guide to the Criminal Justice System”, including information about victim’s rights and entitlements to services in several languages including Chinese, French, Gaeilge (Irish), Latvian, Lithuanian, Polish and Spanish.^b

Efforts to support migrants through the criminal justice process

Many countries allow support persons to assist victims through court. In Japan for instance, a family member, psychological counsellor or other person can accompany witnesses at trial when they are testifying.^c

^a For more information, see: www.unodc.org/unodc/en/frontpage/2014/November/know-your-rights-campaign-launches-in-somaliland-to-help-improve-criminal-justice-system-in-the-region.html?ref=fs1

^b For more information, see: www.integration.ie/website/omi/omiwebv6.nsf/page/Information%20for%20Migrants-mresourcescrimevictims-en

^c See Ministry of Justice, Japan, *Victim Support During Trials*, available at www.moj.go.jp/ENGLISH/CRAB/crab-02-4.html

8.2. Ensuring access to legal aid in criminal justice systems

The *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems* explain that legal aid is an essential component of a fair, humane and efficient criminal justice system.¹³⁵ The International Covenant on Civil and Political Rights also states, as one of many minimum guarantees for accused persons, that they are “to have legal assistance assigned to him, in any cases where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.”¹³⁶ This is true also for migrants, who may

¹³⁵ *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems* (A/RES/67/187), annex, paragraphs 1 and 14. See Also UNODC, “Legal Defence and Legal Aid” in *Criminal Justice Assessment Toolkit* (UNODC). See also Article 13 of the Directive of the European Parliament and of the Council 2012/29/EU, *Establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA on the right to legal aid*.

¹³⁶ See ICCPR, Article 14(3)(d).

also require (and are entitled to) “the free assistance of an interpreter if he cannot understand or speak the language used in court”.¹³⁷

Legal aid is understood to include “legal advice, assistance and representation for persons detained, arrested or imprisoned, suspected or accused of, or charged with a criminal offence and for victims and witnesses in the criminal justice process that is provided at no cost for those without sufficient means or when the interests of justice so require” and includes legal education, access to legal information and other services provided for persons through alternative dispute resolution mechanisms and restorative justice processes.¹³⁸ In short, states are responsible for providing legal aid to persons suspected of or charged with a criminal offence, and to victims or witnesses of crime. Such persons include migrants, irrespective of their status, owing to the principle of non-discrimination.¹³⁹ Special measures must be taken to ensure meaningful access to legal aid for all persons in need of it, including *inter alia*, migrants.¹⁴⁰ Activities must therefore be targeted at migrants to inform them about the criminal justice system and their rights within it.

Suggestions for consideration:

- Ensure that migrants who are victims of violence or accused of perpetrating violence have access to free legal aid irrespective of their status and where appropriate, court support and interpretation services.
- Consider ways of providing legal aid to migrants in remote areas where full legal services are not available.

Promising regional standards on access to justice

The EU Directive on the right of access to a lawyer (2013/48/EU), adopted on 6 November 2013, provides for: minimum rules on right of access to a lawyer from first stage of police questioning throughout criminal proceedings, rights to legal advice in country where the arrest is carried out and where it is issued (dual legal representation), the right to have a third party informed upon deprivation of liberty as well as to communicate with consular authorities.^a

The Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa (2004) promotes a just and fair criminal justice system, and requires that legal aid be given for all stages of the criminal justice system and recommends a diverse legal aid delivery system with a range of options and actors involved to strengthen legal literacy.^b

Providing paralegals where lawyers are not available

In some contexts, particularly in border regions, it may not be possible to provide all persons with access to lawyers. In such cases, appropriately trained paralegals may be called upon to

¹³⁷See ICCPR, Article 14(3)(f).

¹³⁸See *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems* (A/RES/67/187), annex, paragraph 8.

¹³⁹*Ibid.*, principle 6. See also Part I, 2-3.

¹⁴⁰*Ibid.*, principle 10. See also Directive 2012/29/EU of the European Parliament and of the Council to ensure access to justice for all victims of crime, and the UNODC *Handbook on Improving Access to Legal Aid in Africa* (New York, 2011).

provide legal aid. The Paralegal Advisory Service (PAS) of Malawi works with several government and non-government partners throughout the country to provide legal services to persons in conflict with the criminal law. In establishing itself, it borrowed models from other practices such as “Camp courts” in India, mediation in Bangladesh and Legal Aid Days in prisons in Kenya. The PAS also successfully campaigned for the adoption of the Lilongwe Declaration on Accessing Legal Aid (2004), requiring legal aid access for all stages of the criminal justice system.^c

^a Directive 2013/48/EU of the European Parliament and of the Council on the right of access to a lawyer, adopted on 6 November 2013.

^b The Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa is available in Arabic, English and French at: www.penalreform.org/resource/lilongwe-declaration-accessing-legal-aid-criminal-justice-system/.

^c For more information, visit www.pasimalawi.org.

8.3. Removing barriers to access to justice for migrants

Access to justice requires more than simply providing for channels for migrants to report victimization (as discussed above at 5.3). It also requires removing the barriers that may exist between them and the justice they are entitled to. In some countries, victims of exploitation, abuse and violence require residence permits in order to access justice, making irregular status a barrier to access to justice and relevant services such as language assistance, information and shelters. They may not know of their rights and be unable or reluctant to seek assistance, whether because of mistrust of public officials or because of fear of detention or deportation if they are in irregular situations.¹⁴¹

Where migrant victims of gender-based violence are dependent on their perpetrator partners to secure their residence, they may face the choice of remaining in violent situations—sometimes with their children—or losing their regular status and becoming undocumented.¹⁴² States should consider granting residence permits as a means of preventing and combating violence, and ensuring access to justice for those who experience it. Consideration must also be given the impact of revoking temporary residence permits on women who are victims of domestic violence.¹⁴³

Access to justice is particularly hampered in remote areas, border areas and border points and deportation is a clear barrier to accessing justice including asylum procedures. Measures must be put in place to ensure that a person can remain in the country where proceedings are taking place, or to ensure that the absence of a victim of violence from a jurisdiction, because of his or her return to his or her home country, does not interfere with his or her access to justice including

¹⁴¹ European Union Agency for Fundamental Rights, *Criminalisation of Irregular Migrants and of Persons Engaging with them* (Vienna, 2014), pp. 6-7, 15; and PICUM, *Strategies to End Double Violence against Undocumented Women: Protecting Rights and Ensuring Justice* (Brussels, 2012), p. 101.

¹⁴² PICUM, *Strategies to End Double Violence Against Undocumented Women—Protecting Rights and Ensuring Justice* (Brussels, 2012).

¹⁴³ See Human Rights Committee, *Views on communication No. R.9/35, Shirin Aumeeruddy-Cziffra and others v. Mauritius*, 9 April 1981 (A/36/40, annex XIII), in which the Committee found that changes of residency requirements and revocation of temporary residence permits of non-citizen women who experience domestic violence should not be undertaken without a full assessment of the impact on these women.

compensation.¹⁴⁴ Specifically, cooperation arrangements between countries should be established to allow for continued investigation and prosecution of instances of violence.¹⁴⁵

Suggestions for consideration:

- Ensure equal rights for undocumented victims of crime by building a firewall between provision of services to migrant victims of violence, and immigration regulation processes so that detection and enforcement of migration regulations does not undermine the rights of migrants to access justice.
- Put measures in place to allow victims of violence to testify against perpetrators without fear of detention or deportation as a consequence of seeking justice. Specifically, where the defendant is in control of the victim's residence status, provide independent residence permits or visas to victims.
- Put measures in place to allow victims of violence to testify against perpetrators regardless of whether they are in the jurisdiction of the State or not.

Strengthening access to justice for migrants in irregular situations

The European Fundamental Rights Agency suggests good practices on access to justice for migrants in irregular situations, including;

- Introducing possibilities for anonymous or semi-anonymous reporting
- Offering victims and witnesses of crime the possibility to reach out to police via third parties
- Defining conditions under which victims of crime can be granted residency permits
- Delinking immigration status of victims of violence from the main permit holder/perpetrator
- Developing leaflets in cooperation with labour inspectorates and other relevant entities to inform migrants apprehended at places of work of the possibilities to lodge complaints against employers.^a

Empowering migrant women against violent partners

In many countries, migrants who are married are required to remain in their relationships for a period of time before they are granted residency status in their own right. As a result, many migrant women remain in violent situations because they fear losing or not receiving their residency status. There are several promising practices offered in response to this barrier to accessing justice.

Article 59 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210) allows States Parties to grant independent residency status to women victims of violence and allows women who have been forced into marriage in other countries to regain residency status.^b

¹⁴⁴See for instance, UNODC *Model Law against Trafficking in Persons* (2010), Article 27(2) and 28(6), referring specifically to orders from payment of compensation. Also see the Global Workers Justice Alliance on how global workers can assist advocates with their low-wage transnational clients. Information can be found at: www.globalworkers.org/advocates/advocate-services.

¹⁴⁵See Article 17 of the Directive of the European Parliament and of the Council, 2012/29/EU, establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

Article 13(2)(c) of the *Free Movement Directive 2004/38/EC of the European Parliament and of the Council* (of 29 April 2004) contains a specific provision aimed at protecting residence status for third-country national victims of domestic violence whose partner is an EEA national.^c

The Victims of Domestic Violence (VDV) immigration policy enables victims of domestic violence, whose partners are New Zealand residents or citizens, and who are not yet residents themselves, to be issued a residence visa or a special temporary work visa. These victims of domestic violence can apply for these visas without needing the support of their partner as an immigration policy requirement.^d

Legislation providing migrant women with services

Spanish legislation on gender-based violence (*Ley Orgánica 1/2004, de Medidas de Protección Integral contra la Violencia de Género*, 28 de diciembre) applies to all women on Spanish territory and establishes the state's responsibility to guarantee women in special personal and social circumstances, such as migrant women, the use of the services provided by the law.^e

Article 1 of European Union Directive 2012/29/EU requires States to ensure access to justice and victim support for all victims of crime, irrespective of their residence status.^f

Supporting cross-border access to justice for returned migrants

The Global Workers Defender Network “portable justice” supports migrants who have returned to their home countries to access justice in countries of employment by empowering existing organizations in the home countries to be resources to migrant workers, a model of cross-border facilities legal cases for migrant workers in partnership with advocates in countries of employment so migrants who return home do not have to abandon their rights upon returning home.^g

^a Fundamental Rights Agency, *Apprehension of migrants in an irregular situation—fundamental rights considerations* (Vienna, 2013), available at http://fra.europa.eu/sites/default/files/fra-2013-apprehension-migrants-irregular-situation_en.pdf

^b For more information, see Council of Europe, *Handbook for Parliamentarians: Council of Europe Convention on preventing and combating violence against women and domestic violence* (Strasbourg, 2012), pp. 38-39.

^c Directive 2004/38/EC of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC.

^d *Immigration New Zealand Operational Manual: Residence* (June 2014), section 4.5, Special Residency Categories, available at: www.immigration.govt.nz/NR/rdonlyres/DE3CE116-100F-4855-A3C8-38413511E3CC/o/Residence.pdf

^e *Strategies to End Double Violence Against Undocumented Women—Protecting Rights and Ensuring Justice* (PICUM, 2012), pp. 103-106.

^f Directive 2012/29/EU of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA concerning the right to understand and be understood.

^g See: www.globalworkers.org/our-work/our-programs

9. Provide restitution and compensation

Restitution is a form of payment or action taken to restore the victim to the position he or she would have been but for the victimization.¹⁴⁶ Fair restitution should be made to victims, their families or dependents, and sometimes even communities, by offenders or third parties responsible for violence. In situations of violence, restitution should be in addition to other criminal sanctions and not be used as a substitute for custodial sentences.

In contrast, compensation is generally regarded as payment or reparation for injury or harm.¹⁴⁷ Compensation claims may include unpaid wages, legal fees, reimbursement of illegal “fees” paid to recruiting or employment agencies (for instance, in the case of migrant smuggling), medical expenses, lost opportunities, and pain and suffering caused.¹⁴⁸ Compensation does not necessarily remove the traumatic effects of violence, but improves victims’ chances of recovery and economically empowers them to avoid re-victimization. Where perpetrators of violence pay compensation, such payment can also constitute a form of punishment.

Restitution and compensation procedures need to be simple and accessible for all victims of crime. For some crimes the right to compensation is irrespective of status. For instance, the Special Rapporteur on trafficking in persons, especially women and children, notes that “All trafficked persons have a legally enforceable right to obtain compensation, irrespective of their immigration status and of whether their perpetrators have been convicted.”¹⁴⁹ Crucially, compensation should be calculated and awarded on a non-discriminatory basis.

9.1. Securing restitution and compensation from offenders

Different jurisdictions have adopted a variety of methods for encouraging reparation by offenders to victims and for determining the scope of harm suffered for which the offender is liable. Two basic funding mechanisms are through the assets of perpetrators and through State-funded schemes, administered through judicial process (whereby the court orders compensation or restitution to be paid to the victim by the offender) or administrative actions.¹⁵⁰

Offenders should make reparations to migrant victims of violence and their families, including payment for harm or loss suffered, reimbursement of expenses incurred as a result of victimization, provisions of services and restoration of rights.¹⁵¹ Different approaches include implementing restitution as a condition of probation, as a sanction itself, or as an additional penalty. In order for courts to make restitution orders as part of another process, information about the damage suffered must be presented, assessing the loss and the ability of the offender to provide restitution. Where the offender lacks the means to pay restitution, it can be offered in kind through services to the

¹⁴⁶United Nations Global Initiative To Fight Human Trafficking, UNODC, “Module 13 Compensation for victims of trafficking in persons”, *Anti-human trafficking manual for criminal justice practitioners* (New York, 2009), p. 1.

¹⁴⁷Ibid.

¹⁴⁸Ibid.

¹⁴⁹See Special Rapporteur on human trafficking, especially women and children, *Draft basic principles on the right to an effective remedy for trafficked persons*, 14 March 2013, Article 9(b)(i), available at: http://www.ohchr.org/Documents/Issues/Trafficking/Consultation/2013/DraftBasicPrinciplesSantiago2ndConsultation_en.pdf

¹⁵⁰United Nations Global Initiative To Fight Human Trafficking, UNODC, *Module 13 Anti-human trafficking manual for criminal justice practitioners* p. 1.

¹⁵¹See United Nations *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (A/RES/40/34), paragraph 8.

victim or to the community. In order for restitution to be effective, restitution orders must be enforced through consequences imposed on offenders who fail to comply with restitution orders.¹⁵² In the case of migrants in irregular situations who have suffered in labour contexts, efforts should be made to ensure that the irregularity of migration status and/or their employment is no barrier to restitution.

Suggestions for consideration:

- Governments should review their practices, regulations and laws to consider restitution as an available sentencing option in cases of violence against migrants.¹⁵³
- Make specific efforts to ensure that migrant workers have access to remedies, including in cases of violence and physical mental or sexual abuse by employers, failure to pay wages and unlawful dismissal.¹⁵⁴

Restitution as sanctions

Some jurisdictions allow restitution orders to be used as the main sanction against offenders, while others allow for both a restitution order and a sentence order to be made giving priority to the enforcement of the restitution order. Some sanctions follow restitution to the victim, for instance (a) financial community restitution, involving payment of money to the offender to a community programme or charity (b) community service, where the offender performs a beneficial service to the community (c) restitution fines, imposed and collected for the purpose of depositing funds into a State victim fund used to reimburse victims for financial losses or to support victim assistance services.^a

In Kenya for instance, the Counter-Trafficking in Persons Act 2010 allows for the convicted trafficker to provide restitution to his or her victim. In Portugal, criminal courts award criminal damages.

Restitution for migrants in irregular situations

In Hamburg, Ver.di, the principle German trade union for service occupations, provides legal advice and assistance for migrants in irregular situations. Through this programme, Ver.di helped a migrant who had returned to Serbia after having lived and worked irregularly in Germany. The migrant had worked as a locksmith without a residence permit for seven years in Germany but never received his agreed-upon wages. He joined Ver.di, and, through its legal aid programme for migrants in an irregular situation (MigrAr), was able to claim full payment of withheld wages by bringing an action before the Labour Court. At first, the employer rejected all allegations, even denying that the migrant had ever worked for him. Only after the court summoned 13 witnesses and scheduled four days of trial did the employer agree to a court settlement. The locksmith received €25,000 of withheld wages.^b

¹⁵²UNODC, “Victims and Witnesses”, in *Criminal Justice Assessment Toolkit: Module 3* (New York, 2006) p. 16. Also, UNODC *Guide for Policy Makers on Victims of Crime and Abuse of Power* (New York, 1999), pp. 24-25.

¹⁵³See for instance, the United Nations *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, paragraph 9.

¹⁵⁴See General Assembly Sixty-eighth Session, Report of the Secretary-General, *Promotion and protection of human rights, including ways and means to promote the human rights of migrants* (A/68/292), paragraph 95(j).

International Cooperation in victim compensation

The Council of Europe Convention on the Compensation of Victims of Violent Crimes (1988) sets minimum standards and seeks to promote international cooperation in compensation. It is also open to non-members of the Council of Europe. On October 4, 2012 the European Union adopted a new directive on rights and services including new standards for crime compensation, towards taking steps to standardize aspects of compensation programmes in Europe to overcome inequities. Of particular importance is cross-border compensation.

^a UNODC *Guide for Policy Makers on Victims of Crime and Abuse of Power* (New York, 1999), p. 25.

^b Reported in: European Agency for Fundamental Rights, *Fundamental rights of migrants in an Irregular Situation in the European Union* (Vienna, 2011), p. 56.

9.2. Providing State restitution and compensation

International guidance determines that States should be encouraged to accept and implement their responsibility for all cases of violent crimes in their jurisdiction.¹⁵⁵ Article 16 of the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* recommends that States “establish national programmes for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligation.”¹⁵⁶

The Economic and Social Council, in resolution 1989/57 *Implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* recommends that legislation be implemented to simplify access to compensation and restitution, and methods of redress for harm or damage inflicted to ensure they meet victims’ needs.¹⁵⁷ In this context it is important to ensure that the scope of coverage in respect of offences is adequate. Particularly in the case of violence against migrants, it is important that territorial coverage includes all incidents that occur in the State’s territory, regardless of the citizenship of the victim, and includes all incidents where a citizen is the victim, regardless of where the incident occurred.¹⁵⁸ In addressing the practical situations of migrants, national funds for compensation should be established, strengthened and expanded, to include “those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.”¹⁵⁹ Various inter-governmental and non-governmental funds have been established for compensation of and assistance to victims, and some jurisdictions provide support to these funds.

Suggestions for consideration:

- Implement mechanisms to provide reparations for harm caused to migrants as a result of the violence perpetrated against them, through the establishment of reparation funds that migrants can access, irrespective of their status.

¹⁵⁵ See United Nations *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, paragraph 12.

¹⁵⁶ *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, General Assembly resolution 60/147 of 16 December 2005.

¹⁵⁷ Economic and Social Council, Resolution 1989/57 on the *Implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, paragraph 2(a)-(c).

¹⁵⁸ UNODC *Guide for Policy Makers on Victims of Crime and Abuse of Power* (New York, 1999), p. 26.

¹⁵⁹ See the the United Nations *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, paragraph 13.

- Establish and strengthen national funds for compensation for migrant victims of crime, and/or support intergovernmental and non-governmental funds that have been established.

Establishment of victim compensation funds

UNODC administers a voluntary trust fund for victims of trafficking providing for legal and financial aid to be provided to victims via governmental, inter-governmental and civil society organizations. The trust fund was established in accordance with resolution A/RES/64/293 Article 38 of the General Assembly on 12 August 2010.^a

In Norway, the *Compensation for Victims of Violent Crime Act* administered by the Norwegian Criminal Injuries Compensation Authority allows for compensation to be awarded even where the criminal case is dropped. In practice though, the Compensation Authority generally pays victims according to conviction and seeks recovery from the convicted person.

Compensating migrants in irregular situations for work-related injuries

In the United States, the New York State Court of Appeals awarded compensation to a migrant in an irregular situation who had been injured while working at his construction job due to an unsafe work environment. This decision was followed in 2009 by court settlements in the amount of \$US 3.85 million for three other workers in irregular situations, including a Mexican plumber scalded by an exploding pipe, another Mexican injured when a steel beam fell on his foot, and an Ecuadorean whose hip was fractured by a collapsed trellis.^b

Compensation in the absence of prosecution of perpetrators

In 2007, the Victims Compensation Tribunal of New South Wales, Australia awarded \$50,000 to a victim who was trafficked from Thailand to Australia at the age of 13 where she was sexually exploited in a brothel. The compensation was awarded despite the fact that her abuses were never prosecuted. In its' reasoning the Tribunal stated that that victim "suffered from chronic post-traumatic stress disorder and moderate severe depressive disorder" as a consequence of her victimization.^c

^a For more information, visit: <https://www.unodc.org/unodc/en/human-trafficking-fund.html>

^b Reported in European Agency for Fundamental Rights *Fundamental rights of migrants in an Irregular Situation in the European Union* (Vienna, 2011), p. 53. The case was handled by the New York law firm of O'Dwyer & Bernstein, L.L.P. Information available at: www.odblaw.com/ where also other cases are listed.

^c See Natalie Craig, "Former sex slave victim wins abuse claim", *The Age*, 29 May 2007, www.theage.com.au/news/national/sex-slave-victim-wins-abuse-claim/2007/05/28/1180205160434.html

9.3. Providing State restitution where perpetrator of violence is an agent of the State

As noted in the *International Code of Conduct for Public Officials* and the *Code of Conduct for Law Enforcement Officials*, many jurisdictions have reviewed their liability for the acts of public officials and agents. Where violence is perpetrated by public officials or other persons acting as agents of the State, victims should receive restitution from the State.¹⁶⁰

¹⁶⁰Ibid., paragraph 11.

Of key relevance in situations where the State has perpetrated violence, are the United Nations *Basic Principles and Guidelines on the Right to a Remedy and Repatriation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, specifying actions to be taken by States. Remedies include victims' rights to (a) equal and effective access to justice, (b) adequate, effective and prompt reparation for harm suffered and (c) access to relevant information concerning violations and reparation mechanisms.¹⁶¹ In some instances, States may also be held to account for the failure of State agents to protect victims from violence, irrespective of their immigration status.

Suggestions for consideration:

- Put mechanisms in place to restitute and compensate victims of crime for violence perpetrated by State agents and ensure these mechanisms are accessible to migrants.
- Ensure that decisions on restitution are based on prompt and impartial investigations conducted by competent authorities.

State held to account for violence against migrants

In the European Court case of *Hirsi Jamaa and Others v. Italy*, the defendant State, Italy, had returned the applicant migrants to Libya without seeking assurances that they would not be subject to violence there or elsewhere. The Court unanimously found that there had been a violation of Article 3 of the European Convention on Human Rights prohibiting torture, and in so doing rejected the State's objection concerning the victim's lack of victim status. The Court rewarded the applicants €15,000 each for non-pecuniary damage.^a

States held to account for failing to protect crime victim

In the landmark European Court of Human Rights Case of *Rantsev v. Cyprus and Russia*, both States were held to account for human rights violations. In 2001, Oxana Rantseva was trafficked to Cyprus where she subsequently died as a result of falling from a balcony. Some days before, Rantseva met with Cypriot police who handed her back to her employer. The case was brought by Rantsev's father, who successfully lodged a complaint against Cyprus under Article 4 of the European Convention on Human Rights, prohibiting slavery, servitude and forced labour. The Court ordered Cyprus to pay Mr. Rantsev €40,000 in damages and the Russian government to pay a sum of €2000.^b

^a See European Court of Human Rights, *Hirsi Jamaa and Others v. Italy* [GC], Application No. 27765/09, 23 February 2012.

^b See European Court of Human Rights, 2012 *Rantsev v. Cyprus and Russia*, Application No. 25965/04, 7 January 2010.

¹⁶¹ UNODC, "Victims and Witnesses", in *Criminal Justice Assessment Toolkit: Module 3* (New York, 2006) p. 16.

10. Sentence and rehabilitate perpetrators

Measures must be taken to ensure that sentences imposed for violence against migrants are commensurate with the seriousness of the offence and serve to rehabilitate offenders to prevent them from perpetrating violence again. Where perpetrators of violence are migrants themselves, consideration must be given to the fact that they face particular risks of discrimination and violence within the criminal justice system, requiring specific measures to ensure their fair treatment. In some countries, migrants are over-represented in prisons owing to several factors including profiling that may place non-nationals under more scrutiny of law enforcement authorities, and harsher custodial sentences imposed on them relative to non-migrant perpetrators of equivalent crimes.¹⁶² This fact emphasizes the need to take measures to ensure that sentences are not imposed in a discriminatory way.

Incarceration does not always serve to rehabilitate offenders, but may contrarily further criminalize individuals, leading to reoffending and a cycle of release and imprisonment which fails to reduce overcrowding in prisons.¹⁶³ For this reason—and to ensure that the rights of convicted persons are protected—alternatives to incarceration are often considered, including economic sanctions, status penalties, restitution and compensation orders (as discussed above), suspended sentences, supervision orders, community service orders, house arrest or a combination of measures.¹⁶⁴ However, violence is a serious crime and the need to ensure the safety of migrants, migrant workers, their families and others in the community must be borne in mind in sentencing decisions. An appropriate balance must always be achieved between the rights of offenders, the rights of victims (who should be consulted where appropriate) and the concerns for public safety and crime prevention.¹⁶⁵ Where custodial sentences are imposed, the conditions of incarceration of migrants must respect social, cultural, religious and other rights, with special measures taken to address the disadvantages that foreign detainees may face.¹⁶⁶

10.1. Ensuring appropriate sentences for crimes of violence

States should ensure that sentences for violent crimes are not imposed in a discriminatory way on the basis that the victim or the perpetrator, or both parties are migrants or on other discriminatory grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth or other status.¹⁶⁷ In other words, the status of the migrant perpetrator should have no bearing on the sentence imposed. Rather, sentences should reflect the impact of the violence on victims and their families, in a manner that is commensurate with the severity of the offence and the severity of the physical and psychological harm on the victim, his or her family and others.

¹⁶²See for instance, Twelfth United Nations Congress on Crime Prevention and Criminal Justice, Working paper prepared by the Secretariat, *Crime prevention and criminal justice responses to violence against migrants, migrant workers and their families* (A/CONF.213/11), pp. 8-9, paragraph 23, and p. 13, paragraph 47.

¹⁶³See UNODC “Custodial and Non-Custodial Measures” in *Criminal Justice Assessment Toolkit* (UNODC, 2006), p. 1.

¹⁶⁴See for instance the United Nations *Standard Minimum Rules for Non-Custodial Measures* (the Tokyo Rules), Rule 8.2., General Assembly resolution 45/110, annex.

¹⁶⁵See the United Nations *Standard Minimum Rules for Non-Custodial Measures*, Rules 1.4 and 8.1.

¹⁶⁶See Twelfth United Nations Congress on Crime Prevention and Criminal Justice, Working paper prepared by the Secretariat, *Crime prevention and criminal justice responses to violence against migrants, migrant workers and their families* (A/CONF.213/11), paragraph 64.

¹⁶⁷See the United Nations *Standard Minimum Rules for Non-Custodial Measures*, Rule 1.5. As mentioned above, there have been instances of more severe sentences being imposed on offenders who are migrants, relative to those who are not. Similarly, violence against migrants may not be treated as severely as violence perpetrated by non-nationals.

Sentences should accordingly be aggravated according to appropriate criteria. For instance, in relation to the crime of migrant smuggling, States are required to include as aggravating circumstances, situations that endanger or are likely to endanger the lives or safety of migrants.¹⁶⁸ Violence against migrants, if it does not compromise the lives of migrants, certainly compromises their safety and should be accordingly treated as an aggravating circumstance. Beyond situations of violence in migration processes, other aggravating circumstances may result from the fact of the particular vulnerability of victims, which may implicitly or explicitly include migrants in regular and irregular situations. Moreover, hate crimes that are perpetrated on racial, religious, or other discriminatory grounds are often perpetrated against migrants. Sentences imposed for violent crimes should be aggravated where there is a racial, religious or any other discriminatory element so as to make a clear statement to society on the unacceptability of such intolerance. Sentences imposed on law enforcers and other officials for violence against migrants should also be aggravated on the basis of their abuse of their position of responsibility and authority.

In many jurisdictions, use of victim impact statements in the sentencing stage is commonplace.¹⁶⁹ In taking statements from migrants, migrant workers and their families, cultural and linguistic resources should be called upon to ensure that statements in a way that is sensitive to the victim's needs and accurately represent the impact of the violence on them.

Suggestions for consideration:

- Review, evaluate and amend sentencing policies and procedures in order to ensure that they hold offenders accountable for violence against migrants, denounce and deter violence against migrants, and take into account the impact on victims and their families in imposing sentences commensurate with the severity of the offence.
- Review, evaluate and amend legislation to include aggravating factors for sentencing purposes, including for example, repeated acts of violence, abuse of a position of trust or authority, perpetration of violence against a spouse or a person in a close relationship with the perpetrator, perpetration of violence against migrant minors, and violence that is motivated by racial, religious or other discriminatory grounds.
- Strengthen procedures for taking victim impact statements from migrant victims, to take into account cultural, religious, linguistic and other factors that may be necessary to ensure that relevant evidence is brought to bear in sentencing.

¹⁶⁸See the Smuggling of Migrants Protocol, Article 6(3)(a).

¹⁶⁹International Criminal Tribunal for Rwanda, *Prosecution of Sexual Violence, Best Practices Manual for the Investigation and Prosecution of Sexual Violence Crimes in Post-Conflict Regions: Lessons Learned from the Office of the Prosecutor for the International Criminal Tribunal for Rwanda* (2014), p. 72.

Aggravation for crimes motivated by discrimination

In Azerbaijan, Article 61.1.6 of the Penal Code, includes aggravating circumstances, including committing a crime “... on grounds of national, racial, religious hatred or fanaticism ... ”

In Canada, Section 718.2 of the Criminal Code provides that “evidence that the offence was motivated by bias, prejudice, or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor ... shall be deemed to be aggravating circumstances.”

In the United Kingdom, the Magistrates’ sentencing guidelines for domestic violence state that an abuse of trust is an aggravating factor, as is the vulnerability of victims. Judges will consider Sentencing Guidelines and make sentences in the form of a rehabilitative order, a community penalty, fines or custody.^a

Also in the United Kingdom, Paragraph 4.12(c) of the *Code for Crown Prosecutors* raises a public interest factor in support of prosecution for racial and religious crime, being the fact that

“... the offence was motivated by any form of discrimination against the victims ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity, or the suspect demonstrated hostility towards the victim based on any of those characteristics.”

In cases motivated by religious or racial hatred, the Court should decide on the appropriate sentence without the element of racial or religious hatred, then enhance the sentence to take account of racial or religious aggravation, including if the offence merits a custodial sentence. The Judge should publicly state what the sentence would have been without the racial or religious aggravation.^b

Guidance on taking evidence

Guidance on achieving best evidence in the United Kingdom offers insights into the race, gender, culture, ethnic and language background of victims and witnesses. Interviewers are advised to learn about and consider these factors to strengthen their capacity to take and understand statements and bear in mind the discrimination and oppression that some persons may have experienced in their contacts with authorities. Cultural considerations that interviewers should bear in mind are raised, and advice is also offered on use of interpreters.^c

^a See Crown Prosecution Service, *Policy for Prosecuting Cases of Domestic Violence*, available at: www.cps.gov.uk/publications/prosecution/domestic/domv.html#a15

^b See *R v. Kelly & Donnelly* [2001] 2 Cr. App. R. (S) 73 CA adopting recommendations made to the Court of Appeal by the Sentencing Advisory Panel Advice No 4. Referred to in Crown Prosecution Service, *Guidance on Racial and Religious Crime*, available at: www.cps.gov.uk/legal/p_to_r/racist_and_religious_crime/#a19.

^c United Kingdom Ministry of Justice, *Achieving best evidence in Criminal Proceedings: Guidance on interviewing victims and witnesses, and guidance on using special measures* (London, 2011), pp. 37-38. Available at: www.justice.gov.uk/downloads/victims-and-witnesses/vulnerable-witnesses/achieving-best-evidence-criminal-proceedings.pdf

10.2. Ensuring non-discriminatory incarceration of migrants for violent crimes

All human rights rules that attach to prisoners must equally apply to non-nationals who are incarcerated. However, incarcerated migrants may face particular disadvantages that non-foreign

detainees do not, in the form of additional barriers to protection of their social, cultural, religious and other rights in their incarceration situations.¹⁷⁰ Rule 6(1) of the *Standard Minimum Rules for the Treatment of Prisoners* states that rules laid out therein must be applied impartially and that “There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”¹⁷¹ States must therefore take additional measures to prevent discrimination and ensure the needs of non-national prisoners are met on an equal basis to prisoners who are nationals in the countries in which they are incarcerated. They must also take special measures in relation to non-national prisoners who are women, in accordance with the *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders* (the Bangkok rules).¹⁷²

Specifically, States should consider whether foreign national prisoners are informed of their right to request contact and allowed facilities to communicate with diplomatic or consular representatives of their State, and how often they can have consular official visits.¹⁷³ Prisoners who are foreign nationals must also be informed of the possibility of requesting that the execution of their sentence be transferred to another country. They must be given written information on all prison rules and regulations and their rights and obligations in a language they understand. Where the family of incarcerated persons is not in the country, special discretion can also be used to allow them telephone and postal contact with their families, and flexibility in visitation rights where families have travelled significant distances to visit incarcerated relatives. Migrants should have equal access as nationals to activities, and be provided with an opportunity to learn the language of the country in which they have been imprisoned, and have access to books in languages they can understand. Religious and cultural customs (for instance, concerning food and worship) must be respected where possible.¹⁷⁴ Further, prisoners should not be required to pay for their healthcare on the grounds that they have not contributed to the country’s insurance scheme nor be denied prison leave because they have no home to go to. NGOs and civil society organizations may be able to offer support with accommodation in such situations.¹⁷⁵

Suggestions for consideration:

- Determine whether migrants who are incarcerated for violent crimes have access to the same services that their non-migrant counterparts do and take measures to ensure that their incarceration is not more or less difficult on the basis of their migration status.

¹⁷⁰See for instance the Twelfth United Nations Congress on Crime Prevention and Criminal Justice, Working paper prepared by the Secretariat, *Crime prevention and criminal justice responses to violence against migrants, migrant workers and their families* (A/CONF.213/11), paragraph 64.

¹⁷¹See for instance the *Standard Minimum Rules for the Treatment of Prisoners*, Rule 6(1), adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 22 August-3 September 1955: report by the Secretariat (United Nations publication Sales No. 1956.IV.4), annex I.A; amended by the ECOSOC in its resolution 2076 (LXII)

¹⁷²See the *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders* (the Bangkok Rules) General Assembly resolution 65/229 of 16 March 2011. See particularly Rule 53 concerning consideration of transfer of women non-national prisoners and their children to their home countries and Rule 66 concerning the secondary victimization of foreign national women.

¹⁷³See Article 36 of the Vienna Convention on Consular Relations, adopted by the United Nations Conference on Consular Relations 1963, vol. 596, p. 261; and Rule 38 of the *Standard Minimum Rules for the Treatment of Prisoners*. See also *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, Principle 16.2, General Assembly resolution 43/173, annex.

¹⁷⁴UNODC “Custodial and Non-Custodial Measures: Social Reintegration” in *Criminal Justice Assessment Toolkit* (New York 2006), p. 33. Also, OHCHR *Human Right and Prisons: Trainers’ Guide on Human Rights Training for Prison Officials* (Geneva, 2005), pp. 137-139 and Andrew Coyle, *A Human Rights Approach to Prison Management: Handbook for Prison Staff* (International Centre for Prison Studies, 2nd edition, 2009), pp. 107-110.

¹⁷⁵Andrew Coyle, *A Human Rights Approach to Prison Management: Handbook for Prison Staff* (International Centre for Prison Studies, 2nd edition, 2009), p. 109.

- Where appropriate (and without prejudice to the principle of *non-refoulement*), consider transfer of non-resident foreign national prisoners to their home country as early as possible, with the informed consent of the offender.¹⁷⁶
- Develop non-custodial measures to provide alternatives to reduce the use of imprisonment, rationalize criminal justice policies and observe human rights, the requirements of social justice and the rehabilitation needs of migrant offenders.¹⁷⁷

Prison admission for migrants

Being admitted to a prison in a foreign country can be a difficult experience for migrants. Different approaches have been taken by prison administrators including by inviting fellow nationals from the prisoner's home country to assist with admission into prison and induction, or by arranging special briefing sessions for migrants, and producing induction videos in a range of foreign languages.^a

Visitation of non-national prisoners

The Kumla High Security prison in Sweden cooperates with a local church to support families to visit foreign prisoners, by helping them to affordably stay overnight in Kumla. While prisoners are normally allowed to receive visitors two days in a row, visitors from abroad are allowed to visit for up to ten consecutive days and following a four day break of no visits, may visit again for another ten consecutive days.^b

Non-nationals deprived of liberty to be informed of their rights

Principle V of the Inter-American Commission of Human rights, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas* (2008) states that "... Persons deprived of liberty in a member State of the Organization of American States of which they are not nationals, shall be informed, without delay, and in any case before they make any statement to the competent authorities, of their right to consular or diplomatic assistance, and to request that consular or diplomatic authorities be notified of their deprivation of liberty immediately. Furthermore, they shall have the right to communicate with their diplomatic and consular authorities freely and in private."^c

Access to services during serving of sentence

A programme in the Czech Republic has been developed to ensure that Roma minorities receive equal access to services during implementation of sentences, including juvenile members of the Roma minority who have received non-custodial sanctions.^d

^a Referred to in Andrew Coyle, *A Human Rights Approach to Prison Management: Handbook for Prison Staff* (International Centre for Prison Studies, 2nd edition, 2009), p. 109.

^b *Ibid.*, p. 110, referring to Anton van Kalmthout et al, *Foreigners in European Prisons*, 2007.

^c *Ibid.*, p. 109.

^d UNODC "Custodial and Non-Custodial Measures: Social Reintegration" in *Criminal Justice Assessment Toolkit* (New York, 2006), p. 33.

¹⁷⁶ See for instance the United Nations *Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders*, Rule 53.

¹⁷⁷ See for instance the United Nations *Standard Minimum Rules for Non-Custodial Measures*, Rule 1.5.

10.3. Strengthening rehabilitation and reintegration

The goal of rehabilitation is to address the underlying factors that led to criminal behaviour and thereby reducing the likelihood of re-offending.¹⁷⁸ This goal can be achieved in many ways, including by working to assist in the social reintegration of offenders.¹⁷⁹ Measures can be provided in legislation or policy documents to include treatment to address specific offences of violence perpetrated by offenders including drug and alcohol treatment, anger management courses, education or vocational training as well as prison and community-based programmes. In situations where violence was motivated by racial and other hatred, offenders can be required to engage with the community of the individual who was targeted for violence. In situations where violence was perpetrated in the context of cultural, religious or traditional practices (such as in the case of honour-related crimes), cultural and gender training could be considered.

Offenders who are migrants are often denied access to rehabilitation opportunities that national offenders are provided with, particularly where migrants are in irregular situations. Their deportation without rehabilitation can exacerbate susceptibility to recidivism, and further entrench their exclusion from rehabilitation opportunities.¹⁸⁰ In situations where migrants are perpetrators of violence, they should not be denied access to reintegration activities in the country where they are imprisoned on the basis that they are likely to be deported once they have served their sentence.¹⁸¹ Convicted perpetrators of violence should be punished; deportation is not punishment.

Suggestions for consideration:

- Develop and evaluate treatment and reintegration/rehabilitation programmes for perpetrators of different types of violence against migrants that prioritize the safety of the victims; and ensure that perpetrators' compliance with any treatment is monitored for compliance.
- Ensure that rehabilitation opportunities available to offenders of violent crime are also made available to migrant offenders, including those in irregular situations, by removing any explicit sentencing restrictions on foreign nationals and taking positive steps to adapt existing rehabilitation programmes to the needs of migrant offenders.

Sentences including rehabilitation orders

In the United Kingdom, the Magistrates' sentencing guidelines for domestic violence allow for offenders to be ordered to attend a domestic abuse perpetrator programme to help perpetrators change their behaviour and develop non-abusive relationships.^a

Supporting people to leave groups that perpetrate hate crimes

The Exit project of the NGO Fryshuset supports persons wanting to leave nationalist, racist or Nazi environments by cooperating with different stakeholders including social and legal services as well as family and friends of clients. The project engages with schools and

¹⁷⁸UNODC "Custodial and Non-custodial Measures: Social Reintegration" in *Criminal Justice Assessment Toolkit* (New York, 2006) p. 1.

¹⁷⁹See *Guidelines for the Prevention of Crime* (2002), paragraph 6(d).

¹⁸⁰See *The European Journal of Probation*, volume 4, No. 3, 2012 available at: www.ejprob.ro/index.pl/september_2012.

¹⁸¹Andrew Coyle, *A Human Rights Approach to Prison Management: Handbook for Prison Staff* (International Centre for Prison Studies, 2nd edition, 2009), p. 109.

governments through dialogue through lectures, seminars and workshops and assists governments, municipalities and schools as well as other non-profit organizations to understand the target groups needs and offer them support and counselling. Some key staff at Exit are former members of nationalist, racist or Nazi groups. The project has helped hundreds of people leave racist and Nazi environments and avoid violent criminal behaviour.^b

Toolkit for working with persons convicted of hate crimes

The Diversity Awareness and Prejudice Pack (DAPP) toolkit produced by the London Probation Trust consists of several modules on working with offenders of hate crimes, including those motivated by prejudice against race, religion, disability and homophobia. The programme works through their socialization, addressing prejudices, attitudes and beliefs about their victims to reduce reoffending. The programme has allowed many offenders to increase their empathy towards victims and change their racist and other prejudicial beliefs.^c

^a See Crown Prosecution Service, *Policy for Prosecuting Cases of Domestic Violence*, available at: www.cps.gov.uk/publications/prosecution/domestic/domv.html#a15

^b See: <http://exit.fryshuset.se/english/>. Further information is also available in Equality and Human Rights Commission, *Rehabilitation of hate crime offenders*, Research Report (Scotland, 2011), pp. 30-32

^c Reported in in Equality and Human Rights Commission, *Rehabilitation of hate crime offenders*, Research Report (Scotland, 2011) pp. 28-30.

III. CONCLUSION

Efforts to combat violence against migrants should be measured against the extent to which they achieve comparable results to those aimed at combating violence against non-migrants. The fact that victims of violence are migrants should not detract from criminal justice efforts; rather their unique situation and resulting challenges emphasize the need to take specific measures to respond to the particular vulnerabilities of migrants to violence and barriers they may face in accessing recourse against it.

The general measures offered in this publication are not exhaustive, but aim to encourage further work by legislators, policymakers and criminal justice practitioners to develop specific approaches that are relevant in a given country context, and to take efforts to implement them in a way that is meaningful in practice. The document invites stakeholders to consider how the strengths of existing criminal justice frameworks and efforts to combat violence can be brought to bear in specific relation to violence against migrants, and to consider how weaknesses and gaps in response to violence can be addressed so as to not disproportionately affect migrants.

The key conclusion that emerges is that criminal justice actions should be no less rigorous in relation to violence that is perpetrated against migrants, but in some instances may need to be more rigorous so as to protect human rights, to uphold the principle of non-discrimination, and to ensure that criminal justice efforts are truly victim-centred. In particular, measures to delink the prosecution of violence from immigration control are vital, so that investigation and prosecution of violence against migrants takes precedence over proceedings concerning the immigration status of victims.

The United Nations Office on Drugs and Crime (UNODC) and the International Federation of Red Cross and Red Crescent Societies (IFRC) stand ready to provide technical assistance to governments to support their work combating violence against migrants.





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