

**OSCE Alliance Against Trafficking**  
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**1. What are some developments concerning undocumented migrants that can impact the protection of people who have been trafficked in Europe?**

**1.1. Labor migration: seasonal workers' directive**

- European Commission presented on 14 July 2010 proposal for directive on seasonal migrant workers
  - Seasonal workers one of three dossiers on legal migration:
    - Other two: single permit application and Inter-Corporate Transferees (ICTs).
  - Seasonal workers' directive: first discussion at EU level on legislation for low-skilled migrant workers.
- One of aims of directive: address exploitation and sub-standard working conditions in the seasonal work sector for 3CN
  - We nevertheless feel that current proposal is weakened by political choice to define different sets of rights for different groups of third-country workers.
  - Directive should offer sustainable solutions for reducing exploitation and improving working conditions within the sector.
- PICUM thus led coalition of 10 European and national-level NGOs in adopting a joint statement on 20 April 2011, expressing concern over the exclusion of certain categories of workers, including seasonal workers, from the scope of the framework directive on third country workers (the so-called "single permit directive"), resulting in differential treatment between workers.
  - Considering that the scope of the single permit directive will not be extended, efforts to improve and amend the proposed directive on seasonal migrant workers by increasing the level of protection and access to rights are of key importance.
- **NGO Coalition demands:**
- In order to achieve better living and working conditions for seasonal workers and reduce exploitation within the sector, the proposed directive on seasonal migrant workers should:
  - apply to third-country nationals residing outside the EU and to third-country nationals already residing in an EU Member State but not having access to the labour market

- Proposal of transitional measures to enable those with irregular status possibility of regularization (this would also help in preventing further abuses)
- Directive only applies to third-country nationals residing outside the EU
- Overlooks the situation currently existing in the sector, in which there is a strong presence of undocumented workers employed under very precarious conditions.
- No guarantee that workers who have been hired under this new directive will return to their countries of origin after the maximum stay of six months, assuming more work is available for them in Europe.
- By creating such a migration scheme with rigid return dates and without any option for a change of status, the directive may risk increasing the number of migrants who overstay their residence and work permit, become UDM and exposed to exploitation.
- DG Research Clandestino project finding:
  - “Despite the political intention of preventing and reducing irregular migration various legislations in the EU instead contribute to its emergence. Thus, a considerable discrepancy can be identified between policy goals and policy outcome.”
- Importance of seasonal workers’ directive is in developing legislation concerning low-wage migrant workers, under principle of equality of treatment
  - Majority of UDM would prefer to live and work in Europe in legal manner, contributing to economies and tax systems
- Important for European Parliament to monitoring employers’ sanctions directive (deadline for transposition: 20 July 2011)
  - Will be crucial to ensuring that the various protective measures have intended effect of ensuring that employers, not migrants, pay the price of exploitation.
  - For many employers, the profits that can be made by hiring flexible and cheap undocumented workers outweigh by far the risk of being sanctioned.
  - Under sanctions directive, employers have to control immigration. May lead to increased racial discrimination since every foreign-looking worker may be suspected and placed under scrutiny.
- **NGO Coalition demands (continued):**

- define the notion of seasonal work so as to prevent social dumping between national and third-country workers in the EU by:
  - clearly distinguishing it from temporary work and
  - limiting it to agriculture, horticulture and tourism while regulating the possibility of extension to other sectors,
- establish the necessary conditions for effective access of seasonal workers to the full respect of equal treatment, decent working and housing conditions and comprehensive social protection measures by:
  - reinforcing the conditions laid out in work contracts,
  - making all collective agreements applicable,
  - extending the scope of equal treatment,
  - providing for effective monitoring and complaint mechanisms and
  - defining minimum standards on accommodation and
- determine or oblige the Member States to determine the conditions under which seasonal workers may apply for a longer-term residence permit.
- These concerns and recommendations have been largely taken into account in the draft report of the Rapporteur of the EP Committee on Civil Liberties, Justice and Home Affairs (LIBE), and the draft opinion of the Rapporteur for the EP Committee on Employment and Social Affairs (EMPL).
- Both reports are being discussed by their respective committees (amendments have to be proposed by mid-July).

## **1.2. Criminalization of irregular migration and restricting access to social services as means of migration control**

- Council of Europe *Issue Paper Criminalization of Migration in Europe: Human Rights Implications (Feb. 2010)*
  - Noted two aspects of the EU's criminalization of foreigners:
    - Measures separate foreigners from citizens and subject foreigner to measures which cannot be applied to citizens (e.g. detention without trial, charge or conviction)
    - Criminalization of people who engage with foreigners: message is sent that contact with foreigners can be risky as it may result in criminal charges:
      - Transport companies
      - Employers
      - People who go about their daily life (landlords, doctors, friends, etc.)
      - Contact with foreigners increasingly becomes associated with criminal law and the result may include rising levels of discrimination against

people suspected of being foreigners (on the basis of race, ethnic origin or religion, xenophobia, hate crime).

- The Council of Europe member states should reverse these trends and establish a human rights compliant approach to irregular migration.
- Recommends using proper terminology: “irregular” (or “undocumented”) and not “illegal”
- July 2009 - Italian parliament adopted “the Security Package” which criminalized irregular entry and stay in Italy.
  - Fines ranging from ranging from €5000 to €10,000 for unauthorised stay.
  - Failure to comply with expulsion orders: punishable by 1-4 years imprisonment.
  - Some organisations reported a decrease of up to 50% of undocumented patients in clinics after the adoption of the law.
- Dutch government currently making proposals to criminalize UDM
- EU member states: try to tackle irregular migration by restricting access to basic necessities with the aim of discouraging further irregular migration and encouraging those already in the country to depart.
- By not providing preventative or curative care to undocumented migrants
  - States causing a worsening of the health condition of the migrants
  - Increasing their health care needs
  - Health professionals caution, potentially creating wider risks to community health.
    - 22 March, ***European Declaration of Health Professionals Towards Indiscriminate Access to HC***, handed over to Eur. Parl.
      - Signed by 141 health organizations representing over 3 million health professionals (including prominent European associations of health professionals)
      - Urged EU institutions and MS to take action to allow health professionals to respect their medical ethical obligations
    - Campaign in **Italy “We are Not Spies”!** when Italian gov’t was drafting Security Package legislation in early 2009. As a result of nation-wide campaign, doctors were not obliged in Security Bill to denounce UDM to authorities.
    - Security Package also recently challenged by the **European Court of Justice**, which ruled one month ago against the crime of irregularity, for which UDM can be sentenced to detention like criminals.
- Many refused asylum seekers in the UK, including families with children, sleep on the street, and eat from bins:
  - Report: “Still Destitute,” by Joseph Rowntree Charitable Trust

- Calls for humanitarian status and the right to work for people from Iraq, Iran, Zimbabwe and Eritrea, classified as "unreturnable."
  - The study listed 273 destitute former asylum seekers in "limbo" in Leeds, including 30 children and 11 elderly dependants.
  - More than a third had been destitute for over a year and many were developing mental illnesses.
- European Committee of Social Rights (ESCR) (Decision on the Merits 20 October 2009 response to collective complaint submitted by Defence for Children Int'l):
    - ESCR: Undocumented children evicted from Dutch reception centers following failed residence proceedings are put in a situation of outright helplessness and living on the street.
    - Eviction policy of Dutch gov't denies these children basic right to protection, and that the right to shelter is directly linked to the rights to life, social protection, and respect for the child's human dignity and best interests.
    - Dutch gov't's response: send these children to youth institutions and leave their parents on the street.
    - Defence for Children's reaction: this new approach would violate the right to family life and launched petition to immediately stop evictions.

### **1.3. Protection of undocumented women from violence and abuse**

- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) – Dec. 2008 recommendation on women migrant workers
  - Noting particular vulnerability of undocumented female workers to exploitation and abuse because of their limited access to basic labour rights and fear of deportation
  - Committee underscored States Parties' obligation to protect the basic human rights of undocumented migrant women.
- Many women migrating to Europe for work or for family reunification:
  - Control of immigration status generally given to an employer or spouse
  - This status can be withdrawn if the relationship breaks down.
  - This dependency creates power imbalance which very often leads into violence.
- Irregular status impacts women who have suffered violence:
  - Structural barriers to report violence to the police or pursue legal remedies.: Inability to hold perpetrators accountable - "zero risk" victim.
  - Numerous administrative and financial barriers prevent undocumented women from accessing shelters and other support services for victims of violence.

- By not allowing support, protection and justice for victims of violence because of their status, national governments and public institutions are actively fostering a culture of impunity
- France: CIMADE “Do Not Hesitate” campaign
  - In over one third of cases of foreign victims of violence in 75 police stations across Paris, undocumented women face expulsion if reporting violence.
  - Telephone helpline and drop-in centre for migrant women
  - Development of support networks throughout country to provide health care, accommodation and follow-up.
  - Pushing for legislative change as well as better implementation of existing law in police stations.
- Last Friday in Brussels, UN Special Rapporteur on Violence Against Women, Rashida Manjoo, held regional consultation with NGOs working on women’s rights and violence against women
  - Discussion identified key challenges faced by NGOs working with women who have experienced violence
  - Specific situation of undocumented migrant women, and lack of protection both on national and EU level raised as key issue
  - Council of Europe Convention on preventing and combating violence against women and domestic violence (5 November 2011)
    - Only one mention of undocumented women, in explanatory memorandum
    - 10 ratifications (including 8 CoE member states)
  - EU Victims’ Package
    - Should have been a broader EU strategy on violence against women
    - Essential to get inclusion of all women, irregardless of administrative status, into the proposed legislation
- Spain: “Gender Based Violence Act” (2004)
  - Right for a court order which provides legal protection.
  - Right for temporary protective order and receive a residence and work permit from the authorities.
  - Administrative file for irregular status automatically suspended until resolution of criminal proceedings.
  - Instruction issued to all police stations to inform them of the protocol for dealing with undocumented foreign women victims of domestic or gender-based violence.

## 2. Recommendations

- **Address not status but migrants as workers, women and children first and foremost.**
- **Address the multiple legal, structural, financial and administrative barriers which prevent vulnerable migrants from accessing essential services and justice.**
  - Inhumane treatment, exploitation and abuse of migrants because they are migrants and/or undocumented constitutes discrimination and therefore, the barriers that prevent their access to support services or legal proceedings are further incompatible with human rights obligations and should be removed.
- **Strengthening the capacities of civil society** (NGOs, unions, professionals from diverse fields):
  - Ensuring that they are not penalized or criminalized for providing assistance to undocumented migrants
- **Strengthening the position of people who have been trafficked, through empowerment and support by relevant actors**
  - PICUM's "Ten Ways" approach
    - Increase awareness amongst civil society of the ways in which vulnerable workers are exploited
    - Increase the scope for solidarity between mainstream and vulnerable workers
    - Increase the scope for action!
- **Reinforce international human rights standards within EU policies**
  - FRA-FRIM project on EU 27: health, housing, education, social care, employment status and fair working conditions and access to remedies against violations and abuse.
- **Promote the regularization of undocumented migrants and improved access to regular channels for migration as policy solutions.**
  - Humane systems of migration and policies which respond to and protect the rights of undocumented migrants will contribute to promoting the dignity of these migrants whose precarious immigration status exposes them to exploitation, violence and abuse.
- **Stop using terms "illegal immigrants" and "illegal immigration," and instead use "irregular migration" or "undocumented migrants".**