OSCE Alliance Against Trafficking in Persons

An Agenda for Prevention: Non-discrimination and empowerment

Discrimination on grounds of migration status as a vulnerability factor

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In my presentation I would like to look at how lack of authorised migration status contributes to increased vulnerability in situations of human trafficking and exploitation. PICUM is an umbrella organization based in Brussels with around 150 member organisations in 40 countries, concerned with the human rights of undocumented migrants. PICUM works to gather evidence and information on the human rights situation of undocumented migrants in Europe and to communicate the information towards policy makers on European, international and national level for more informed and evidence based policies.

What is PICUM's angle when looking at the issue of trafficking?

● Starting point: not all UDMs are trafficked persons but a majority of all trafficked persons will be UDMs.

It is widely known that, due to imperfect identification processes, the majority of trafficked persons are not recognised as victims of trafficking, and thus fall into the broader category of irregular migrants. Therefore many issues linked to those of trafficked persons are very common to a wider group of UDMs- issues around access to basic services, access to protection and justice mechanisms.

As a result of the fact that the trafficking framework is currently not offering the necessary support and protections to all victims of abuse and exploitation, we need to address the question- what happens with those people who for one reason or another fall out or don't fit into the trafficking framework? This can happen because of a too narrow interpretation of the law, because fear prevents victims from working with law enforcement or because we simply do not reach those victims because they are so isolated and cut off from any public services.

So we should think what can be done to ensure the human rights of these persons and we need to look at what other systems are in place or need to be put in place to improve their access to services, care, justice and protection and fight discrimination.

Let me just give you examples from three crucial areas, where undocumented migrants face discrimination : access to basic labour rights and fair working conditions, access to protection, justice mechanisms and redress and access to basic social services. I will end my presentation with some broad but concrete practical recommendations.

1. **ACCESS TO BASIC LABOUR RIGHTS**

Labour rights enforcement that is focused on establishing fair working conditions first and foremost and not on pursuing the migration status of workers is of crucial importance. In the EU, a directive on Employers Sanctions was passed a couple of years ago, which establishes sanctions for employers of undocumented migrants and provides for some guarantees for the workers. However, this directive was passed as part of a DG Home Affairs package to "combat irregular migration" which already paints a very clear picture of the foreseen objectives and focus.

NGOs were trying very hard to put their concerns across- they were worried that the directive will actually have the opposite effect and would push undocumented workers further underground into more isolation and into worse working conditions. We have already some indications from our members that these sanctions are not on one hand having the deterrent effect- it is still cheaper to risk paying the fines than hire workers regularly and on the other hand workers are not reporting abuse and exploitation because there are no guarantees in relation to their migration status. The implementation deadline for this directive was last summer and in 2014 an implementation review is foreseen from the Commission. PICUM intends to collect information and put together a shadow report on this issue.

So firstly, in order for labour rights enforcement to be effective, there must be a firewall between labour inspections and migration status, otherwise abuses are not reported.

Secondly, there need to be more regular avenues for migrants to enter Europe for low wage work. The first and only EU wide initiative of this sort is the proposal for a directive on seasonal work. This is still being discussed in the Council and many question marks remain around the nature of circular migration.

Thirdly, the right to change employer should be an obvious one. Employer dependent migration status is a huge driver for exploitation, abuse and underreporting. This brings me to the second key area that we need to address in order to provide that necessary landing for those victims not identified as victims of trafficking.

2. **ACCESS TO JUSTICE AND PROTECTION**

Lack of authorised migration status and employer or spouse dependent status or what we sometimes call insecure migration status is a factor of vulnerability both in terms of being more vulnerable to trafficking and exploitation and being unable to seek assistance and protection.

It is crucial that all victims of crime regardless of migration status would have equal rights in terms of assistance and remedies. The EU recently passed a directive on the rights of victims of crime, which, even though does not explicitly establish safeguards for undocumented migrants, does clearly refer to rights of all victims regardless of migration status, which means that the directive applies also to irregular migrants.

Trafficked persons who do not want to press charges or who are not identified depend on this directive on victim's rights, as it provides for access to support and practical assistance from the earliest possible moment irrespective of whether the crime has been reported to authorities. Now it depends on the member states how they will implement this directive and if it would be possible to

include specific safeguards to national level legislation that would really ensure that undocumented migrants will be able to report crimes against them without the fear of being deported.

PICUM has in recent years done extensive research in relation to the realities of undocumented women experiencing violence and the often devastating situation many find themselves in. We found that undocumented women are more exposed to ill-treatment. Add to this, the risk of deportation if they contact the police, difficulty to gain access to women's shelters, to legal and financial assistance for victims of violence, and it becomes clear that this specific group of women is unprotected against violence in Europe. These women face structural and institutional discrimination because of their migration status, in addition to gender-based violence.

Safeguards, such as giving a temporary residence permit and allowing for free legal counsel, would prevent irregular migrants from becoming a "zero risk victim" and help combat impunity. In France and in Spain there are specific laws in place that guarantee undocumented women the right to access justice and ensure that all victims can report a crime without fear of being arrested or deported.

3. ACCESS TO BASIC SERVICES

Non-discriminatory access to basic services such as health care, education and decent housing will have both preventative benefits but will also help to identify victims of trafficking. Irregular migration status prevents migrants from accessing services like health care due to legal barriers as well fear of being arrested and deported, victims often suffer in isolation. Education for undocumented children is another crucial one- be the children living with families or unaccompanied, having access to the education system has a strong preventative role in terms of falling prey to traffickers. Decent housing and shelter was mentioned already before- safe havens open to all persons regardless of migration status are absolutely vital, however the reality is far from it. In most EU countries for various reasons, women's shelters and homeless shelters remain closed for people with an irregular migration status.

And again there is a need for a firewall between these crucial human rights and migration policy.

Let me conclude with some concrete recommendations.

- **Address not the migration status but migrants as workers, women, children and victims of crime first and foremost.**

- **Address the multiple <u>legal, structural, financial and administrative barriers</u> which prevent vulnerable migrants from accessing essential services and justice.**

The barriers that prevent their access to support services or legal proceedings are incompatible with human rights obligations and should be removed. A firewall between realization of human rights and proceedings concerning migration status should be put in place.

- **Strengthen the capacities of civil society** (NGOs, unions, professionals from diverse fields):

Ensure that they are <u>not penalised or criminalised</u> for providing assistance to undocumented migrants.

- **Strengthen the position of people who have been trafficked, through empowerment and support by relevant actors**

Increase awareness amongst civil society of the ways in which vulnerable workers are exploited and about the barriers undocumented migrants face accessing protection and justice. Engage trade unions, women's organisations, children's rights groups etc.

- **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".**

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