

PICUM Presentation at the OSCE 15th Alliance against Trafficking in Persons Conference

Vienna, 6-7 July, 2015

ROLE OF RESTRICTIVE MIGRATION POLICIES IN INCREASING THE VULNERABILITY OF MIGRANTS TO IRREGULARITY, EXPLOITATION AND TRAFFICKING

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NOTE TO INTERPRETERS: Please do not interpret undocumented or irregular migrant/migration into “illegal” migrant/migration. Please see translation suggestions into other EU languages and arguments for not using “illegal” [here](#).

PICUM, the Platform for International Cooperation on Undocumented Migrants represents a network of more than 140 organisations and 100 individual advocates working with undocumented migrants in 33 countries, primarily in Europe as well as in other world regions. PICUM approaches trafficking in the broader context of exploitation and irregular migration with the objective to draw attention to the interlinkage between the shortcomings of the EU labour migration systems, discriminatory access to services and justice and the exploitation and trafficking of migrant workers.

1. Role of adequate labour migration policies in preventing trafficking¹

Eurostat projects that the EU workforce will shrink by 50 million over next 50 years² and even with the success of any planned activation policies, it will not be enough to mitigate this prognosis without labour migration policy reform. However, current statistics show that the labour markets of EU member states are increasingly restrictive to third country migrant workers: the total number of first time residence permits for all remunerated activity reasons (not differentiating for the type of employment, skill level or sector) in the EU28 went down from 786,892 in 2008 to 535,478 in 2013.³

The EU’s labour migration policies, with the exception of the recently adopted directive regulating seasonal work, have thus far mainly focused on highly skilled workers, leaving very few regular employment opportunities for low-wage workers from outside the EU. At the same time, particular sectors of the economy

¹ This section is drawn from PICUM Position Paper “Undocumented Migrants and the Europe 2020 Strategy: Making Social Inclusion a Reality for All Migrants in Europe”, July 2015 (forthcoming on PICUM website).

² Eurostat, Main scenario - Population on 1st January by sex and single year age (with working-age population defined as people aged between 20 to 64 years), June 2014. http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=proj_13npms&lang=en.

³ Eurostat, First permits by reason, length of validity and citizenship, December 2014. http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_resfirst&lang=en.

in the EU rely on the presence of a migrant workforce that works undeclared in the informal economy due to limitations on work and residence permit opportunities which force these migrants to work in precarious conditions with an irregular status due to lack of alternatives.⁴

The presence of migrant workers demonstrates that labour market demand exists in low wage occupations most notably in the restaurant, hospitality, agriculture, construction, retail, and domestic work sectors. Nonetheless, national and EU migration policies continue to offer few possibilities for migrant workers from third countries to receive work and residence permits to work regularly in these sectors. Due to widespread unofficial work arrangements, undeclared activity and informal recruitment channels in these sectors, very little comprehensive cross-country data is available about sectorial labour shortages or labour market outcomes for different migrant profiles⁵, as these workers are often not recognised, registered or counted in national statistics.⁶

This lack of recognition of labour market needs results in lost tax revenue and more irregular migration, as these workers are pushed into the informal economy and into an irregular situation when a structural labour demand is not met through official labour migration channels.

This situation in turn creates a vast decent work deficit with high levels of labour exploitation, trafficking for labour exploitation, work place accidents⁷ and general worsening of working conditions.⁸ Undocumented migrant workers are particularly vulnerable to unsafe working conditions and face many barriers across Europe to access compensation for work place accidents⁹ and unpaid wages.

In addition to the lack of possibilities to reside and work in Europe regularly, work permit rules in many EU member states tie a third country migrant worker to one specific job with one particular employer. If a worker needs to change employer, they would have to re-apply for a new permit, a lengthy and complicated procedure with very insecure outcomes. This creates a situation of excessive dependency and allows for situations of exploitation to continue as migrant workers are not willing to risk the loss of residence status that would follow after initiating a complaint against the employer.

⁴ B. Anderson, *Migration, immigration controls and the fashioning of precarious workers* in *Work, Employment and Society*, Volume 24, Number 2, June 2010, p.306

⁵ G. Lemaître, *Migration in Europe: An overview of results from the 2008 immigration module with implications for labour migration* in *Matching Economic Migration with Labour Market Needs*, OECD/European Union, 2014, p.351. http://www.oecd-ilibrary.org/social-issues-migration-health/matching-economic-migration-with-labour-market-needs_9789264216501-en

⁶ International Labour Organisation, *The informal economy and decent work: a policy resource guide, supporting transitions to formality*, International Labour Office, Employment Policy Department – Geneva, 2013, p. 2.

http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_policy/documents/publication/wcms_212689.pdf

⁷ See Platform for International Cooperation on Undocumented Migrants, *Position paper on the European Commission Communication on an EU Strategic Framework on Health and Safety at Work 2014-2020*.

http://picum.org/picum.org/uploads/publication/PICUM%20Position%20paper_EU%20Framework%20on%20OSH%202014_2020_November%202014.pdf

⁸ International Labour Conference, 104th Session, 2015, *Proposed Recommendation Concerning the Transition from the Informal to the Formal Economy*, ILC.104/V/1, p. 21 http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meeingdocument/wcms_302539.pdf

⁹ EU Fundamental Rights Agency, *Fundamental rights of migrants in an irregular situation. A comparative report*, 2011, p.48. http://fra.europa.eu/sites/default/files/fra_uploads/1827-FRA_2011_Migrants_in_an_irregular_situation_EN.pdf

2. Barriers to identification of exploited and trafficked persons

- Normalisation of labour exploitation in society

The acceptance of exploitation as an inseparable element in many jobs in low wage sectors acts as a barrier for workers to self-identify as being exploited and/or trafficked and from seeking assistance and justice. Substandard working conditions in the agricultural sector, excessive hours and salaries under minimum wage in the restaurant industry, isolation and withholding of wages in the domestic work sector have all become what our societies accept rather as a norm than an exception. Parts of our economies and the middle classes have become increasingly dependent on products and services produced and delivered with wages well below the minimum wage in exploitative conditions.

As an example, with the backdrop of an inadequate publicly subsidised childcare system, the Irish government has taken a political decision to not grant any work permits in the domestic sector for migrant workers. This has resulted the demand being moved to the au-pairing industry, which is misused for domestic work. Agencies are publicly advertising for women who would work up to 70 hours a week, caring for children, cooking and cleaning often for less than €3 an hour. The au pair system is used to create a class of very vulnerable workers who are in practice denied access to basic labour rights. Following significant media pressure generated around the issue, the Minister for Jobs has publicly announced that all employment rights are applicable to au-pairs but how this is going to be implemented in practice remains to be seen. This situation is not particular to Ireland only, the misuse and exploitation of au pairs in the domestic sector is a widespread phenomenon across Europe.

- Criminalisation of migrants

Criminalisation of irregular migration status impedes migrants from seeking assistance and help in the face of a possible arrest and deportation. Migrant workers who are often working and living in very isolated conditions such as private homes and rural greenhouses are unaware of their rights as a worker and as a human being and lack practical possibilities to approach third persons for advice and assistance. In addition to the lack of awareness, fear is the main factor contributing to the effective seclusion from justice mechanisms.

Undocumented migrants in exploitative situations are intimidated by the police and the threat of deportation, due to the fear that their irregular status will be uncovered; they find it difficult to leave exploitative situations and rarely seek redress for violations.

The situation in reality unfortunately confirms the fears of undocumented migrant workers who are exploited. The increasing prioritisation of migration enforcement in the context of social assistance and justice mechanisms result in situations where migration control aims trump any needs on the grounds of abuse and exploitation.

For example, very often joint inspections with labour inspections and migration police to work floors result in a quick document check of the workers and immediate arrest of those without valid residence status before investigation into their working conditions and potential labour exploitation. Even in cases where

trafficking/exploitation has been identified access to redress and compensation remains very difficult. Migrant workers who have been exploited often end up sanctioned for their irregular stay rather than being directed to support services.

- Lack of effective complaints mechanisms and safe routes to justice and redress

The existence of an effective complaints and inspections system is crucial for improving identification of exploited and trafficked persons. The lack of success of the “employers’ sanctions” model, which criminalises employers for employing undocumented workers, suggests that the criminalisation approach has actually very little impact on employers but has negative impacts on workers.

Repercussions for employers remain very limited and facilitation of complaints insufficient, indicating that this approach does not deter employers from employing undocumented workers and cases of exploitation are not being reported. While undocumented workers remain disempowered from enforcing their labour rights, the costs and risks associated with the irregularity of their employment are often displaced from the employer to the worker. Through inspections, workers risk retaliation from employers, loss of employment and income, and immigration enforcement (detention and deportation). Without a separation between immigration enforcement and labour rights protection, undocumented workers are not in a position to denounce exploitative employers and the exploitative practices are allowed to continue.

Labour inspectors, seen in the employers’ sanctions system as the main link between undocumented workers and enforcement of protective measures, are not often perceived as defending the labour rights of this group due to, largely, the implicit or explicit obligation to report irregularly staying workers to the immigration police. The lack of separation between labour inspectors and immigration enforcement mechanisms remains the key barrier to labour rights enforcement for undocumented workers, to addressing exploitation and identifying trafficking victims.¹⁰

Recommendations to States:

1. Establish a better regulated labour market by reviewing labour migration policy and creating more entry, stay and work opportunities for third country migrant workers across skill levels and labour sectors and in particular in low wage sectors with high levels of exploitation.
2. Reduce undeclared work and irregular migration by strengthening the residence status of third country migrant workers by uncoupling residence and work permits so that loss of employment or change of employer would not automatically lead to loss of residence and work permit status.

¹⁰ See Platform for International Cooperation on Undocumented Migrants, *Position Paper Employers’ Sanctions: Impacts on Undocumented Migrant Workers’ Rights in Four EU Countries*, April 2015.
http://picum.org/picum.org/uploads/publication/EmployerSanctions_Final.pdf

3. Address undeclared work and labour taxation system in a way that enables transition of the sectors most in risk into the formal economy offering more protections to workers and de-normalising exploitative working conditions.
4. Decriminalise irregular residence and ensure non-discriminatory access to crucial services such as health care, victim support and emergency shelters to improve identification of trafficked persons.
5. Create effective and safe complaints mechanisms that would remove barriers preventing undocumented workers from reporting exploitation and abuse by setting up of a “firewall” - a clear separation in law and practice between the powers and remit of labour inspectors and justice mechanisms and those of migration law enforcement authorities.

For further information please do not hesitate to contact:

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