

**UN Migrant Workers Committee**  
**Day of General Discussion on Labor Exploitation**  
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**PICUM's Five Main Concerns:**

**1. Lack of regular channels for migration and secure labor conditions**

- Lack of regular migration channels to meet labour market demands.
  - In many European Union countries, work permits for low-wage sectors are highly restricted. Where they are available, they are usually tied to one employer, creating a power imbalance and dependency on the employer.
- Inflexible labour migration frameworks enable exploitative employers to deliberately undermine migrant workers' residence status as a means of controlling and preventing them from reporting abuses to the police or labour authorities.
- This relationship exposes migrant workers to exploitation and abuse and can easily result in migrants losing their right to work and reside in the destination country, if the employer does not renew their employee's permit or ends the employment relationship.
  - Research from the European Commission has shown that the majority of the estimated 2 to 4 million undocumented migrants in Europe do not enter irregularly; they arrive regularly and become irregular

**2. Labor rights violations and exploitation**

- The principle of safeguarding decent and fair working conditions, including fair remuneration, compensation for work accidents and rest periods for all workers, including domestic workers and undocumented workers, is well-established in international law instruments.
- However, although guarantees of fair working conditions may be provided for in national law, their applicability to undocumented migrant workers is often not expressly ensured within national legal frameworks.
- As a result, migrant workers with insecure or irregular residence status frequently experience violations of labour rights, including:
  - under-payment and non-payment of wages;
  - long working hours without choice or compensation;
  - very limited rest periods;

- degrading and poor working and living conditions;
- confiscation of identity documents and psychological, physical threats and violence.
- Employers' sanctions: aim is to fight irregular migration, not to fight workplace exploitation
  - EU: not yet seen improvement on situation on ground concerning undocumented workers' ability to hold employers accountable
  - USA: 1986 Immigration Reform and Control Act established employers' sanctions.
    - General Accounting Office and U.S. Commission on Civil Rights (1989) found that employers' sanctions contributed to widespread discrimination against citizens and legal residents

### 3. Lack of access to justice and protections for victims of labor exploitation

- Despite increased exposure to ill-treatment, undocumented workers are at significant risk of arrest and deportation if they seek assistance from the police and labour authorities, as their irregular status frequently supersedes their need for protection.
- Irregular status also serves as a serious barrier when trying to access the justice system, be it for labour rights violations or criminal justice for acts of violence.
- Undocumented migrant workers are also denied the right to free legal aid and often prevented from being party to labour law proceedings as they are deported to their countries of origin before legal action has got under way.
- The structural barriers that prevent vulnerable migrant workers from pursuing legal remedies and bringing their perpetrators to justice contribute to a worrying culture of impunity for exploitation of undocumented migrants

### 4. Violence

- Lack of workplace and labour rights protection and access to justice for undocumented migrant workers, alongside the dependent visa scheme, place them in a position of vulnerability to psychological and physical violence.
- This situation coincides in some countries with increasingly worrying xenophobic public and political sentiment, which can in turn fuel violence by employers and discrimination by service providers, police and labour authorities.
  - 155 Bangladeshi migrant workers were shot at, resulting in 35 who were wounded, during a pay dispute on a strawberry plantation in Manolada, Greece on 17 April 2013.

- The incident is yet another example of an increasing number of reported acts of racist violence against migrants in Greece.
- To date, one of the victims was deported whereas the 35 injured victims have been granted a temporary residence status and have been recognised as victims of trafficking for labour exploitation.
- The remaining 119 migrants have not yet been granted access to justice and victim protection and are still waiting for a decision from the national courts.

## **5. Lack of access to social rights, poverty and disempowerment**

- In Europe, the increased linkage between migration control mechanisms and access to basic services means that undocumented migrants experience numerous barriers to accessing their fundamental rights.
- Despite their unprotected status and heightened exposure to ill-treatment and exploitation, numerous legal, administrative, financial and practical barriers prevent undocumented workers from accessing basic social rights, such as healthcare or housing.
- This policy-driven exclusion and removal of social protection serves as a significant barrier to undocumented migrants' meaningful participation in society. Such policies risk compounding inequalities existing in our society and further marginalising migrant workers.
- Being denied access to social services and facing exploitative working conditions, undocumented migrant workers and their families face higher risks of poverty and social exclusion.

### **PICUM's Recommendations:**

#### **1. Ratify the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and apply international labour law standards to ensure protection to all migrant workers.**

- A July 2013 comparative analysis requested by the European Parliament concerning the implementation of the Migrant Workers' Convention in the EU found that the ratification of this convention would impose few additional obligations on States compared existing obligations under the EU Charter and EU legislation in the area of labour immigration.

- MWC General Comment No. 2 on irregular migrant workers and members of their families – crucial for both states' parties to MWC as well as potential signatories of what the MWC specifies concerning UDM as well as the other human rights core conventions
- The study stresses that: “these obligations touch mainly upon areas which would most likely not be considered as problematic by Member States or on areas (such as the one of family reunification) which leave States Parties a broad margin of discretion.
- ILO international labor standards
  - Tripartite Meeting on Labor Migration (Nov. 2013)
  - June 2013 ILC – Protocol and recommendation to Forced Labor Convention – should clearly address migration status and forced labor

## **2. Promote regular channels for migration and regularization of undocumented migrant workers**

- National governments should develop, and make accessible, avenues for migrants to work in low-wage sectors, with an independent residence status and right to change employer.
- Ensure protections for low-wage workers under temporary and seasonal labor migration schemes
  - Centro de los Derechos del Migrante reported on 3 April that the U.S. Secretary of Labor and Secretary of Labor and Social Welfare for Mexico were to engage in ministerial consultations and sign a joint declaration pursuant to the North American Agreement on Labor Cooperation (the labor side accord to NAFTA), concerning abuses faced by migrant guestworkers in fairs, carnivals, and in agriculture in the U.S.
  - The declaration responds to a petition filed by this and other NGOs.
- Morocco – round table – NGOs

## **3. Build a firewall between service provision and immigration enforcement**

- A firewall between public service provision and justice and immigration control should be erected, in law and in practice
- The sharing of personal data between service providers and immigration authorities should be prohibited, including in the context of access to justice and redress.

- Guidelines provided by the Fundamental Rights Agency of the European Union in relation to detection and apprehension of irregular migrants.

#### **4. Ensure access to protection and redress for migrant workers who have suffered exploitation and violence, regardless of migration status.**

- National governments must remove all legal, administrative and practical obstacles for undocumented migrant workers to report abuse and seek protection and redress for violations of rights.
- Steps must be taken to ensure that justice is made safe, effective and accessible, protecting migrants when they report abuse, and facilitating prosecution of perpetrators regardless of the status of their victim.
  - Prioritizing police and labour authorities' roles in upholding rights and justice over immigration enforcement;
  - Recognising the validity of work relationships and violations regardless of the status of the employee;
  - Guaranteeing the suspension of any expulsion proceeding or removal directions when seeking access to labour or criminal justice courts;
  - Guaranteeing access to support services, such as secure accommodation and psychological and social support for domestic workers who have suffered abuse and exploitation.
- Good practice: City of Amsterdam
  - Despite the pending proposed legislation to criminalise irregularity, the State Secretary for Security and Justice has agreed to a pilot project in Amsterdam which would mean that irregular migrants would be able to report crimes without facing imprisonment.
  - Many promising practices by local and regional authorities to uphold undocumented migrants' rights – should contribute more to these discussions (GFMD Sweden).

#### **5. Reform national law, policy and practice to ensure equal access to social rights regardless of migration status.**

- National governments must review and reform law and policy that restricts access to basic rights and services on the basis of migration or residence status, and proactively address practical, administrative and financial obstacles to such access.

- Today, 7 April, is World Health Day. Important to recognize good practice legislative and policy measures taken by government to ensure right to health for all migrants, regardless of status.
  - In Sweden, a reform entered into force on 1 July 2013 entitling all undocumented migrants to care “that cannot be postponed”, including dental care, maternity care, contraceptive counselling and sexual and reproductive care. Undocumented children now have access to the same health care treatment as national children.
  
- Annex has several examples of good practices
- Accurate terminology that is respectful of the dignity and human rights of migrants, that does not have connotations of criminality
  - “Undocumented” or “irregular” (UN General Assembly 1975)