



PLATFORM FOR INTERNATIONAL COOPERATION ON UNDOCUMENTED MIGRANTS

U.N. Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families
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Ten Ways to Protect Undocumented Migrant Workers

By PICUM, the Platform for International Cooperation on Undocumented Migrants

PICUM, the Platform for International Cooperation on Undocumented Migrants, is a network of organisations providing assistance to undocumented migrants in Europe. The aim of PICUM is to promote the basic social rights of undocumented migrants.

PICUM seeks to achieve this aim by (1) gathering information on law and practice regarding the social rights of undocumented migrants; (2) developing a centre of expertise in this field; (3) strengthening networking amongst organizations working with undocumented migrants in Europe; and (4) formulating recommendations for improving the legal and social position of these migrants.

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Introduction

Every day hundreds of thousands of undocumented workers labor in different sectors of the economy in Europe. Undocumented workers often work and live in inhumane conditions, earning very little or no pay at all, and are insufficiently protected by legislation. Facing exploitation and abuse, many undocumented workers believe that they have no other option than to accept this situation. Fearing that they may be deported if they speak out, an overwhelming number suffer in silence.

Meanwhile some economic sectors in the European Union are to a considerable extent dependent upon undocumented workers, who make up a substantial part of their workforce. This dependence may be hidden, not just by migrants' silence, but by sub-contracting chains and employers' complicity.

PICUM, the Platform for International Cooperation on Undocumented Migrants, has collected detailed information obtained from NGOs, trade unions and other actors working with and advocating for undocumented workers, both in Europe and in the United States.¹ The first section of this paper presents a summary of ten actions that contribute to the aim of respecting the dignity of undocumented migrants as humans and as workers.

The second section of this paper presents ten policy recommendations that should be taken into account by policy makers. The employment and the exploitation of thousands of undocumented migrant workers in Europe is a symptom of the shortcomings of social, employment and migration policies. Tackling the roots of the problem of the exploitation of undocumented workers therefore constitutes a major challenge, requiring concerted efforts in all of these fields.

¹ See PICUM, *Ten Ways to Protect Undocumented Migrant Workers* (Brussels: PICUM, 2005), available online at: www.picum.org.

Ten Ways

1. Engaging public support through events and consumer campaigns

Undocumented workers are too often thought of as taking advantage of public benefits and causing native workers to become unemployed. Changing the unfavorable image of undocumented workers and gaining public support is paramount in protecting their rights.

Without public support, undocumented workers stand little chance of fighting exploitation and abuse, a reality that many endure on a daily basis. Numerous organizations engage in awareness-raising initiatives to dispel the negative images of undocumented workers by highlighting that these workers are human beings and that they contribute considerably to our economies.

2. Collecting data

Policies in the fields of migration, employment, and social inclusion are often developed in the absence of concrete data about undocumented workers. As a result, many of these policies lose their effectiveness. Collecting both qualitative and quantitative data on undocumented workers is thus of utmost importance.

NGOs play a crucial role in setting a relevant research agenda and in overcoming the many difficulties of gathering essential information about undocumented workers, who tend to live in the shadows.

3. Informing undocumented workers about their rights

Undocumented workers do have rights, but many are unaware of this. As a consequence, countless undocumented workers do not challenge their employers if the latter exploit or abuse them. Informing undocumented workers about their rights is primordial, since it is the first step towards ending the silent suffering of hundreds of thousands of undocumented workers.

4. Building capacities through empowerment

In order to prevent and stop exploitation and abuse, undocumented workers must be able to effectively exercise their rights. Empowering and developing undocumented workers' leadership capacities counteracts a system of dependency. Instead, workers are able to defend themselves and even engage in and influence the decision-making affecting their lives. These capacities are essential if workers are to become agents of their own rights.

5. Unionizing undocumented workers

For an undocumented worker acting alone, asserting one's rights remains a major challenge. Unionizing undocumented workers is therefore very important, since it puts a worker in a much stronger position.

There are, however, several obstacles preventing undocumented workers from joining unions, and not all traditional union structures and working methods are directly applicable to undocumented workers. Many trade unions in Europe and the United States have managed to overcome these difficulties, leading to an enhanced level of protection of undocumented workers.

6. Working with employers to prevent exploitation and advocating for laws to hold them accountable to fair labor standards

One way to prevent violations of undocumented workers' workplace rights is to work with employers. There are several successful examples of organizations that invite – and sometimes pressure – employers to respect well-defined minimum standards of employment.

But there is also a need for legal measures holding employers accountable if they exploit or abuse their undocumented employees. Such measures are indispensable to attain effective protection of undocumented workers' rights.

7. Challenging exploitation and abuse through mediation and collective actions

Other ways of asserting undocumented workers' rights are by engaging in mediation and collective actions.

"Nobody wants a bunch of angry workers on their doorstep or circling their car, making it hard for them to do their work. ... (After repeatedly putting pressure on abusive employers as a group), now essentially all it takes is a call from our organization to the employer, telling him that so-and-so worked for him for x number of days, that he owes him x amount, and when can he get a check over to our office?" said Julia Perkins of the Coalition of Immokalee Workers.

As an alternative to filing an official complaint through a governmental entity, collective actions and mediation have often proven to be very useful ways of upholding undocumented workers' rights.

8. Asserting undocumented workers' rights in the legal system

When other means of protecting undocumented workers' rights turn out to be unsuccessful in resolving labor disputes, undocumented workers can resort to filing an official claim through legal channels. This can be a difficult and challenging task, as there are numerous obstacles involved in making a claim: the fear of being deported, high legal fees, and the need to prove the employment relation. Such barriers deter many undocumented workers from using the legal system.

However, the law offers protection, and there have been numerous legal rulings in Europe and in the United States in favor of undocumented workers.

9. Working with governmental agencies to promote undocumented workers' rights

Undocumented workers tend to be reluctant to approach governmental agencies. Nevertheless, many governmental agencies, including the entity responsible for labor inspection, do not let a worker's irregular legal status impede their main task, namely to uphold fair working conditions and to sanction exploitative and abusive employers.

Liaising with governmental agencies can therefore be helpful in improving the protection of undocumented workers, since these agencies can and will intervene in many instances to protect these workers.

10. Advocating for legal status of undocumented workers

A final way of preventing abuse and exploitation is to legalize the status of undocumented workers.

There are many arguments for regularizing undocumented workers. Regularization leads to increased visibility of this particular social group, and thus to increased protection. It is a proven fact that not only undocumented workers, but society at large benefit from legalization procedures. Regularizing undocumented workers is a way to combat the informal economy and to stop the deterioration of general working conditions, which in the end affects *all* workers.

Ten Policy Recommendations

PICUM does not hold a magic key for solving the situation in all of its complexity. But the expertise we have acquired by working on a daily basis with undocumented migrants throughout Europe leads us to formulate the following recommendations that should be taken into account by policy makers.

It should be noted that our use of the term “policy makers” does not refer exclusively to national or European lawmakers. Many more institutions and bodies contribute to the development of policies in the field of migration and more explicitly in the area of undocumented migration. In a broad sense, policy makers include unions and schools, as well as local authorities. All of these actors formulate and implement policies that affect PICUM’s target group and the public at large.

1. Acknowledge the social and economic presence of undocumented migrants

PICUM urges policy makers to acknowledge the presence of undocumented migrants in the European Union. Whether they are desired or not, large numbers of undocumented migrants are present in the Member States of the European Union, and even though they tend to live in the shadows, they are part of our societies and our economies.

Although all consumers in the EU are affected by the presence of undocumented migrants, too many policy discussions are held without taking this reality into account. To structurally deny the presence of undocumented migrants in the EU inevitably leads to ineffective social, employment and migration policies.

Irregular migration is mainly debated in terms of the fight against illegal migration. Nonetheless, this fight is unsuccessful, and it has been acknowledged by the European Commission that illegal migration will never disappear. The need for social policies directed at undocumented migrants is therefore an urgent necessity.

Confronted with this fact, politicians often resort to almost commonplace conversation stoppers, ranging from “We cannot reward people who break the law,” to “The better treatment we give them will make more of them come here,” or “Regularization schemes have a magnet effect.” None of these concerns justify not dealing with the issue at all. These assumptions need to be carefully studied, and the alternatives should be investigated.

2. Prioritize data collection

To be able to develop genuine policies in the fields of migration, integration, and employment, it is important to have an understanding of who undocumented migrants are, why they come here and how they survive.

There is a general lack of research on undocumented migrants in Europe. Policy makers should prioritize collecting and exchanging data on mainly three levels:

- Firstly, there is a need for qualitative and quantitative research regarding undocumented migrants.
- Researchers should also engage in impact studies on current and future policies: What are the societal impacts of policies on irregular migration? What are the impacts of migration policies on working conditions in general and specifically on undocumented workers?
- Thirdly, research should be conducted on experimental and pilot problem resolution processes, demonstrating alternative constructive and cooperative policy options.

3. Involve (local) NGOs in conducting research and making policies

To collect information on undocumented migrants, it is important to have a relation based on trust, as undocumented migrants are often reluctant to speak about their situation. Local NGOs providing assistance to undocumented migrants on a daily basis are therefore important partners for researchers.

It is also essential for NGOs to be involved in the process by which researchers and research institutions develop their work plans. Based on their expertise, NGOs are good advisors concerning research priorities and ensure that the output of the research is relevant and supported.

NGOs' expertise is also beneficial for policy makers. Authorities and grant makers should therefore enable grassroots NGOs to contribute to research and to policy work by providing them with the time and the resources to do so. Indeed, it is mostly these NGOs that are very much put under pressure to work on a practical level. As a consequence, their role in criticizing policies, stimulating the public debate, and assisting in research projects comes in second place.

4. Mainstream undocumented migrants in integration policies and in the Social Inclusion Strategy

Integration policies

If social cohesion is a real concern for policy makers, the living and working conditions of undocumented migrants should be addressed.

Many local authorities in Europe have voiced their concerns about the presence of large numbers of undocumented migrants in their cities and local districts, indicating that it is detrimental for social cohesion that the needs of these immigrants are not being addressed. Even though there is a cost in providing services to undocumented migrants, most local authorities know very well that the price of *not* providing these services is much higher.

The urgent integration needs of undocumented migrants are generally very basic and concern access to health care, housing, education for undocumented minors, and fair working conditions. Nonetheless, it is advisable that other integration measures designed for legal migrants (such as language courses) should not be closed off to undocumented migrants.

Social Inclusion Strategy

A stronger link between migration and the European Social Inclusion Strategy is urgently needed. The main aim of this strategy is to fight social exclusion and poverty. PICUM's research underlines that undocumented migrants are a vulnerable group and thus at risk for social exclusion and poverty.

The European Union upholds principles of social inclusion. The creation of second-class citizens and workers should thus be avoided at all costs. To this end, PICUM urges European policy makers to include undocumented migrants as a specific target group in the Social Inclusion Strategy.

5. Invest in workplace inspection

Employing undocumented workers is an attractive option for employers, a phenomenon that mainly stems from the fact that these workers are not protected, and therefore unlikely to complain against exploitative conditions, which allows employers to make more profits by cutting down labor costs. The chance that an employer will be caught and penalized for exploiting an undocumented worker is indeed still very small in comparison to the potential profits they can gain by hiring these workers.

The demand for undocumented workers is not seriously addressed in policy debates. European governments overwhelmingly focus on the supply side, as if there was no demand for undocumented labor.

PICUM urges national and European authorities to shift the focus away from border control and to invest more means in workplace inspection.

As part of this approach, PICUM urges governments to invest in legislative measures penalizing employers who exploit and abuse workers. PICUM's research on this issue has revealed that it is possible to develop laws that prevent employers from evading their responsibilities towards workers.

To ensure the enforcement of these and other legislative measures, a greater number of labor inspectors is needed to check if employers respect the minimum wage and working hours and take measures to ensure that workers (or their families, where relevant) receive financial compensation in the case of workplace accidents or injuries. Labor inspectors should be trained and sensitized to specific issues concerning undocumented workers. They should consider undeclared workers as victims, and should not report a worker's illegal status to the foreigners' police.

6. Safeguard the right to equality before the law

The right to equality before the courts and tribunals is a universal human right. To deny people the right to defend themselves in the judiciary system renders any claim to any other right problematic.

If undocumented workers would be given the means to legally enforce their rights, this would reduce incentives for hiring them, since they would no longer be an “easily exploitable” workforce. Given that the detection of poor employment conditions and exploitative employers is in governments’ interest within the context of combating the informal labor market, legal challenges by undocumented workers against their employers should be facilitated.

This also means that there should be no risk of deportation if an undocumented worker files an official complaint against their employer. Judges and other staff in labor courts and industrial tribunals should not report undocumented workers to the foreigners’ police, and the migration status of a worker should not play a role in a decision taken by a judge. We refer in this context to the United States, where courts have issued protective orders to ensure that immigration status will be kept out of the court proceedings.

7. Safeguard the right to organize

The benefits and even the necessity of organizing undocumented workers to fight against exploitation and abuse are highlighted throughout PICUM’s research on this issue. Organized workers have more strength and an increased potential for making an impact in labor disputes.

An increasing number of unions are beginning to work on the issue of undocumented workers and see the urgent need to include them in their membership. It is indeed the mission of unions to uphold workers’ rights: the present situation of exploitation and abuse of undocumented workers and the lack of protection in labor legislation is the same phenomenon that occurred more than a century ago when unions were beginning to be established. To deny a group of workers the right to organize would entail a serious relapse in the labor movement.

Including undocumented workers in unions is also crucial for unions’ representativity and power base. If trade unions refuse to include undocumented migrant workers in their ranks, their power base will become smaller, and their opinions will no longer be seen as representative of all workers. Unions will end up defending a diminishing group of privileged workers with permanent jobs in traditional industries, who feel threatened by the growing number of unprotected workers.²

To protect the most vulnerable workers and to ensure the survival of the trade union movement, PICUM subscribes to the conclusions made at an international trade union conference organized by the Dutch union FNV, that unions should agree that this is an issue worth fighting for, they should educate their members and officials, and allocate the necessary resources.³

For national authorities, it is of crucial importance to safeguard undocumented workers’ right to organize in the law. PICUM’s research has revealed that employers often prohibit workers from organizing. This adds to the importance of very clear and unbiased legislation in this regard.

8. Regularize undocumented migrants

In the “Study on the links between legal and illegal migration” (COM(2004) 412 final), the European Commission stated that there are limits to the existing channels for legal immigration and therefore many Member States establish ways to regularize undocumented migrants. The Commission also

² See FNV, *From Marginal Work to Core Business: European Trade Unions Organising in the Informal Economy* (Amsterdam: FNV, 2003).

³ Ibid.

states that by carrying out regularization campaigns, governments attempt to incorporate these migrants in society rather than leave them on the margins, subject to exploitation.

Based on the experiences of its members, PICUM can fully endorse these findings. The experiences of past regularization programs have shown that the most effective way of reducing exploitation and employers' illegal practices is to remove workers' irregular and unprotected status. This renders them less vulnerable in employment relations.

Society at large benefits from reducing the number of people living outside of the system. Policies in general will be more effective. Regularizing workers also regularizes jobs, thus more contributions are brought into the social and welfare systems.

9. Open up the debate on the future of the low wage sector

Regularizing undocumented migrants is not the only solution. Undocumented workers who are legalized are often replaced by new undocumented migrants. Indeed, national and European governments should take into account that several economic sectors in Europe depend on a cheap and voiceless workforce, and that the strong desire to rely on undocumented workers is not tackled by legalizing some of these workers.

This observation requires thinking about the question of *why* the low wage sector relies heavily on undocumented workers. This sector needs to be analyzed and studied, and a debate on its future should be begun.

If policy makers refuse to tackle the question of the regulation of the low wage sector in Europe, it is very unlikely that the demand for undocumented migrant workers will be reduced.

10. Ratify the Migrant Workers Convention

European Union Member States are urged to ratify the International Convention for the Protection of the Rights of All Migrant Workers and the Members of Their Families (1990), which guarantees various social rights to undocumented migrant workers.