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## Current EU Migration Policies and their Impact on the Position of Migrant Workers

Maria Giovanna Manieri, Programme Assistant, PICUM

Today I would like to look at how the lack of authorised migration status contributes to increased vulnerability in situations of human trafficking and exploitation. In particular, I will explore how migration and labour migration policies affect the position of migrant workers and make them more vulnerable to exploitation and abuse, which could lead to trafficking in human beings. I will also highlight the important link between grass roots work and policy and advocacy and describe what NGOs can do in order to support exploited workers and how can grass roots experiences influence the political debate.

But let me first start with a story: a story of isolation and modern slavery, a story that shows to what extent administrative burdens and strict migration requirements can outweigh the importance of ensuring fair working conditions and protection from exploitation, abuse and ultimately trafficking to ALL WORKERS:

Muhammad Younis grew up in a rural area of Pakistan. He has a wife and nine children. In 2002, Muhammad was recruited for a good job as a chef in a tandoori restaurant in Ireland. He was promised a work permit and decent pay. He took up the offer and moved thousands of miles away to support his wife and children back home, so they could have a better life at last. Instead of the promised good job, Muhammad endured 7 years of slavery. He worked 80 hours a week in the cramped, unventilated and overheated kitchen of a takeaway. He was paid just 51 cents an hour for the first 3 years and given just one day off each year – Christmas Day. His passport was taken by his employer; he was constantly threatened and verbally abused. His every move was controlled; he was a virtual prisoner, shuttled between the kitchen and the small 2-bedroom house he shared with nine other workers. When his work permit ran out, the employer refused to renew it – to further control Muhammad, who was terrified of being deported. Muhammad was unable to reach out for help as he spoke only Urdu. He was completely isolated.

He lived in fear.

Due to the efforts of a friendly co-worker and the Migrant Rights Centre Ireland team, the full extent of the exploitation suffered by Muhammad was revealed. It became clear that he was a victim of trafficking for forced labour – essentially, slavery. With our support, Muhammad finally left the horrific situation he had endured for 7 years. Free, hopeful and determined to find justice, Muhammad worked with MRCI to realise his rights. But as a victim of trafficking for forced labour in 21st-century Ireland, justice was not easily found. Muhammad was traumatised by all he had endured at the hands of his employer, but with the force of MRCI's advocates and activists behind him, he began to fight for the 7 years of wages he was owed and for the rights denied to all victims of slavery. After 2 years, Muhammad was vindicated: the Rights Commissioner awarded him €92,634.42 in unpaid wages and compensation. This award was upheld by the Labour Court.

However, Muhammad's employer brought the case to the High Court. He claimed he should not have to pay as Muhammad was undocumented and therefore the contract was illegal – so he should not have to honour it. Remember, it was the employer himself who had refused to renew Muhammad's permit and had used Muhammad's undocumented status to further isolate and threaten him. STILL, the judge ruled that as Muhammad did not have a valid work permit, he was not covered by employment legislation, and so he was not to receive a single cent in unpaid wages or compensation. Muhammad Younis was brought to Ireland for the express purpose of exploitation;

he was a victim of trafficking for forced labour. For 7 years he endured slavery, abuse and isolation. After all that, he was left with nothing and his employer got off scot-free. In March 2012, having failed Muhammad Younis in every possible way, the Irish state informed Muhammed that it intended to deport him. Again with the help of MRCI, Muhammad appealed to the Minister for Justice and was granted Humanitarian Leave to Remain in Ireland.

One year later, there are 3 reasons to be hopeful:

1. Muhammad Younis has been granted leave to remain in Ireland, so he, Migrant Rights Centre Ireland, and his solicitors can continue to pursue justice.
2. Last week, Muhammad travelled to Pakistan to see his wife and children for the first time in eleven long years.
3. And finally – finally – forced labour (the modern term for slavery) will be criminalised in Ireland when a bill incorporating the International Labour Organisation's definition of forced labour is enacted shortly.

Sadly, Muhammad's story is not an isolated case.

PICUM is an umbrella organization based in Brussels with around 160 member organisations in 38 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:

**Key message = The current frameworks do not reflect reality =**

**3 main hypocrisies in EU labour migration policies:**

**1. More - and more flexible - regular channels for migration are needed**

- Currently very few possibilities to migrate to the EU for work
- Mostly high-wage sectors
- This does not reflect demand for workers in low-wage sectors
- Migration policies need to better reflect realities in labour markets
- But labour markets are constantly changing
- Therefore labour migration policies must be flexible, to allow migrants who have a job to work regularly

**2. Dependent visas lead to exploitation**

- Growing body of research and practice is demonstrating that low-wage migrant workers – whether they are in the domestic services sector, agriculture, construction, catering, etc. – are particularly vulnerable to exploitation and abuse by their employers
- As when work permits are available for low-wage sectors, they are commonly tied to a particular employer
- This leads to exploitation of workers, as employers are able to breach labour standards with impunity
- If they end the employment relationship, the worker will become undocumented and have little access to justice and redress mechanisms
- They often threaten them with deportation

- It is essential for workers to have the right to change employer
- It is essential for there to be a 'bridging' visa or period, for workers who lose their job to have time to find another job
- This should not be sector dependent
- These conditions will enable workers to challenge and leave exploitative working conditions
- It will also make labour migration more flexible

### 3. All workers must have the labour rights protected

- Undocumented migrant workers are even more vulnerable due to their irregular status, and employers use it to threaten them if they dare to complain about their situation
- Situation in practice throughout EU demonstrates that almost impossible for UDM to claim overtime, unpaid wages, sick leave, holidays.
- Most often employers threaten to report the undocumented migrant to the police, or end the working relationship when a complaint is made
- Practical administrative obstacles to realizing these labor rights, including lack of identification, difficulty to prove the working relationship, lack of bank account, costs of bringing forth a case in labour courts, etc.
- Even if an employment relationship can be proved, it may be considered invalid because the worker didn't have the right to work (REF: Mohamed Younis case)
- This should have changed now with the **Employers Sanctions Directive**, which recognises that undocumented workers have the right to unpaid wages etc.
- However evidence indicates that the rights protections in the Directive are not leading to effective protection of the rights of undocumented workers
  - They are not being transposed
  - They are not being implemented
  - Lack of awareness of provisions when they do exist
  - No separation between immigration enforcement and labour inspections in most cases, so only affects workers who are identified during a raid and subject to deportation proceedings
  - Only informed of their rights at time of deportation – no time to claim
  - Deportation not suspended
  - Generally the context is a restrictive legal framework and not rights-based
  - The costs and risks associated with irregular work are transferred onto the worker and not the employer

#### How does this link to labour trafficking?

- 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.

Therefore:

- It is essential for all workers to have their labour rights protected, and access to justice and redress mechanisms if those rights are breached, in order to challenge exploitative working conditions and prevent trafficking in human beings.

*ALSO:*

- The current initiatives to address **trafficking in human beings** are too narrow in scope – the majority of cases of exploitation do not fall within the definition of trafficking in the EU Directive and there are major issues regarding identification and protection for victims
- Rather than creating a new sub-section of 'severe labour exploitation' it is essential to empower and protect the rights of all workers in order to address exploitation

Final 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 too 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.

## THE ROLE OF CIVIL SOCIETY ORGANISATIONS

### A. Collecting Data

- Data seldom available or lack quality and relevance, resulting in uncertainty about the numbers of migrants as well as the human rights situation of migrant workers and their families.
- EU-funded research concerning presence of UDM and paths into irregularity:
  - Clandestino (2009):

- “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.”
  - Undoc. Workers in Transition: 200 testimonies of UDM and expert interviews
    - “Workers without papers have been driven into the most marginal and dangerous jobs, but that the imperative for them to seek work makes even these difficult conditions ‘acceptable’.”
- FRA’s reports:
  - Specific case study on irregular migrant domestic workers; specific recommendations concerning undocumented workers’ entitlements to access to justice, workers’ compensation
- UN Migrant Workers Committee:
  - DGD on “the role of migration statistics for treaty reporting and migration policies” – 22 April 2013
  - Aim: close gaps in methodologies, quality and practices as well as the solutions that are being adopted to gain information on the protection of rights and that data on habitually “hidden” populations - including irregular migrants, migrant domestic workers, migrants in administrative detention, children of migrants

## **B. Informing Undocumented Migrants About Their Rights**

- Do UDM have rights?
  - Non-discrimination clause that affords protection of rights to non-citizens as well
  - Any differences in treatment given to migrants must conform to int’l law and must not breach migrants’ internationally recognized HR
- UN Migrant Workers’ Convention: ratified by Algeria, Egypt, Morocco
  - General Comment No. 2 - will outline Part III of the convention, which specifies the rights of UDM and their families
    - Protection against violence
    - Protection against forced and compulsory labor and child labor
    - Equal treatment as nationals in terms of conditions of work and terms of employment
- Innovative, creative ways of reaching out and informing UDM about rights:
  - Info centers - CITEs in Spain and Italian unions
  - Telephone assistance
  - Printed materials (pamphlets, brochures, comic books, guides, etc.)
  - Group sessions
  - Popular education (animation, short films on Internet, radio campaigns)

## **C. Empowerment**

- UDM from “collectif” in Switzerland:
  - “As undocumented workers we do have rights, the trade unions and everyone else tell us that we do, but the problem is exercising them. It’s like having a Porsche without knowing how to drive.”

- A key way to empower UDM: organize them so that they can collectively examine possibilities for challenging unfair employers.
- Migrant domestic workers:
  - DWAG (Domestic Workers Action Group) – MRCI: moving from charity to rights-based approach
    - The group initiated dialogue with the Irish Congress of Trade Unions (ICTU) and the Services, Industrial, Professional and Technical Union (SIPTU) to develop a Code of Practice for domestic workers in Ireland. This code was negotiated with and agreed by the ICTU in Ireland's National Partnership Agreement.
  - RESPECT: Empowers and facilitates engagement of migrant domestic workers in policies which relate to them; has worked with Dutch union AVKABO to unionize migrant domestic workers
  - ILO Convention 189 (June 2011) on domestic workers - many migrant domestic workers were present in civil society delegations participating in ILC to influence discussions concerning possible convention
    - Uruguay and Philippines first two signatories; convention should come into force in Sept. 2013
- DREAMERS movement in the United States
  - Undocumented youth mobilizing to gain access to higher education and paths to citizenship
  - Activism led to Obama issuing "Deferred Action for Childhood Arrivals" on June 15, 2012

#### **D. Unionizing UDM**

- A worker is a worker is a worker!"
- In 2009, CSC/ACV union conducted outreach programmes to the churches, universities and other buildings in Brussels which were being occupied by undocumented migrants seeking regularisation.
  - By going out and speaking to the women that were present in these occupations, Ana Rodriguez of CSC realised that not only were the women uninformed about their rights, but that their needs and demands were not being addressed by the often male-dominated occupation committees which had been established.
  - CSC/ACV trade union in Brussels started a group with documented and undocumented women in 2010 based on personal story telling and discussion about their working conditions. In addition to developing demands about recurring issues, the group's work fed into the broader work of the union, enabling them to take part in concrete actions to defend their rights.
- Morocco - First congress launching a trade union for migrant workers in Morocco, called held on 1 July 2012, in Rabat, under the umbrella of the Organisation Démocratique du Travail (ODT).
  - Migrant workers, most of whom were undocumented and originally from Sub-Saharan countries, had marched along the streets of the Moroccan capital during the 1 May celebration, calling for decent and fair working conditions and asking for the regularisation of their status.

- The first task of the union will be to conduct a study in order to count migrants working in Morocco, regularly or not, describe their working and living conditions and also to gather information regarding their families (access to health care, education, housing).

#### **E. Working with Employers to Prevent Exploitation and Holding them Accountable for Abuse**

- Employers' sanctions directive
  - Will be crucial to ensuring that the various protective measures have intended effect of ensuring that employers, not migrants, pay the price of exploitation.
  - PICUM currently conducting review of this directive with members to determine if UDM can claim back wages, can safely file complaint with labor inspectors, etc.
    - Experience from PICUM members so far in Eastern Europe has shown that directive is not properly applied and protections not granted
    - In Belgium, however, some six NGOs working specifically with UDM are now recognized by government

#### **F. Mediation and collective actions**

- Nearly 80% of cases of exploitation of day laborers resolved through direct mediation/negotiation with employer
- Aim is to resolve situation before having to take further measures
- Resort to collective actions to draw attention of broader public and other actors who can offer support
  - Picketing in front of restaurants of abusive employers in NYC
  - Strike of undoc. workers in France and subsequent, though small-scale, regularization of workers

#### **G. Using Legal Channels**

- Lengthy and drawn-out process:
  - Case of Moldovan undocumented worker in Belgium, fell off scaffolding, abandoned by his employer, in a coma for one year, and finally, six years later, has been allowed to stay and given medical treatment
- Examples:
  - Supreme court decisions in Spain and Greece upholding labor rights of undocumented workers;
  - Workers' compensation cases in NL, FR, Belgium
  - Irish cases of back wages totaling more than 50,000 Euros for three separate situations of undocumented workers
- European Social Charter – two cases on undoc. children
- European Court of Justice – case on unemployment benefits (Zambrano) – children
- Worrying developments:
  - Irish Supreme Court ruling on 31 August 2012

#### **H. Working with Governmental Agencies to Promote UDMs' Rights**

- Many organizations identify the need to build relationships with governmental agencies required to support workers, to help them provide effective protection
- Many times governmental agencies can and want to intervene to protect workers, but are limited because they cannot effectively reach the most exploited workers.
- FRA guidelines: Apprehension of migrants in an irregular situation – fundamental rights considerations  
[http://fra.europa.eu/sites/default/files/document-on-apprehensions\\_1.pdf](http://fra.europa.eu/sites/default/files/document-on-apprehensions_1.pdf)
  - Access to justice, to enable undocumented migrants to report crime without being apprehended. Good practices indicated:
    - introducing possibilities for anonymous, or semi-anonymous or other effective reporting facilities;
    - offering victims and witnesses of serious crimes the possibility to turn to the police via third parties (such as a migrants ombudsman, specially designated officials; or entities providing humanitarian and legal assistance);
    - defining conditions under which victims or witnesses of crime, including domestic violence, could be granted residence permits building upon standards included in Directive 2004/81/EC and Directive 2009/52/EC1;
    - considering the need for delinking the immigration status of victims of violence from the main permit holder, who is at the same time the perpetrator;
    - developing leaflets in cooperation with labour inspectorates or other relevant entities to systematically and objectively inform migrants apprehended at their work places of existing possibilities to lodge complaints against their employers, building upon Directive 2009/52/EC, and in this context taking steps to safeguard relevant evidence.
- Worrying developments: criminalization of irregular migration and supporters
  - The Dutch government has said that persons without documentation can receive a fine of up to EUR 3,900 if found in the Netherlands. The deputy minister for Security and Justice stipulated the police will not target undocumented migrants, but if apprehended the person will be eligible for a fine and will be placed in detention until the conclusion of the return procedure. If stopped for a second time he or she will be prohibited from travelling to the Netherlands (or any other EU country) and those who refuse to leave will be eligible for detention. However, the deputy minister has also said that unlike some other EU Member States, the Netherlands will not make it a crime to help undocumented migrants.  
Source: [NRC](#), 14 December 2012
  - A new legislative proposal limiting police custody of undocumented migrants to a maximum of 16 hours detention in police stations is being examined by the Council of Ministers and the Senate before a final vote in November 2012. With the Court of Appeal's decision of 5 July 2011 forbidding using police custody for undocumented migrants, they would be placed under control of the judicial authority in order to consider a possible deportation. Moreover, the draft law would cancel the 'solidarity offence', which was until now punishable by a 5-year prison sentence and a €30,000 fine.  
Source: [France Info](#), 27 September 2012

## I. **Engaging Public Support - Awareness-Raising Campaigns and Actions**

- Campaigns targeting consumers
- Coalition of Immokalee Workers – USA
  - “Campaign for Fair Food”, 4-year campaign focused on consumers of Taco Bell: demand fast food giant to show corporate responsibility for unfair labor conditions and human rights abuses taking place in fields where tomatoes produced
  - In 2005: deal with Taco Bell establishing several precedents in farm labor reform; agreements



- with other corporate actors (Mc Donalds, Burger King, Subway, Whole Foods)
  - Involvement of student groups, religious organizations – broad sectors of the population
- Raising awareness amongst the general public – proper terminology
  - UN GA Resolution 1975 – irregular or undocumented migrants
  - Many regional bodies (e.g. European Parliament, European Commission, Council of Europe – recommendations on terminology)
  - MEDIA – need to use correct terminology, avoid stigmatization

#### **J. Regularization and regular channels for migration UDM**

- The International Labor Recruitment Working Group - labor rights, migrant rights and anti-trafficking organizations in the U.S. – issued report this week on immigrant worker abuse (The American Dream Up for Sale: A Blueprint for Ending International Labor Recruitment Abuse)
  - Report identified the shortcomings and gaps in the current regulatory and enforcement framework governing international worker programs, while providing important recommendations for reform.
- EU Seasonal Workers' Directive: (NGO Call to Action):
  - 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,
  - 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,
  - determine or oblige the Member States to determine the conditions under which seasonal workers may apply for a longer-term residence permit.
- More regular channels of migration should be developed:
  - Family reunification (children travelling alone can also be trafficked while trying to reach parents or other family members in countries of destination)
  - Work and residence permits not tied to single employer
  - Independent status for women
- Regularization schemes should be promoted

*For more information contact:*

*Maria Giovanna Manieri, PICUM Programme Assistant*

[mariagiovanna.manieri@picum.org](mailto:mariagiovanna.manieri@picum.org)