

Regularisation is not the only policy
-Ten ways to protect undocumented migrant workers
24 March 2006

Action is needed to protect the rights of migrant workers, whatever their legal status, speakers told a Policy Dialogue on *Regularisation is not the only policy: ten ways to protect undocumented migrant workers* organised by the EPC in cooperation with the King Baudouin Foundation and the Platform for International Cooperation on Undocumented Migrants (PICUM). ‘Regularising’ their status is a key way to ensure these workers’ rights are upheld, but there are other steps which can be taken to protect them from exploitation.

The European Policy Centre held a Dialogue, in cooperation with the King Baudouin Foundation and the Platform for International Cooperation on Undocumented Migrants (PICUM), on *Regularisation is not the only policy: ten ways to protect undocumented migrant workers*. The keynote speakers were **Don Flynn**, from the Joint Council for the Welfare of Immigrants, and **Michelle LeVoy**, Director of PICUM. The two panel debates were moderated by EPC Policy Analyst **Elizabeth Collett** and journalist, **Jean-Paul Marthoz**. Closing remarks were made by **Demetrios Papademetriou**, President of the Migration Policy Institute.

In his opening remarks, **Thierry Timmermans**, of the King Baudouin Foundation, said the dialogue was not aimed at producing guidelines for policy-making, but rather at creating an environment for asking the right questions about the complex and delicate issue of undocumented migrant workers.

Don Flynn, Policy Officer for the Joint Council for the Welfare of Immigrants, explained why this was a matter of concern. Currently, there are two prevailing official views: that migrants are feckless and irresponsible people working to subvert current labour and immigration systems; and that irregular migration is a marginal issue which can be dealt with through tough policing and immigration controls.

Globalisation, and the development of the global labour market, has encouraged the belief that achieving success involves crossing borders. In a capitalist society, this frequently takes the form of irregular migration. The demand for migrant labour is especially strong because it is flexible, with migrants willing to work long hours for low wages.

While governments in Europe are pursuing policies of ‘managed migration’, it is only highly-skilled workers who are considered politically acceptable, even though the demand for migrant labour is uniformly distributed across the skills spectrum. The result is a set of bureaucratic procedures for managing migration and an increase in irregular migration.

Migrants themselves receive confusing messages about the labour needs of host countries, and on arrival, find it difficult to remain within the boundaries of a poorly administered and complex immigration system. In turn, businesses encourage people to cross borders and break rules. This leaves a significant section of workers in the EU in a vulnerable position, open to exploitation by employers.

Mr Flynn warned that the current situation was unsustainable, and governments would have to consider regularisation at some point. In the meantime, future priorities should include recognition of social policy issues and a joined-up policy that accepts some obligation towards migrants.

Michele LeVoy, Director of PICUM, presented the organisation’s study on *Ten Ways to Protect Undocumented Migrant Workers*, based on information from both the EU and US. She outlined the various methods which can be used to secure the rights of undocumented workers, including raising public support, improving data collection, joining workers’ unions, mediation and collective action, working with government agencies and employers, and most importantly, lobbying for undocumented migrant workers to be given legal status.

Ms LeVoy gave examples of successful initiatives to protect these workers, and outlined the role different actors can play - not least the migrants themselves - include launching consumer campaigns to try to force employers to raise wages and a migrants’ strike aimed at improving working conditions.

She said trade unions had a vital role to play: workers were workers, whatever their legal status, and had employment rights which needed to be enforced. Although trade unions have to balance the needs of all of their members, migrant workers are an increasingly important element of the national workforce.

Ms LeVoy offered a number of policy recommendations, including ratification of the International Convention on the Rights of Migrant Workers, increased investment in workplace inspection, and mainstreaming undocumented migrant workers in integration policies and social inclusion strategies. Although regularisation is not the only policy, it is recommended as a key way to ensure the rights of migrants are upheld.

Introducing the first panel discussion on integration and social inclusion, EPC Policy Analyst **Elizabeth Collett** noted that the public debate on irregular migration centred on security issues. She insisted, however, that the social consequences for both migrant and host society should not be ignored.

Michael Samers, University of Nottingham, said there was little evidence to support claims that informal economies are growing rapidly and are fuelled by irregular migration. The key difference compared with past decades is that much more of the work is now done by migrants.

Other accepted myths also remain unproven, such as the argument that small businesses and migrant entrepreneurs employ low-skilled migrants and that a country's affluence determines the size of its informal economy. Similarly, there is no evidence to support claims that government overregulation and the erosion of welfare payments have encouraged informal employment.

In fact, the need for flexible workers and the greater willingness of employers to sub-contract their labour needs are stimulating the informal economy. This should not be confused with globalisation.

Dr Samers drew some policy implications from this, not least that there is a need for more research and data to better identify changing trends in the informal economy. Some have suggested that deregulating labour markets would improve the situation. However, this merely weakens labour standards. Instead, real enforcement of labour and workforce regulations is needed to maintain social protection for all workers (not just migrants) and prevent further threats to labour standards.

Ed Van Thijn, former mayor of Amsterdam and Council of Europe Parliamentary Committee member, noted that between 5-8 million irregular migrants in Europe are living in a legal 'no man's land', constituting the 26th Member State of the EU. They are, however, often deleted from statistics (as happened in the Netherlands in relation to failed asylum seekers who were neither regularised in some fashion, nor returned home). These 'deleted' people have no rights, live in fear and are subject to exploitation.

In response to this situation, the Council of Europe has commissioned a report on irregular migration. This report, which will be presented to the Council in

April, lists the basic human and social rights which should be given to irregular migrants, including the right to life, adequate housing, health, and education. All these rights are violated in the 25 EU Member States.

Marie-Anne Paraskevas, of the European Commission, outlined the work the Directorate-General for Employment and Social Affairs has been doing in relation to migrant workers. The main objectives are to promote their participation in employment, offer greater access to services, prevent social exclusion and protect vulnerable groups. In response to the National Action Plans to combat social exclusion submitted by Member States in October 2005, the Commission has called on governments to develop integrated and coordinated responses to migrant populations, particularly migrant youngsters.

Programmes have been developed with the Commission through the Community Action Programme, including two undertaken by PICUM on undocumented migrants, focusing on particular groups such as Roma and women in migrant communities.

The Commission has also launched a consultation on “active inclusion”, looking at how to best deal with those least integrated into society and the labour market.

Other EU initiatives include:

- A Communication on the rights of children, including migrant children in poverty;
- The promotion of ethnic minority access to decision-making;
- Awareness-raising about the needs of particular migrant groups: eg. Roma in Spain;
- Focusing on the problems faced by second- and third-generation immigrant youngsters, particularly those from ethnic minorities.

The lack of indicators has been highlighted, and Member States have been asked to look at ethnicity and immigrant status in their own countries. Few, to date, have taken up this challenge.

Discussion

One NGO representative highlighted the plight of undocumented migrant women, and noted the number of undocumented migrant workers in domestic service. These women are frequently exploited and abused, yet little is done to help them.

Asked whether the Commission could do more to encourage Member States to tackle the issue of undocumented workers, Ms Paraskevas admitted that the

Commission was in a difficult position as the coordination of Member States' policies in this area is voluntary. The Commission is, however, trying to promote activities targeted at undocumented migrants, focusing in particular on the vulnerable sections of the migrant population.

Mr Van Thijn explained that in the face of Member States' refusal to recognise a substantial segment of their migrant populations, local government had begun to respond with its own policies, creating a new battleground between city and national authorities.

Journalist **Jean-Paul Marthoz**, introduced the second panel discussion on 'Undocumented workers: victims, criminals or just workers?'

Stefan Malomgré, a labour inspector in the Brussels Capital Region, briefly explained his role. An essential point, often overlooked, is that in Belgium, only the employer can be prosecuted for having illegal workers. The migrant is only responsible for having the correct residence permit and papers. An invalid labour contract does not negate social protection: an irregular migrant can claim employment rights, be paid for work done under that contract and complain about working conditions.

However, Belgian law does require the deportation of illegal migrants. In addition, the labour inspectorate has no competence to deal with domestic work, as its staff cannot enter private houses to inspect working conditions.

Ultimately, protection for undocumented workers is best promoted by the labour inspectorate ensuring a healthy and safe workplace and listening to complaints about employment conditions.

Catalene Passchier, Confederal Secretary of the European Trade Union Confederation, argued that governments are not the only actors capable of defining who is a worker. Trade unions should be able to form their own definition and need to debate what is 'legal' in the European labour force.

Undocumented work is not just the result of immigration policy, but is affected by employment and social policies, and there is a danger of creating second-class citizens within the workforce, due to the unequal application of labour standards. The Commission has adopted this argument with respect to lifting transitional measures for accession workers, but there is no competing rationale against lifting restrictions against all migrant workers to ensure labour standards are enforced. "What are we seeking to 'protect' through such restrictions?" asked Ms Passchier. Certainly not the worker.

Undocumented workers pose a challenge to trade unions, which need to deliver stronger messages about fighting exploitative conditions; otherwise migrant

workers will become invisible. Picking tomatoes and cleaning houses are not illegal activities in themselves and migrant workers should be properly paid for doing them.

Bridget Anderson, from the Centre for Migration Policy and Society at Oxford University, asked: “When is a worker not a worker?”

She suggested that immigration controls encouraged false collusion between employer and employee. Workers without documents have little motive to report exploitative practices, as they risk deportation.

In addition, the differences between documented and undocumented migrant workers, or good and bad employers, are not clear cut. Some migrants may be legally resident, but working illegally, or breaching the conditions of their work permit by working in a different sector. Those with quasi-legal status are also vulnerable to exploitative employment practices. Thus all those of uncertain status – undocumented migrants, students, tourists ecetera - are not ‘workers’.

Ms Anderson said it was essential for definitions of “workers” to be inclusive, to separate labour rights from immigration controls and to give migrant workers the opportunity to self-organise to protect their rights, not just nationally but across Europe.

Discussion

The discussion focused on the work of the labour inspectorate, and the rights of undocumented migrant workers. Speakers argued that the fines employers face for employing people illegally are too low to deter them from doing so. In terms of protecting workers, only victims of human trafficking are able to enforce all their rights before deportation. It was suggested that the rights accorded to them should be extended to those subjected to exploitative labour practices more broadly.

Demetrios Papademetriou, President of the Migration Policy Institute, said the magnitude of the task ahead meant Europe would probably still be facing these issues in 30 years’ time.

He also highlighted the one actor in the informal economy missing from the debate: the consumer. We accept the products of informal employment without questioning the ethics of doing so, and the entire population needs to be engaged as consumers, employers and members of society for social protection measures to be effective.

Mr Papademetriou said the Commission should take a stronger lead on these issues, be more honest about the problems involved, and particularly highlight

undocumented migrant workers as an 'at risk' group. 'Mindless regulation' does not work. There needs to be greater investment in the targeted, creative policies, such as those outlined in the PICUM report.