

On the European Commission Communication on an EU Strategic Framework on Health and Safety at Work 2014-2020

November 2014

The Platform for International Cooperation on Undocumented Migrants (PICUM) was founded in 2001 as an initiative of grassroots organisations. Now representing a network of more than 150 organisations and 170 individual advocates working with undocumented migrants in 33 countries, primarily in Europe as well as in other world regions, PICUM has built a comprehensive evidence base regarding the gap between international human rights law and the policies and practices existing at national level. With over ten years of evidence, experience and expertise on undocumented migrants, PICUM promotes recognition of their fundamental rights, providing an essential link between local realities and the debates at policy level.

I. Introduction

This submission presents PICUM's position regarding the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on an EU Strategic Framework on Health and Safety at Work 2014-2020.

In order to genuinely address labour standards and safety in the EU, measures to address the situation of undocumented migrant workers and ensure that the rights and safety of all workers are protected, regardless of status, are essential.

II. Evaluation of the previous EU Occupational Safety and Health Strategy

As raised in our response to the public consultation to seek stakeholder views on the implementation of the previous OSH strategy and on the way forward, the strategy was limited in terms of measures to address occupational safety and health risks of migrant workers and in particular, irregular migrant workers.

The Strategy pursued this issue only as new/ emerging risk and primarily through a study (literature review) and some training to address language and cultural barriers. While language and cultural barriers can be important, questions over the status of the worker and ability to enjoy fair working conditions and labour rights are the crux of the issue for this group of workers, who face disproportionate risks of occupational accidents and diseases.

III. Evaluation of the Commission Communication on an EU Strategic Framework on Health and Safety at Work 2014-2020

- A key and cross-cutting challenge not addressed: migrant workers

While the previous strategy was limited in the way it addressed the occupational health and safety risks of migrant workers as a new/ emerging risk, the current proposal fails to address it all. This section explains why the rights of all migrant workers should be addressed in the EU Strategic Framework on Health and Safety at Work 2014-2020.

- Migrant workers over-represented in high-risk occupations for occupational injuries and diseases

The evaluation of the EU Occupational Safety and Health Strategy noted that less people are employed in some high-risk occupations (e.g. construction, agriculture, factory work). However, these jobs are increasingly carried out by migrant workers, and particularly those that are undocumented or are unable to work regularly in these sectors. The problems are rooted in the functioning of these sectors, which favour irregular workers, and the lack of regular migration channels to meet labour market demands in these sectors.

A large proportion of those employed in high risk occupations, such agriculture, construction, cleaning, domestic and care work, and sex work are undocumented. In order to tackle occupational safety and health in the EU, the safety of these workers must be prioritised.

- Lack of access to labour rights and redress for violations leads to workplace exploitation and increased risks, including lack of implementation of safety standards

Across Europe, migrant workers' residence and work permits are often tied to a single employer. This means that they lose their status if they lose that employment, even if their labour rights are violated or they are wrongfully dismissed. Undocumented workers are unable to access justice or compensation for violence, exploitative and unsafe working conditions, or unfair dismissal in the vast majority of cases.

Often, the prohibition for migrants in an irregular situation to work undermines any claims resulting from labour law, including the right to compensation for work accidents. Indeed, in some EU member states, there are explicit legal provisions that prevent migrant workers from seeking redress in labour courts if they are undocumented. In others, without such legislation, the reality is much the same in practice.

As undocumented migrants are limited to the informal sector, they often work without an employment contract meaning they have significant difficulties to prove labour-relations in a court of law. Even when a contract has been signed, it is usually considered invalid, due to the irregular status of worker, and thus unenforceable.

Further, if an undocumented worker reports violence or criminal labour exploitation to the police, they face arrest and deportation, rather than protection and justice.

These policies and practices increase migrant workers' dependency on employers, and diminish their bargaining power and ability to challenge unsafe working conditions, as well as their ability to report incidents of violence, occupational injuries or other labour or criminal law violations. It is important to note that occupational accidents and diseases of undocumented workers are largely un-reported and under-represented in data sets.

They contribute to making undocumented migrant workers a "zero risk" victim whom unscrupulous employers can coerce to work in unsafe and exploitative conditions, and threaten to denounce if they seek police assistance. They are often exploited and suffer worse labour conditions and occupational risks than other workers in these sectors. If an incident occurs in the workplace resulting in injury or a migrant worker's health deteriorates, migrant workers often have their employment terminated.

This enables employers in these sectors to continue to operate with impunity to the standards set by international, EU and national law and exploit undocumented workers. Regular workers who work in these sectors can also face poorer labour conditions as a result. It is often the employers that employ undocumented workers that are the ones that do not respect OSH standards.

- Increased health risks linked to restricted access to health services and dependence on employers for accommodation

When employers provide accommodation for undocumented workers, it is often sub-standard and can also lead to injury and disease. There are cases of construction workers being accommodated in the construction sites themselves, and accessing the area by climbing the scaffolding at night.¹ There are cases where domestic workers have to sleep on the floor in the kitchen or larder area where the rubbish is kept.² There are cases where migrant farm workers live in make-shift camps near agricultural sites, without sanitation and water.³

Access to health services is highly restricted for undocumented workers. This creates a significant barrier, in countries where undocumented workers are able to make a claim for compensation for a workplace injury or accident, to obtain the required evidence for the case, such as a medical certificate.

Furthermore, this means that any health conditions or injuries arising from their working or living arrangements often go without treatment until the conditions have deteriorated and are an emergency, with severe impacts on health.

Limiting migrant workers' access to accommodation and renting can force them into exploitative, dangerous and unsanitary accommodation provided by employers.

Migrant workers that are injured or unwell due to poor occupational safety and health conditions face restrictions on the medical and rehabilitation services they are able to access, further jeopardising their health as well as their ability to claim compensation.

IV. Key messages

1. In order to genuinely address labour standards and safety in the EU, measures to ensure that the rights and safety of all workers are protected, regardless of status, are essential.
2. Given the political concerns around undocumented migration and the disconnect from the reality of labour migration to the EU and reliance on undocumented workers, the setting of goals and priorities at EU level and coordination of national policies could be beneficial in terms of clearly signalling the protection of labour standards regardless of the status of the worker as an occupational safety issue, a question of labour standards that should be dealt with as such (rather than a political issue).
3. The EU Strategic Framework on Health and Safety at Work 2014-2020 should recognise:
 - That undocumented workers, and migrant workers with dependent status in low-wage work, are disproportionately at risk of occupational injuries and diseases,
 - The links between policies and practices that limit undocumented workers' rights and the prevalence of poor occupational safety and health standards in some sectors and among some employers in particular.
4. This reality should be tackled through concrete actions, such as improvement of legislation, issuing of guidance, exchange of good practice and improved data collection/ research.
5. Actions should be developed and implemented in partnership with trade unions, labour authorities and inspectors, and migrants' organisations that represent migrant workers, regardless of status, as well as employers and agencies for the relevant sectors.

V. Recommendations for the EU Strategic Framework on Health and Safety at Work 2014-2020 to address

1. Law and policy should be revised:
 - To explicitly include all workers regardless of status in existing EU and national OSH legislation and policy
 - To ensure that all workers are able to join trade unions and pursue collective bargaining. Labour inspectors should be required to speak to a workers' representative confidentially to combat window-dressing and ensure workers have a voice.
 - To separate the role of labour inspector and immigration inspector. Labour inspectors should ensure OSH and other labour standards without sharing workers' personal information with immigration authorities. A code of practice and training should be developed to ensure implementation.
 - So labour courts consider complaints and deliver justice regarding labour rights violations for all workers regardless of status.
 - The burden of evidence should be placed on the employer.
2. An anonymous complaints mechanism should be installed to enable workers to denounce poor conditions without it leading to penalisation or immigration enforcement. Third parties should be able to make complaints on behalf of workers.
3. All workers should be able to claim compensation for workplace accidents and diseases, including through Employers Sanctions legislation.
4. Inspections should include accommodation when provided by the employer to inspect safety and ensure standards.
5. Residence permits should be issued to undocumented workers and their families with on-going complaints against employers at least for the duration of proceedings, with possibilities for extension and permanent residence. Residence permits should entitle full access to health care and rehabilitation services and income support when necessary.
6. Labour authorities should raise awareness about rights and available services and support among migrant workers and their families.
7. Ratification of ILO conventions (including No. 189) and UN Migrant Workers Convention (1990) should be promoted.
8. The scope of Directive 89/391/EEC should be extended to include domestic workers.
9. Stop use of criminalising language such as 'illegal migrants' and 'illegal worker' and 'illegal work'. The work and the worker are not illegal - it is only the status of the worker that is not or cannot be regularised due to migration and visa policy restrictions.
10. Coherence with initiatives in other policy areas should be increased through cross-sector/ service cooperation and consultation:
 - Promote revision of law, policy and practice so that health care services are available on an equal basis to all regardless of status, and the sharing of personal information between health care providers and immigration authorities is prohibited, to ensure that migrant workers can

receive treatment for injuries and diseases incurred through work without fear and before their condition deteriorates.

- The Victims Directive should be transposed and implemented to ensure that undocumented workers can report violence, exploitation and abuse to the police and/ or labour authorities, and access equal support, protection and redress, without it leading to immigration enforcement.
- Providing social assistance or renting to irregular migrants should not be criminalised, so workers are not reliant on employers for accommodation.
- Promote mechanisms to enable undocumented workers to regularise their status, and that of their families, based on their employment.
- Promote regular migration channels for the sectors in which irregular workers are often employed, to reduce undeclared work and provide opportunities for the work to be carried out regularly.

VI. Integrating action on these recommendations within the strategic objectives in the EU Strategic Framework on Health and Safety at Work 2014-2020

1. Migrant workers should be included as a group of workers that deserves particular attention and requires targeted actions in Strategic Objective 4.5 “Address the ageing of the workforce, emerging new risks, prevention of work-related and occupational diseases”.
2. The role of labour inspectors and labour authorities in upholding occupational health and safety standards and labour rights for all workers, regardless of status should be addressed in Strategic Objective 4.3 “Better enforcement of OSH legislation by Member States”.
3. Specific efforts to improve inclusion of occupational accidents and diseases of all migrant workers, and disaggregation of data (ensuring data protection) in order to identify systematic discrimination and exploitation of certain groups of workers including migrants, should be included in Strategic Objective 4.6 “Improve statistical data collection and develop the information base”.
4. Raising labour standards through protecting the rights of all migrant workers, regardless of status, should be one of the issues addressed in dialogue with the ILO, WHO, OECD and other strategic partners in Strategic Objective 4.7 “Better coordinate EU and international efforts to address OSH and engage with international organisations”.

END NOTES

¹ See for example, Fitzgerald & Howarth, “A study of migrant worker health and safety issues in the UK construction industry”, CIB W099 Conference 2009 (available at: http://www.academia.edu/376712/A_STUDY_OF_MIGRANT_WORKER_HEALTH_AND_SAFETY_ISSUES_IN_THE_UK_CONSTRUCTION_INDUSTRY).

² Indeed, data collected by Kalayaan on the employment conditions of workers holding a migrant domestic workers visa in 2012, mostly women, found 85% of those surveyed did not have their own room so slept with the children or in the kitchen. Kalayaan, *Justice for Migrant Domestic Workers*, 2013 (available at: <http://www.kalayaan.org.uk/documents/Slavery%20by%20a%20new%20name-%20Briefing%207.5.13.pdf>).

³ Médicos del Mundo Andalucía, Andalucía acoge, APDHA, “Condiciones de vida en los asentamientos chabolistas en el Poniente Almeriense”, 2012, (available at: https://www.medicosdelmundo.org/index.php/mod.documentos/mem.descargar/fichero.documentos_Nota_al_Relator_sobre_asentamientos_en_Almeria_def_5700a51f%232E%23pdf).