



PICUM KEY MESSAGES AND RECOMMENDATIONS ON HUMAN TRAFFICKING

Introduction

PICUM, the Platform for International Cooperation on Undocumented Migrants represents a network of more than 165 organisations working with undocumented migrants in 35 countries, primarily in Europe as well as in other world regions.

PICUM approaches human trafficking in the broader context of exploitation and irregular migration, and advocates a rights-based approach that tackles the structural reasons – in particular government policies and practices – which increase risks for people with an insecure or irregular status of experiencing situations of exploitation and remaining in those situations, and focuses on providing person-centred and rights-based services, support and justice to victims.

This approach provides a particular analysis of trafficking in human beings. This document sets out some of PICUM's key messages and policy recommendations on trafficking in human beings deriving from this analysis.

Human trafficking is a complex phenomenon on a continuum of exploitation.

- > PICUM sees exploitation of workers on a continuum, with decent work on one end of the spectrum and forced labour or trafficking on the other end. All work situations are somewhere along this continuum, and can move along it in each direction, for example, closer towards decent work as a result of collective bargaining to improve working conditions, or closer towards forced labour or trafficking due to an accumulated or progressive worsening of conditions. This understanding is crucial to addressing the reasons why people are at risk and to design appropriate responses, including support for trafficked persons.
- > Trafficking in human beings should be understood and addressed as a complex phenomenon, being both a cause and consequence of violations of human rights, global inequality, gender discrimination, exclusion and poverty. Trafficking occurs within a context of globalisation, de-regulation of labour and normalisation of poor working conditions in some sectors, in particular, but not only, for migrants.
- > The criminal justice framework is too limited to address the complexity of trafficking. A broader social agenda and intersectional approach is needed to address the various causes and risks for exploitation people face at different stages of their migration experience, and to realise the fulfilment of every person's human rights.

- > Exploitation can occur in all sectors and services, including both regulated and non-regulated sectors, as well as in forced begging and in criminal activities, which are also recognised as forms of trafficking in human beings.¹
- > Data on human trafficking needs to be treated with caution.² Data is based on enforcement actions, identification of victims and prosecutions, and reflects to some extent the priorities for enforcement and trends in recognition, rather than the full breadth of the issue. There are also major concerns around data protection and privacy rights of trafficked persons.³

The current counter-trafficking framework is not only ineffective but also harmful.

- > One of main pillars of the common EU asylum and migration policy over the past 20 years has been the fight against irregular migration.⁴ The new EU Pact on Migration and Asylum published on 23 September 2020 very much continues this trend, with deterrence of any unauthorised mobility and increasing deportations a central objective of the policy and proposed legislative reforms.⁵
- > Combatting trafficking in human beings (THB) is often used to give additional political – and even moral – justification for measures that aim to prevent and sanction irregular migration.⁶
- > Many of the measures that are introduced in the name of combatting trafficking actually have the opposite impacts in practice, increasing risks of trafficking and failing trafficked persons. At times they result in gross miscarriages of justice and human rights violations⁷ and entrench gender discrimination and racism against migrant women.⁸ For example:
 - Increased border controls lead to increased reliance on smugglers and more dangerous and expensive routes. This increases risks of situations of debt bondage, forced labour and trafficking,⁹ as well as endangering lives. [Data collated by IOM](#) indicates that more than 20,000 people have drowned in the Mediterranean since 2014.¹⁰
 - Some countries of origin place discriminatory age and gender restrictions on labour migration for young women, particularly migration for domestic work,¹¹ under the logic that they risk sexual exploitation, while not providing viable alternatives. This can push them towards irregular migration.
 - Migrant women from some countries face particular risks of being refused entry at borders (usually airports) and summarily deported to their country of origin, when border guards suspect them of being victims of trafficking.¹²

- Raids on workplaces to identify trafficked persons, including “rescue operations” for sex workers,¹³ often lead to undocumented people being arrested, detained and deported, and deprived of their earnings, rather than access to justice.
- Legislation criminalising trafficking and the facilitation of irregular migration are regularly used against migrants themselves, their family members, and people providing rental accommodation, services and humanitarian assistance. For example, considering cases of people providing humanitarian assistance to people with irregular status, [ReSOMA](#) research found that 171 human rights defenders¹⁴ have been criminalized in the past five years. This includes volunteers, activists, NGOs, crew members of rescue ships, migrants’ family members, and also journalists, mayors and priests.
- PICUM opposes all anti-trafficking measures that undermine or adversely affect the human rights of the groups concerned.

We advocate for:

- De-criminalisation of irregular entry, residence and work.
- Explicit de-criminalisation of all services and assistance provided to irregular migrants without undue financial gain.
- Removal of all criminal and administrative prohibitions and penalties on sex work,¹⁵ related to sex workers, clients and non-exploitative¹⁶ third parties (including laws targeting brothel owners).¹⁷

Regular migration pathways and decent work permit schemes are crucial to prevent exploitation.

- Labour migration policies do not reflect current and future labour market needs. The presence of migrant workers demonstrates that labour market demand exists in low wage occupations most notably in the restaurant, hospitality, agriculture, construction, retail, and domestic work sectors.¹⁸
- When structural labour demand is not met through official labour migration routes, it pushes workers into the informal economy, and irregularity.
- Nonetheless, national and EU migration policies continue to offer very few possibilities for migrant workers from third countries to receive work and residence permits to work regularly in key sectors.¹⁹

- > Those admissions policies that do exist for work in these sectors usually tie the migrant worker to one specific job with one particular employer, for a specific period of time. If a worker wants or needs to change employer, they would have to re-apply for a new permit from their country of origin, a lengthy and complicated process with very insecure outcomes. If the worker loses their job, their residence and work permit becomes invalid and any continued residence is irregular. This creates a situation of excessive dependency and allows for situations of exploitation to continue and escalate as migrant workers are not willing to risk the loss of residence status that would follow after initiating a complaint against the employer.
- > Temporary migration programmes also increase risks of exploitation. For example, they often create multiple dependencies, where workers rely on their employers for housing and food. Deceptive and unfair recruitment practices can result in debt bondage and destitution.²⁰
- > The specific situation of domestic workers for diplomatic households is also a major concern, as diplomatic immunity of the employer makes the worker extremely vulnerable to abuse.
- > This situation creates a vast decent work deficit with high levels of labour exploitation, trafficking for labour exploitation, workplace accidents and general worsening of working conditions.²¹
- > People on spouse dependent visas are also at risk of experiencing domestic violence and trafficking due to their over-reliance or dependency on a particular personal relationship in order to gain access to or maintain their regular residence status.

We advocate for:

- > Increased entry, stay and work opportunities for migrant workers across income levels, skills and labour sectors, and in particular in low wage sectors with high levels of undocumented work and exploitation.
- > Strengthening the residence status of migrants by enabling people to change employer (including type of job and sector), to change the type of permit altogether, and to have a period of time to search for employment.
- > Residence and work permits for people whose personal relationship has broken down, including due to violence (without restrictions).

Effective access to protection and justice should be ensured regardless of status.

- > While not all trafficked persons are undocumented migrants, undocumented migrant workers are at particular risk of experiencing unsafe and exploitative working conditions, which may lead to or amount to human trafficking or forced labour.
- > The barriers that undocumented workers face to exercising their labour rights through both the criminal and civil justice systems are important factors contributing to this risk of exploitation.
- > In the criminal justice system, undocumented workers face several challenges²² including the risk of having to leave the country as a result of interaction with law enforcement. Undocumented people may be required to return or be deported:
 - before being identified as a potential victim of trafficking or other exploitation;
 - if they are found not to be a victim (which may also be the case for trafficked persons, because of the challenges around proving employment relationships and the severity of exploitation, among others); and
 - even if recognised as victim of human trafficking, as permits in many countries are granted only for the duration of legal proceedings.
- > This does not recognise the migration projects – and investment in them - of the majority of trafficked and exploited persons, does not meet their needs and wishes to migrate to work, to have a better life for their families.
- > PICUM's recent analysis of complaints mechanisms for undocumented workers,²³ found that civil courts and labour tribunals in 13 out of 15 EU member states in the study²⁴ do or would consider undocumented workers' claims equally to other workers. However, there are significant barriers for undocumented workers to take complaints, participate in proceedings and receive due wages and compensation through the courts.
- > In all 15 of the EU member states²⁵ examined in PICUM's recent study, there is an inspection authority whose remit relates to working conditions, salaries or financial matters, who is tasked with checking work permits of workers, in order to impose sanctions on employers in the case of irregular employment.
 - Sometimes these authorities carry out inspections together with the police who carry out immigration enforcement.
 - Simultaneous inspections are sometimes considered 'good practice' for trafficking cases, but they frequently lead to arrest, detention and deportation

of those without valid authorisation to work before investigation into their working conditions.

- Practices of labour inspectors reporting undocumented workers' personal information to immigration authorities vary. Some of these practices are based on law, formal cooperation agreement or policy, or simply common practice or a perceived duty to report.
- While in some countries,²⁶ labour inspectors maintain professional confidentiality and do not report undocumented workers to immigration authorities, in most countries across Europe, undocumented workers have no real security that engaging with inspectors will not lead to immigration enforcement.
- > The prioritization of immigration enforcement over ensuring safeguards for labour rights and victim rights remains a key barrier to identifying and supporting trafficked persons, addressing exploitation and holding perpetrators to account.
- > Restrictions on access to justice reduce workers' bargaining power with their employers. When workers are not in a position to denounce exploitative employers, or access unpaid wages or compensation, exploitative practices are allowed to continue and escalate, as the employer knows the worker has little or no recourse or better options.
- > Although trafficked and exploited persons have an established right to compensation and various compensation mechanisms are in existence, the actual receipt of a payment by a trafficked or exploited person is very rare.²⁷
- > Ensuring protection and access to justice for people who have been exploited, regardless of their status, is crucial for improving identification of trafficked persons, empowering workers to denounce and exit exploitative employment (which may amount to or become trafficking), and access redress.

We advocate for:

- > Effective complaints and redress mechanisms for all workers, where there is no risk of facing immigration enforcement as a result of interaction with labour inspection, seeking justice in civil or criminal courts or employment tribunals, and reporting crime to the police.²⁸
- > Non-punishment of victims of labour exploitation and trafficking for their involvement in unlawful activities that are a consequence of their being exploited or trafficked,²⁹ nor for infractions related to their status, including undeclared work.
- > Equal access to services, such as health care, victim support and emergency shelters, to identify people who have been exploited including trafficked persons, as well as to uphold their human rights.

Services and support for trafficked persons should be improved.

- > Where there are reasonable grounds to believe that an individual is a victim of trafficking, it still remains very difficult to access compensation and get a secure residence status. Positive outcomes thus remain very limited.

We advocate for:

- > A recovery and reflection period in all cases, and unconditional access to adequate assistance and support.
- > Providing residence and work permission for people, at least for the duration of the reflection period and any ongoing procedure and/ or as necessary according to human rights and humanitarian considerations, regardless of whether or not the person cooperated with law enforcement. If only a temporary status is granted, it should be renewable and there should be clear pathways to longer-term residence status on various grounds (including, length of residence, employment, human rights considerations).³⁰
- > Access to information regarding victim rights and all relevant procedures in a language which the victim can understand and right to legal assistance and free legal aid and remedies.
- > Data protection and protection during investigations and court procedures.
- > Regular assessment of the needs of trafficked persons, and the inclusion of their voices in the development of services, to ensure that they meet their actual and individual needs.
- > Regular training of officials and service providers likely to come into contact with potentially trafficked persons.

ENDNOTES

- 1 According to EU and international regulations, trafficking for forced begging falls within the definition of trafficking for labour exploitation (see e.g. 1930 ILO Convention No 29, EU Directive 2011/36).
- 2 For a broader analysis of the shortcomings and political application of data and evidence on human trafficking, see Anti-Trafficking Review No. 8, 2017, [Special Issue—Where's the Evidence?](#), www.antitraffickingreview.org.
- 3 For more information, see for example La Strada International and KOK project [DATACT](#).
- 4 Migration control policies on EU level have largely focused on the prevention of irregular migration, surveillance of borders, deportations, readmission agreements, and criminalization of assistance to migrants. For example, since 2004, when Frontex was established, there have been [four](#) regulations amending the mandate of Frontex – giving the agency more power and resources. The European Border and Coast Guard Agency (Frontex) Regulation from 2019 commits to a new standing corps of 10,000 staff by 2027.
- 5 [Communication on a New Pact on Migration and Asylum](#), 23 September 2020; see also PICUM Statement “[More detention, fewer safeguards: How the new EU Pact on Migration and Asylum creates new loopholes to ignore human rights obligations](#)”, 14 October 2020.
- 6 For example, the [Communication on the EU Security Union Strategy](#), 24 July 2020 states: “Criminal organisations treat migrants and people in need of international protection as a commodity. 90% of the irregular migrants arriving in the EU are facilitated by a criminal network. Migrant smuggling is also often intertwined with other forms of organised crime, in particular trafficking in human beings... The poor record in identifying, prosecuting and convicting these crimes requires a new approach to step up action. A new comprehensive approach to trafficking in human beings will draw together the threads of action. In addition, the Commission will present a new EU Action Plan against migrant smuggling for 2021-2025. **Both strands will focus on combatting criminal networks, boosting cooperation and support the work of law enforcement.**” (emphasis added). While references are made to a ‘comprehensive approach’, the most significant areas of action have so far been, and look likely to continue to be, within the law enforcement approach, focusing on preventing trafficking, smuggling and irregular migration through increased border controls, surveillance and policing of migration and migrant communities.
- 7 See for example: Global Alliance Against Traffic in Women and Girls (GAATW), [Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World](#), 2007; ICSE, [A Brief Guide on Collateral Damages of Anti-Trafficking Laws and Measures on Sex Workers](#), 2019.
- 8 For an analysis of how anti-trafficking responses and representations of trafficked persons focus on women’s victimhood and need for saving by patriarchal criminal justice systems at the expense of their agency and mobility, and analysis of structural discrimination on the basis of race, class and gender, see for example the Global Alliance Against Traffic in Women and Girls (GAATW), [Beyond Borders: Exploring Links between Trafficking and Gender](#), GAATW Working Paper Series 2010; Anti-Trafficking Review No. 7, 2016, [Special Issue—Trafficking Representations](#).
- 9 Note: in this regard, PICUM insists on the continued differentiation between smuggling and human trafficking, which are often conflated in policy responses; while noting how people who enter into smuggling arrangements can find themselves in situations of violence, extortion, and human trafficking.
- 10 For more data on migrants who have gone missing or died since 2014, see IOM Missing Migrants Project: <https://missingmigrants.iom.int/>.
- 11 For example, Bangladesh and India have restrictions on women below the age of 25 and 30 respectively migrating for domestic work in the Middle East. Pakistan set the age limit for “low-skilled” women migrants to 35. ILO, [Gender equality in labour migration law, policy and management](#): GEM Toolkit, 2016, Bangkok: ILO.
- 12 See for example, the Scottish Sun, ‘100 sex slaves at airport: Around 100 sex slaves nabbed by border cops at Glasgow Airport in just nine months’, 24 August 2017. N. Vuolajärvi, Governing in the Name of Caring—the Nordic Model of Prostitution and its Punitive Consequences for Migrants Who Sell Sex, 2018 c.f. PICUM, [Safeguarding the human rights and dignity of undocumented migrant sex workers](#), 2019.
- 13 ICSE, Intersection Briefing Paper, [Surveilled. Exploited. Deported. Rights Violations against Migrant Sex Workers in Europe and Central Asia](#), November 2016.
- 14 Number as of May 2020, updated from data in report from June 2019 ([CEPS Webinar](#), 14 May 2020).
- 15 The exchange of sexual services (involving sexual acts) between consenting adults for some form of remuneration with the terms agreed between the seller and the buyer.
- 16 While in some legal systems all sex work is considered exploitation, this is not our intended meaning of exploitation here. We refer to situations of disproportionate gain and abuse of power.

17 For more on this see PICUM, [Safeguarding the human rights and dignity of undocumented migrant sex workers](#), 2019.

18 This is also connected to issues around recognition of certain types of work as “work” (e.g. domestic work) and a degradation of working conditions under global capitalism. Parts of economy in the EU have become increasingly dependent on products and services produced and delivered with wages well below the minimum wage in exploitative conditions. Substandard working conditions in the agricultural sector, excessive hours and salaries under minimum wage in the restaurant industry, isolation and withholding of wages in the domestic work sector have become a norm rather than an exception. This is the case for all workers in these sectors. These sectors rely on the presence of a migrant workforce that works undeclared and in precarious conditions, with an irregular status, due to a lack of possibilities to get a work and residence permit. See for example: B. Anderson, *Migration, immigration controls and the fashioning of precarious workers* in *Work, Employment and Society*, Volume 24, Number 2, June 2010, p.306

19 Due to widespread unofficial work arrangements, undeclared activity and informal recruitment channels in these sectors, very little comprehensive cross-country data is available about sectorial labour shortages or labour market outcomes for different migrant profiles, as these workers are often not recognised, registered or counted in national statistics (See for example: G. Lemaître, [Migration in Europe: An overview of results from the 2008 immigration module with implications for labour migration](#) in *Matching Economic Migration with Labour Market Needs*, OECD/European Union, 2014, p.351.; International Labour Organisation, [The informal economy and decent work: a policy resource guide, supporting transitions to formality](#), International Labour Office, Employment Policy Department – Geneva, 2013, p. 2.

20 For more information, see for example, Focus on Labour Exploitation (FLEX), [The Risks of Exploitation in Temporary Migration Programmes: A FLEX response to the 2018 Immigration White Paper](#), May 2019.

21 International Labour Conference, 104th Session, 2015, [Proposed Recommendation Concerning the Transition from the Informal to the Formal Economy](#), ILC.104/V/1, p. 21

22 PICUM, [A Worker is a Worker: How to ensure that undocumented migrant workers can access justice](#), 2020, PICUM: Brussels.

23 Ibid.

24 The 13 EU member states are: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, Spain. Ireland and the United Kingdom (UK) are the two countries in the study where there are some limitations in coverage and/or additional considerations when the civil courts and labour tribunals handle undocumented workers’ cases, so the consideration is not equal to workers with authorisation to work.

25 Austria, Belgium, Bulgaria, Cyprus, Czech Republic, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, and the United Kingdom (UK).

26 For examples, see: PICUM, [A Worker is a Worker: How to ensure that undocumented migrant workers can access justice](#), 2020, PICUM: Brussels.

27 For more information, see the Justice at Last project www.justiceatlast.eu, and for example, Liliana Sorrentino, [Legal assessment: Compensation practices](#), Justice at Last Working Paper, June 2019; Report of the Special Adviser, J. Milquet, to the President of the European Commission, Jean-Claude Juncker, [Strengthening Victims’ Rights: From Compensation to Reparation, For a new EU Victims’ rights strategy 2020-2025](#), March 2019.

28 See more in the PICUM reports [‘A Worker is a Worker: How to ensure that undocumented migrant workers can access justice’](#) (2020), [‘Data Protection and the Firewall: Advancing Safe Reporting for People in an Irregular Situation’](#) (2020), guidelines [‘Undocumented migrant workers: Guidelines for developing an effective complaints mechanism in cases of labour exploitation or abuse’](#) (2017) and leaflets [‘Firewall and Labour: Fighting exploitation, promoting decent work’](#) (2019) [‘Firewall and Justice: Building trust, promoting safe societies’](#) (2019).

29 For more information, see OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, [Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking](#), in consultation with the Alliance against Trafficking in Persons Expert Co-ordination Team, 2013, OSCE: Vienna.

30 See more in PICUM, [Insecure Justice? Residence Permits for Victims of Crime in Europe](#), 2020.

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