



PROTECTING THE RIGHTS OF UNDOCUMENTED MIGRANTS: PICUM PRIORITIES AHEAD OF THE 2024 EU ELECTIONS



PLATFORM FOR INTERNATIONAL COOPERATION ON
UNDOCUMENTED MIGRANTS

The Platform for International Cooperation on Undocumented Migrants (PICUM) was founded in 2001 as an initiative of grassroots organisations. Now representing a network of nearly 160 organisations working with undocumented migrants in 31 countries, PICUM has built a comprehensive evidence base regarding the gap between international human rights law and the policies and practices existing at national and EU levels. With more than twenty years of evidence, experience and expertise on issues affecting undocumented migrants, PICUM promotes recognition of their fundamental rights, providing an essential link between local realities and the debates at the policy level.

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SOCIAL INCLUSION, EQUALITY AND HUMAN RIGHTS

1. Combating discrimination based on race, ethnicity and nationality

Racial discrimination and xenophobia run through key aspects of EU migration laws and policies, their underlying objectives, the way they are organised and implemented, and their results in practice. The former UN Special rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance Tendayi Achiume has [noted](#) that “ethno-nationalism” is an important driver and manifestation of racial discrimination in citizenship, nationality and immigration laws, policies and practices. Not only do the EU’s laws and policies [fail to address the link between migration and racial and ethnic discrimination](#), but may even increase racial and ethnic profiling. Law enforcement and migration enforcement bodies in the EU systematically use racial and ethnic profiling. A 2014 Fundamental Rights Agency [study](#) showed that 79% of surveyed border guards at airports rated ethnicity as a helpful indicator to identify people attempting to enter the country in an irregular manner before speaking to them.

The European Parliament must ensure that EU legislation and policies – including on migration - are [non-discriminatory and lead to increased racial and ethnic profiling](#). In particular, it should call for a **recast of the Race Equality Directive 2000/43/EC** so that the directive would **include discrimination based on nationality** (now it only refers to “ethnic and racial origin”) and would **apply to law enforcement, immigration and border agents** (who are currently excluded from its scope).

The Parliament should also call on the Council to **adopt the 2008 proposal to implement equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation**.

Finally, it should call for a **renewal of the EU Anti-racism Action Plan** beyond 2025 which **commits to specific actions to address the link between structural racism, violence and migration**, including in the EU’s asylum and migration policy.

2. Supporting social inclusion and ensuring access to services

Across Europe, people live and work while having irregular migration status, enriching their communities and countries of residence economically, socially and culturally. Undocumented migrants contribute directly and indirectly to social protection systems, as taxpayers, workers and informal carers. Undocumented workers are a key part of the domestic work and care workforce, caring for children, elderly and people with long-term social support and care needs, and enabling labour market participation and work-life balance. Nonetheless, states severely restrict access to social protection for people with temporary, precarious or irregular residence status. Although undocumented migrants face various economic and social risks and vulnerabilities, they are [excluded from many of the basic mechanisms of social protection](#) put in place to address vulnerabilities and provide a minimum social safety net, including access to subsidised housing and income security. Some European countries nonetheless [adopted measures during the Covid-19 pandemic](#) which aimed to reduce the exclusion of undocumented people from public services.

To promote equal access to social protection and services based on need or other conditions for all residents, the **European Parliament should call for the renewal of the EU Action plan on Integration and Inclusion 2021-2027 beyond 2027**.

3. Ensuring victims' rights by adopting legislation delinking immigration responses from access to protection, support and justice

Under EU law, safety, protection and justice should be available to all victims of crime without discrimination, including based on residence status. Yet, for the many undocumented people who fall victim to a crime every year in Europe, engaging with public authorities and receiving victim support services can be a challenging experience. The criminalisation of irregular migration makes people who are undocumented fearful of engaging with public authorities, and especially with the police, because of the risk that they will be detained and ordered to leave the territory as a result. This distrust is worsened by policing and surveillance of migrant and minority communities. Without help, undocumented victims are at an increased risk of repeat victimisation, continued social exclusion and may struggle to obtain the justice and redress to which they are entitled. Undocumented women, LGBTQI and sex workers, are particularly at risk. The systematic failure of the state to recognise, investigate and remedy abuses committed against undocumented victims denies them recognition and accountability.

The European Parliament should ensure **EU law on victims' rights strengthens undocumented migrants' access to justice and support services**, including through the upcoming revision of the Victims' Rights Directive, the revised Anti-Trafficking Directive and the new Directive for Violence against Women and Domestic Violence. This should include **ensuring [protection of personal data](#) from being shared with immigration authorities (through firewalls) and rejecting measures that would lead to the further criminalisation of sex workers and the purchase of sex work**, given the negative impacts on sex workers' human rights and dignity. The European Parliament should also ensure that EU law adequately addresses cases where mistreatment of undocumented people and others is by the hand of the [authorities themselves](#), and that there are adequate avenues for redress and accountability. It should also call for a renewal of the new EU Strategy on victims' rights beyond 2025.

Consistent with a victim-centred approach, and in the spirit of the Council of Europe Anti-Trafficking Convention and Council of Europe Convention on preventing and combating violence against women and domestic violence (the latter [adopted](#) by the EU in June 2023), the European Parliament should support policy and legislative measures to ensure undocumented victims can **apply for residence permits based on their personal situation**, and not only in relation to cooperation with law enforcement and ongoing criminal proceedings. A secure residence permit helps to ensure access to assistance and victim support services for people with insecure status and can promote their safety and protection from further victimisation. If they are initially issued on a temporary basis, permits for victims of crime should have clear pathways to more stable status after a reasonable period of regular residence. While PICUM is advocating for access to residence permits and support based on victims' personal situation, in the ongoing [revision](#) of the Anti-Trafficking Directive, this would be a good practice that would allow all victims to claim and exercise their rights that should be promoted in the next EU legislature through appropriate policy measures.

4. Placing inclusion and participation at the heart of the next Multiannual Financial Framework (MFF)

The next legislative period will define the EU budget for different policy areas starting from 2028. Under the current MFF, **undocumented migrants are excluded from most inclusion activities and services**. They are [considered](#) ineligible for most inclusion actions supported by the Asylum, Migration and Integration Fund (AMIF), and are often excluded from most activities financed by the European Social Fund Plus (ESF+), due to additional barriers related to residence or employment status in the requirements in calls for proposals or reporting.

In order to prevent discrimination among recipients of inclusion measures and to promote greater social cohesion in Europe, the next MFF should **remove barriers related to residence or employment status** from the regulations on funding to ensure that all migrants have access to inclusion opportunities under both the ESF+ and the AMIF. Sufficient funding for integration and social inclusion should also be ensured **through minimum earmarks and priorities targeting all third-country nationals and particular disadvantaged groups**, such as children with a migration background. At the same time, the next EU budget should refrain from increasing EU funding to finance border walls and infrastructure, border management and security policies at the expense of inclusion activities, by taking into consideration the principle of proportionality and the obligation to respect fundamental rights in all EU-funded actions.

Participation of civil society organisations in accessing funding opportunities and decision-making of EU financial programmes must be encouraged and supported. The inclusion of Home Affairs funding under the Common Provisions Regulation framework (that used to only cover European Structural and Investment funds under the 2014-2020 EU budget), should be maintained. However, despite this progress, civil society organisations are often [still unable to participate](#) in programme planning, implementation and evaluation. Access to EU funding is still undermined by heavy reporting burdens and other restrictions. The next MFF should ease access to EU funds to civil society organisations (including those led by migrant communities) by meaningfully implementing the Partnership Principle in the design and operationalisation of programmes.

5. Upholding the rule of law and protecting migrant rights defenders from criminalisation

While the European Union presents itself as a leading actor in the defence of human rights defenders in its external actions, little has been done to protect those operating within the EU. On the contrary, EU legislation has contributed to creating a hostile environment for humanitarian actors, in particular those working to protect the human rights of migrants. Between January and December 2022, at least [102 people](#) faced criminal or administrative proceedings in the EU for acts of solidarity with migrants.

The European Parliament should take action to uphold the rule of law and create an enabling environment for civil society in the EU. It should request the European Commission to submit a legislative proposal for a **Directive protecting human rights defenders from retaliation** and to develop **Guidelines** for the respect of fundamental rights of human rights defenders in the EU, in consultation with the Fundamental Rights Agency and civil society.

The European Parliament should also set up a **parliamentary inquiry** to gather evidence and to hear the testimonies of human rights defenders who have been the targets of harassment and whose acts of solidarity with migrants have been criminalised, as well as to investigate whether such cases were driven by political agendas.

It should **monitor** all existing and new legislation in the fields of crime prevention, border control and migration management to ensure that these instruments are not misused to criminalise migrants or people acting in solidarity with them. Lastly, it should request the European Commission to put in place an **EU mechanism to protect civil society and human rights defenders** inside the EU, as recommended by several civil society organisations working on the protection of the civic space.

SECURE RESIDENCE STATUSES AND DECENT WORK

6. Strengthening regular labour migration pathways and employment standards

Inadequate and poor-quality regular pathways for labour migration coupled with the lack of decent working conditions foster an environment where undeclared work, exploitative practices and discrimination thrive. Precarious non-EU migrant workers currently meet labour needs in many crucial sectors of the economy, including the food-supply chain and care. However, migrant workers often face enormous challenges in accessing decent permits, social protection, or professional support. When they try to exercise their labour rights, they often risk detention and deportation from the country, as well as loss of their only source of income. As a consequence, many migrant workers are or are at risk of becoming undocumented, pushed to work irregularly and to accept unfair working conditions. This has a direct impact on all aspects of their quality of life, health, family life and well-being.

In the next legislature, possibilities to access [decent work permits](#) should be greatly expanded and available across all jobs and sectors. While the level of admission remains in the hands of the member states, the EU plays an important role in guaranteeing the development and implementation of high standards regarding procedures, permits and associated rights.

The current approach to using labour migration to fill very specific labour market needs relies on a highly segmented, short-term and unrealistic view of the economy and labour force. It is ineffective and places all the power in the hands of individual employers. Delinking workers' permits from a single employer and a particular job is key to break dependency and exploitation, and prevent people from falling into irregularity.

Permits should have an initial validity of at least two years, renewable, and remain valid to provide a reasonable period of time of unemployment to search for alternative work, for workers that lose or leave their job. Extension permits should be made available for situations where workers experience labour violations or other abuses, as it is the case in [Finland](#). It is crucial to re-balance the power between employers and workers, and shift from employer- to worker-owned permits and procedures. Workers should be able to apply for permits themselves, through simple administrative procedures and at a cost which is affordable.

PICUM is advocating for related reforms in the ongoing the revision of the Single Permit Directive. Whatever the minimum standards agreed in the negotiations, the EU must address these challenges in the next legislature through the **accompanying policy measures** to promote implementation of the **Single Permit Directive** and the **Seasonal Workers' Directive**, including the analysis and promotion of promising practice.

Much needed attention to the **care sector** should not promote further segmentation of labour migration policies, but [support national governments](#) to ensure migrant domestic and care workers have access to decent work permits and full labour law and social protection coverage. The **views of representatives of migrant workers**, including trade unions, NGOs and migrant worker associations, should have a clear and direct influence on EU labour policy development, monitoring and evaluation.

Strengthening the **implementation of EU labour law**, including for undocumented migrant workers, should also be a priority for the European Commission and the European Parliament in the next mandate. Making the system of labour inspections and complaints mechanisms accessible without risk of immigration enforcement and effective for all workers would contribute to reducing undeclared work, irregular work, exploitation, forced labour and human trafficking, and support the maintenance and advancement of employment and

health and safety standards for all workers. It would also advance racial and [gender justice](#), considering the gendered and racial dimensions of marginalisation, exclusion and exploitation of migrant workers in Europe.

The European Commission should likewise take initiative to strengthen EU standards on fair and ethical recruitment, and better **regulate labour intermediaries**, including across subcontracting chains. This would be essential to strengthen liability for practices such as broken contracts, unauthorised recruitment fees, abusive working conditions and wages, and debt bondage.

7. Ensuring access to a secure residence status

Many people are undocumented because of gaps and failures in the design of migration and residence policies. **EU migration legislation** that impacts the design of procedures provides an opportunity **to prevent future undocumented stay**. It is important to evaluate residence permit policies' effectiveness based on whether people can retain their regular residence over time.

This work has several facets. Firstly, it means ensuring that **everyone who is on EU territory has access to the broad range of protection statuses and [other residence permits](#) regulated at national level**. [Return should never be the only option](#) for people whose asylum application is rejected. National permits should also be accessible, in law and in practice, to people in screening and border procedures.

Secondly, it means designing migration laws that ensure that **procedures** are [affordable](#) and [accessible](#), including for people who have difficulties in accessing the Internet.

Thirdly, it means **ensuring that EU permits and statuses prevent people from falling out of status**, by including accessible and affordable permit renewal or conversion procedures and criteria, and by making certain that people can access labour and social protection measures without endangering their residence permit.

Fourthly, to promote safety and protection for [victims of crime](#) without discrimination based on residence status, it means developing and ensuring access to special permits under EU and national law (see also previous section).

FAIR AND JUST MIGRATION POLICIES

8. Ensuring accountability and respect of fundamental rights at the EU external borders and on the territory

In recent years, there have been increasing reports of violations of migrants' fundamental rights at the EU external and internal borders, including [pushbacks](#) and [inhuman and degrading treatment](#). Migrants' rights are also repeatedly violated within the EU territory, where they suffer from arbitrary detention, violence, abuses and *refoulement*.

The European Parliament has an essential supervisory power towards other EU institutions and is co-responsible for the correct implementation of EU law. It should **investigate** all instances of violations of migrants' fundamental rights happening both at the EU external borders and on its territory, in close collaboration with civil society, which is documenting the reality on the ground. It should support the establishment of **border monitoring mechanisms** and ensure that these are truly independent.

It should continue its **oversight of Frontex and Europol's activities** and take concrete actions to increase their accountability, increase transparency and access to information, and ensure that all operations that can lead to, or indirectly facilitate, fundamental rights violations are promptly ended. This includes **ending financial support to EU actions in violation of the Charter** of Fundamental Rights, and ensuring meaningful reporting at national and EU level. The European Parliament should also **monitor the effective implementation of the Charter** of Fundamental Rights by Member States, in line with the European Commission's [Strategy to strengthen the application of the Charter of Fundamental Rights in the EU](#).

Concretely, ensuring the respect of migrants' fundamental rights at the EU external border and on the territory also means respecting international law obligations, including the principle of non-refoulement, the right to health, the best interests of the child, and the protection of private and family life, among others. This requires ensuring that everyone who is on the EU territory has **access to a broad range of protection statuses**, including permits regulated at the national level. **Return should never be the only option** for people whose asylum application is rejected. These permits should also be accessible, in law and in practice, to **people in screening and border procedures**.

9. Ending child immigration detention

Immigration detention is a harmful and disproportionate practice that has serious [impacts](#) on migrants' rights and can expose them to torture and inhuman treatment, physical and mental suffering, and separation from their families. A 2022 [report](#) by the WHO Regional Office for Europe found that immigration detention can have a severe impact on migrants' health, especially mental health. The UN Committee on the Rights of the Child has deemed child immigration detention to be in [violation](#) of the UN Convention on the Rights of the Child and against the [best interests of the child](#); and governments worldwide [committed](#) to put an end to this practice.

In recent years, the European Parliament has called for the end of child immigration detention in four different resolutions.¹ Nonetheless, child immigration detention in the EU has been [increasing](#) since 2015, and the EU Pact on Migration and Asylum is likely to further lead to an [increase](#) in child detention, including de facto detention (a measure which in practice [amounts to deprivation of liberty](#) but is not based on a detention order nor usually subject to a judicial review).

The European Parliament should step up **action to end child immigration detention**, both in its role as co-legislator and by making use of its right of [‘indirect’ legislative initiative](#) to request the European Commission to propose legislation on this issue.

10. Protecting people from harmful technology at and within our borders

The **use of digital tools and the large-scale processing of migrants’ personal data** extends well beyond Europe’s borders and into communities – beyond even physical spaces into people’s devices and their personal and biometric data. The extension of this web of surveillance increases the power of authorities to monitor – and to act – in ways often hidden from view, to screen for, identify and deter or deport foreigners meeting certain “risk” profiles. Meanwhile, civil society is shut out from many of these spaces and criminalised for efforts to assist those whose lives are put at risk by these policies. Technology is thus [increasingly embedded](#) in the vast and intertwined systems that regulate and control migration, and that surveil and monitor migrants, in ways that increase their exposure to discrimination and harm.

The European Parliament took a [bold step](#) with the **Artificial Intelligence Act** in prioritising fundamental rights, including several uses of technology in the asylum and migration context under a framework of heightened safeguards, and banning some unacceptable uses - such as AI-driven lie detectors - that apply in the migration context. This courage must extend to ensuring that the rampant collection of migrants’ personal data and the use of technology are not further normalised within EU migration policies, given the enormous [risks they present to fundamental rights](#).

One important role the Parliament can play is regarding oversight of the EU’s budget, given the [vast sums of public money currently spent](#) on the development and piloting of harmful technology for use in immigration enforcement; and the vast, unchecked access of [corporate influence](#) on the EU’s migration agenda.

¹ https://www.europarl.europa.eu/doceo/document/TA-8-2018-0201_EN.html; https://www.europarl.europa.eu/doceo/document/TA-9-2019-0005_EN.html; https://www.europarl.europa.eu/doceo/document/A-9-2020-0238_EN.html; https://www.europarl.europa.eu/doceo/document/TA-9-2021-0090_EN.html

INCLUSION AND SUPPORT FOR CHILDREN AND YOUNG PEOPLE

11. Protecting and supporting children in migration

Children (especially children in migration) are vulnerable to harm and European policy makers must play their role in protecting them. A first step is committing to protect all children against violence, whatever the violence, whoever the child and whoever the perpetrator of the violence is. Undocumented children in Europe are [vulnerable to harm](#) due to the negative effects of current migration policies. Their irregular migration status impacts their psycho-social development, increases the possibility that they experience immigration detention (which is always a child rights violation), and exposes them to pushbacks at and within EU borders, deportation, homelessness, poverty and child unfriendly justice systems.

To protect children against violence as understood by the [UNCRC](#) the EU should commit to **protect all children from violence, irrespective of their residence status**. This means **championing policies and practices that prevent violence** by, amongst others, committing to adopt and support policies that end the practice of child detention (in line with the [Global Compact on Migration](#), championing the inclusion of [best interests of the child procedures](#) in migration legislation that can end in a return decision, and establishing adequate child rights safeguards in all migration-related legislation and policies.

Having **impact assessments that analyse a legislative proposal's impact on children**, their rights and well-being (especially where the Commission's impact assessment has failed to do so) would be a concrete way for the European Parliament to ensure migrant children are protected from violence.

Another element is the fight against poverty, as growing up in or at risk of poverty has life-long, negative consequences. Children with a migrant background are [still twice as likely to live in poverty](#) than their peers, but they receive less government support when support measures depend on the child's or the parent(s)'s residence status. It is crucial that the **successful implementation of the European Child Guarantee remains a priority** for the 2024-2029 legislation. In addition, the European Parliament should also **call for a renewal of the EU Strategy on the Rights of the Child** (2021-2024) and stress the importance of implementing the 2017 Communication on the Protection of Children in Migration.

12. Supporting a safer, smoother transition into adulthood

Across Europe, hundreds of thousands of children in migration face **an accelerated, compressed transition into adulthood** because they **lose the support** they may have been legally entitled to as children. Even though the migration and care sectors increasingly recognize something needs to be done to better protect these children and young people, undocumented children are rarely prepared for what is to come and experience their 18th birthday as a shock. Many also **become undocumented the day they turn 18**, because their age-based residence permit comes to an end. Others may have been undocumented as a child but lose the little respite children's rights gave them against the full brunt of immigration enforcement policies. Once they turn 18, they are [left to fend for themselves](#), and become at risk of homelessness, detention, deportation and exploitation.

Children in migration have difficulties in accessing secure residence permits, simply because there are too few ways for them to regularise. For example, [only 10 EUMS](#) propose ways for formerly undocumented, unaccompanied children to regularise their stay. If pathways exist, they are [rarely designed with children and young people in mind](#). Nonetheless, some countries have taken steps to protect children and young people. [Spain's 2021 reform](#), for instance, prevents unaccompanied children become undocumented at 18. It has also led to 16,000 unaccompanied children and former unaccompanied children accessing a secure residence permit, the labour market, and a better future.

Even though Council of Europe member states have decided to [support](#) more refugee and asylum-seeking children in this period of their lives, important work needs to be done in the EU too.

To smoothen the transition into adulthood of children, EU policy makers can call for more, and better EU and member state policies supporting children and young people transitioning into adulthood, irrespective of their residence status. The EU can play a key role by **providing both funding and guidance to member states** in how to support children and young people transitioning into adulthood, irrespective of their status.

The European Parliament must play a key role in **negotiating migration law that safeguards children from harm**, including by incorporating [best interests of the child procedures](#) in EU legislation.



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