

## PICUM Contribution to the call for input to the forthcoming report on contemporary forms of slavery in the informal economy of the UN Special Rapporteur on contemporary forms of slavery, including its causes and consequences

March 2022

This submission gives a brief overview of [PICUM](#)'s findings on the situation of undocumented workers in the informal economy, organised around a few of the key questions asked.

For further information, please see PICUM (2020), [A Worker is a Worker: How to ensure that undocumented migrant workers can access justice](#). Contact details: [lilana.keith@picum.org](mailto:lilana.keith@picum.org).

### TERMINOLOGY (Q1)

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In the EU context, stakeholders tend to refer to 'undeclared work' rather than 'informal economy'. The European Commission defines<sup>1</sup> 'undeclared work' as 'any paid activities that are lawful as regards their nature but not declared to public authorities, taking into account differences in the regulatory system of Member States'. Thus, undeclared work as defined above, includes: undeclared employment, unregistered employment, undeclared self-employment, labour infringements through the use of umbrella companies, and other specific informal practices which are not declared to labour, social security and tax authorities.

However, the term 'illegal employment' is commonly used to describe employment relationships that are in violation of regulations regulating the employment of non-EU nationals. According to this lexicon, when applicable labour, social security and tax legislation are violated, the employment is considered 'undeclared', but when any irregularities relate to immigration law and migrant workers, the employment is defined as "illegal." Such discriminatory use of terminology has negative impacts, perpetuating and justifying policy responses that criminalise migrant workers and violate their rights.

While not specifically related to the definition of 'informal economy', we would ask the Special Rapporteur to consider how the terminology 'illegal employment' is discriminatorily used against undocumented migrant workers and include a recommendation on appropriate terminology. All employment which is lawful by nature of the work but has aspects of irregularity regarding applicable labour, immigration, social security, and tax regulations should be described as undeclared/irregular.

### MIGRANT WORKERS PUSHED INTO INFORMAL WORK (Q5 & Q6)

#### Restrictive migration policies push people into irregularity and exploitation

When structural labour demand is not met through official labour migration routes, it pushes workers into the informal economy, and irregularity.

National migration policies across Europe continue to offer decent labour migration opportunities largely to workers with offers for highly-paid employment or for very specific skills shortages. Accessible and decent labour migration pathways across various occupations remain very limited, despite labour market demand. Mechanisms such as quotas, shortage occupation lists, and labour

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<sup>1</sup> See e.g. European Platform against undeclared work report, [Counteracting undeclared work and labour exploitation of third-country nationals](#), January 2021.

market tests are implemented in a way that blocks - or creates over-burdensome administrative hurdles to - the employment of migrant workers in key occupations.

The multiplication of rules, permits and statuses creates a complex regulatory framework for authorities, employers and workers to navigate. It leads to fragmentation of the labour market and contributes to undeclared work.

Those pathways that are available often provide work permits with restrictions on workers' labour market mobility and rights. Permits are often linked to a specific employer or job. When people's residence in a country is dependent on a particular employer, it drastically limits their ability in case of a dispute to insist on fair pay and working conditions and challenge contract substitution and violations, which can create the conditions for exploitation.

This also means that job loss, including due to exploitation, is a major reason for people being pushed into irregular residence status and the informal economy.

People with a restricted residence permission are also pushed into working in the informal economy due to restrictions on their access to the labour market. For example, people with student visas are often only allowed to work a certain number of hours per week. In most European countries, asylum seekers do not have immediate access to the labour market and may also face restrictions on the sectors of their employment.

### **Undocumented workers are unable to work formally and declared**

Most migrants, regardless of their status and whether they migrate for work, study, family or protection reasons, enter the labour market. As with the general population, those of working age are normally in work. Undocumented migrants may be unable to work due to long-term health issues or disability, or of retirement age (pensions), but in all other cases must work to survive and provide for their families. Nonetheless, undocumented migrant workers are excluded from social protection systems which would provide some income support when unemployed.

The vast majority of undocumented workers work in the informal economy. In some cases, it is possible for undocumented workers to be registered with social security. For example, they may have registered when they had a work permit and continue to pay social security contributions, or have been able to register while undocumented.

However, for the most part, the lack of authorisation to work means that undocumented workers are unable to work in formal and declared employment, while undocumented.

At the same time, regularisation pathways across Europe remain very limited. In relation to employment, only a few countries provide possibilities for people to regularise based on past employment, or access work permits from within the country while undocumented for future employment. Therefore, undocumented workers' employment opportunities are almost exclusively in the informal economy. Undocumented people may live and work irregularly for decades without being able to regularise their status.

### **SECTORS OF EMPLOYMENT (Q3)**

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Undocumented migrants make up a significant proportion of the workforce in several sectors of economies across Europe.<sup>2</sup> In some of these sectors, there are high levels of undeclared work in general, and workers are largely from lower income EU member states and non-EU countries.

The sectors where undocumented workers most frequently work include:

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<sup>2</sup> See for example: Undocumented Worker Transitions '[The relationship between migration status and employment outcomes: Final Report](#)' 2009, p. 22; ILO, Migrant Work and Employment in the Construction Centre, 2016.

- Building and construction (including renovation)
- Car washes
- Care work (including as au pairs)
- Cleaning and maintenance
- Delivery
- Domestic work
- Fishing, agriculture, meat processing
- Hospitality (hotels, restaurants, cafes, catering)
- Logistics and security
- Nail studios
- Sex work.

## **RACIAL AND GENDER DISCRIMINATION (Q5)**

It is also important to note that in some of these sectors, the workforce is highly gendered, with mostly men working, for example, in building and construction and mostly women working, for example, in domestic and care work, reinforcing stereotypical gender roles and inequalities, and bringing specific risks.<sup>3</sup>

In addition, gender discrimination makes it more likely for women to be on dependent visas, whether as spouses/ partners, in low-wage work, or to be working irregularly. This can trap them in situations of domestic violence or violence, harassment and exploitation in the workplace,<sup>4</sup> because they face losing their status if they leave the relationship and cannot safely report to police without facing immigration enforcement. Access to housing can be extremely difficult when unable to show declared income and due to restrictions on social benefits as well as renting.

Racial and ethnic discrimination also run through exploitative employment practices. In addition to discrimination based on not having a work permit – and in who has access to a work permit in the first place<sup>5</sup> – workers are sometimes assigned different jobs in a workplace, and paid different wages for the same work, along lines of national or ethnic origin.

## **COMPLAINTS/ GRIEVANCE MECHANISMS & THE ROLE OF THE LABOUR INSPECTORATE (Q8 & Q9)**

PICUM sees exploitation of workers on a continuum, with decent work on one end of the spectrum and forced labour, modern slavery 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.

<sup>3</sup> On the domestic and care sectors, see for example: A. Triandafyllidou, '[Irregular migrant domestic workers in Europe : who cares?](#)', 2013, p. 2; ILO, [Promoting integration for migrant domestic workers in Europe: A synthesis of Belgium, France, Italy and Spain](#), 2013, p.13.

<sup>4</sup> See for example: [FLEX/LEAG submission](#) to the UN Special Rapporteur on Contemporary Forms of Slavery on the gendered dimensions of contemporary forms of slavery, its causes and consequences, May 2018.

<sup>5</sup> For example, data on first time permits issued for remunerated activities reasons (highly-skilled, seasonal, researchers and others) in the EU 28 member states in 2018, disaggregated by country of citizenship, shows that citizens of the 55 countries coded as Africa account for 5% (38,099), citizens of the 35 countries coded as America account for 13% (93,018 with 38,598 of those permits granted to citizens of the United States of America, more than the citizens of all the African countries put together), citizens of the 47 Asian and Middle Eastern countries coded as Asia account for 22% (156,668), citizens of the 15 countries coded as Oceania account for 2% (16,234) and citizens of the 10 countries coded as Central and Eastern Europe account for 51% (368,032) of the total of 726,039 first time permits issued for remunerated activities reasons in the EU in 2018 (analysis based on Eurostat data on [First permits issued for remunerated activities by reason, length of validity and citizenship](#), last updated 22 October 2019).

This understanding is crucial to addressing the reasons why people are at risk and to design appropriate responses, including support for trafficked persons.

Migrant workers with precarious, dependent or irregular status frequently experience conditions below those required by minimum labour standards and collective bargaining agreements, in terms of pay, working time, rest periods, sick leave, holiday, and health and safety.

Many undocumented workers endure such conditions, as they see little alternative. If they try to negotiate due payment and respect of basic working conditions, their employers threaten to report them to immigration and wield over them their inability to access formal complaints mechanisms without risking deportation.

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.

Civil courts and labour tribunals in 13 out of 15 EU member states in a study<sup>6</sup> conducted by PICUM do or would consider undocumented workers' claims equally to other workers. They usually check identity, but do not check work permits, and in practice do not report undocumented workers for immigration enforcement purposes if the irregular status of the worker is known. Nonetheless, there remain very significant barriers for undocumented workers to take complaints, participate in proceedings and receive due wages and compensation through the courts.

There are significant barriers to undocumented workers gaining access to justice through the criminal justice system. Undocumented victims of crime, including violence and human trafficking,<sup>7</sup> are often required to leave the country or are deported as a result of interaction with law enforcement.

In 13 out of the 15 EU member states,<sup>8</sup> there is an inspection body with the competence to take individual complaints from workers regarding issues related to underpayment of wages and working conditions, although not all have the competence to investigate and take decisions on complaints of workers without an authorised employment relationship.

Practices of labour inspections reporting personal information on undocumented workers to immigration authorities vary greatly, as does whether they are based on law, a formal cooperation agreement/ policy or common practice. There are a number of important examples where labour inspectors maintain professional confidentiality and do not report undocumented workers with labour complaints for immigration enforcement.

In all 15 of the EU member states<sup>9</sup> examined in PICUM's report, 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.

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<sup>6</sup> 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.

<sup>7</sup> As described in the relevant section, this relates to immigration enforcement before identification and if not found to be a victim of human trafficking, as well as the provision of only short-term permits for the duration of the reflection period or criminal proceedings, including for recognised victims. Only a few EU member states regularly provide long-term permits to recognised victims of human trafficking.

<sup>8</sup> The 13 EU member states are: Belgium, Bulgaria, Cyprus, Czech Republic, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain and the United Kingdom (UK). Austria and Germany are the two countries in the study where there is no inspection body which handles workers' complaints regarding wage issues, though there are inspection bodies with competence to take complaints on other issues.

<sup>9</sup> Austria, Belgium, Bulgaria, Cyprus, Czech Republic, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, and the United Kingdom (UK).

## ROLE OF CIVIL SOCIETY (Q12)

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Civil society and trade union organisations play an essential role in providing independent information and advice, legal assistance, and support services to workers with precarious or irregular status. They provide critical mediation services, and support workers to gather evidence, and access to complaints mechanisms. Collective organising is also critical.

Some examples can be found, for example in:

- PICUM (2020) [A Worker is a Worker: How to ensure that undocumented migrant workers can access justice.](#)
- The [report](#) from the ETUI-ETUC-PICUM-TUC training on Organising and promoting undocumented migrant workers' rights (Jan 2022)
- Fundamental Rights Agency (2021) [Protecting migrants in an irregular situation from labour exploitation – Role of the Employers Sanctions Directive](#)