



PICUM Working Group  
on Labor Rights of Undocumented Migrants  
Date: 23 October 2015



Focus Discussion: Advocacy efforts concerning access to labor rights of undocumented workers in the context of the Employers' Sanction Directive, particularly on defining the concept of effective complaints mechanism.

Regularization through work, part of regular channel for Labor Migration.

Chair: Pablo Rojas Coppari, [Migrants Rights Centre Ireland](#)

The objective of the working group, is to gather information to prepare publication a PICUM briefing paper on complaints mechanism in 2016, which will also include recommendations on better data collection, the role of labor inspections and the use of residence permits in the frame of the Employers' Sanctions Directive (particular discussion on the protective elements for workers back wages and the misobjectification of the Directive to scare employers to hire undocumented migrants).

The working also discuss the state reporting template and monitoring template. Does the directive has positive impact towards undocumented migrants and the protection of human rights in particular?

How effective is the complaints mechanism? No concrete evidence shows successful access to unpaid wages / back wages, only when there is a proof of minimum 3 consecutive working period. It is proven to be difficult particularly on the seasonal workers, short term irregular workers (domestic & care workers with different & changing employers) and au pairs.

The monitoring templates serve as to monitor the social impacts of EU legislation, with a focus on the Employer Sanctions Directive. The template was developed on the last meeting (June 2015) to standardized reporting of cases of non- or misapplication of the Directive, will be used in Belgium and Czech Republic.

Recommendation:

- To put forward the economic argument of regularization of undocumented workers and its salary competitiveness.
- To hold Member States accountable to the mechanism once it is lodged.
- Acknowledging the main obstacles to employ Third Country Nationals; namely the salary threshold and (unrecognized) low wages sectors and access to employment to this sector.
- Preventing irregularity, awareness of labor exploitation and focusing the protection through fair working condition will enhance the productivity. Ultimately an access to social security to all workers regardless its immigration status
- To un-tangle the links between labor inspection with the immigration police



## PICUM Working Group on Access to Justice for Undocumented Women

Date: 10 November 2015

Focus Discussion: Beyond Transposition of Victims Directive (deadline transposition 16 November 2015) and Monitoring Implementation on National Level

Chair: Ana Maria Rocco, [Association APAV Madrid](#)

Instruments on European level addressing the rights of undocumented victims of crime and of gender based violence:

- EU Victims Directive particularly in Article 1 (... irrespective of their residence status). The working group describes the update status of the directive, particularly after the [presentation from](#) the Commissioner Jourova and Victims Support Europe the day before. Followed by discussion and opportunities for civil society input and action in connection with the implementation of the directive in national level. The Netherlands hasn't fully transposed the directive into its national legislation, however as of today, the directive is legally binding.
- Council of Europe Istanbul Convention, a tool for preventing and addressing violence against undocumented women. It is an open invitation for civil society's engagement in the [GREVIO](#) monitoring process and to partner with women's rights and feminist organization to advance undocumented women's access to protection, services and justice. The Netherlands hasn't ratified the convention.

Tools for advocacy and monitoring protections of victims' rights:

- Launching of [PICUM's guide to victim directive](#). Recommendations for the effective implementation of victims directive includes:

- Putting safety and rights before immigrations enforcement, ending detection practices that deter access to basic services to which they are entitled as victims.
- Mandatory training programs of officials together with NGO's and civil society working directly with migrants. To understand the [firewall](#), needs and circumstances for safe reporting.
- To ensure safety and protection to migrants whose his/her status tied to the perpetrator. Member States should create measures that allow victim to obtain an independent residence permit to allow victims to follow criminal proceeding.
- Know your rights as victims. Joint [publication](#) of JUSTICIA and the [Iris Council for Civil Liberties](#) (Catherine Cosgrave) to raise awareness on victims' rights from the Stockholm program to the EU Victims Directive.
- Best practice on the advocacy leading up to the 2003 reform allowing for the renewal of residence cards for women on spouse-dependent visas, as well as broadening access to residence permits for [undoc victims in some circumstances](#) in France by La Cimade (Violaine Husson).

#### Challenges:

#### Barriers faced by undocumented migrants:

- The existence of firewall; fear of being reported, still presents to challenge safe reporting as covered by the directive.
- The intertwined coordination of police and immigration enforcement.
- Double victimization; the latter as being viewed as 'illegals' without status, no rights to access justice, protection and assistance.
- Access to shelter is often cannot be obtained due to its immigration/ residency status (most cases shows that the government doesn't reimburse the stay).
- Practical barriers: language, culture and knowledge. Although these practical barriers are now covered by the directive, but in practice it is still difficult to be implemented.
- Victim's status tied to a perpetrator: employer/ partner.

As a result; crimes go unreported (unseen) and therefore measure cannot be applicable and unaddressed. Victims' go unsupported and didn't have access to proper assistance needed and might face repeat victimization.

When victims' rights are not respected, impunity thrives.

Recommendations:

- Stakeholders should be sensitized with the firewall to create safe reporting particularly to undocumented migrants.
- The commissions needs to underline and extend the definition of victims as far as anyone affected to the victims in accordance to the Victims of [Europe Manifesto](#).
- It is encouraged that the directive transposed not only towards formal compliance as Member States but to ensure an effective implementation in practice.

Reported by Hafizh Atfin