

**A renewed commitment to smart, sustainable and inclusive growth in Europe must guarantee the rights of all EU residents, regardless of their residence status.**

**RECOMMENDATIONS**

**for Lithuanian Presidency of the EU Council**

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**About the Working Group *Building New Coalitions to Address Challenges Faced by Undocumented Migrants***

In view of the Lithuanian Presidency of the EU starting on 1 July 2013, UNITED for Intercultural Action organised its bi-annual conference near Trakai, in Lithuania [entitled "Rethinking Diversity: Challenges for equality in Europe and new responses"](#). From 26<sup>th</sup> to 31<sup>st</sup> May 2013, over 80 civil society representatives, youth groups, human rights defenders, activists and experts representing an array of minority groups

living in Europe and working in the fields of anti-discrimination, anti-racism, equality and human rights gathered to discuss challenges to respecting equality and diversity amongst minority groups.

As one of Europe's most marginalised and vulnerable groups, undocumented migrants face compounded levels of discrimination. This is based on their status as migrants, as irregular migrants, as well as on their ethnic, racial, religious or linguistic origins, religion or belief, sex, gender, age or disability. With "the fight against *illegal* migration" listed as one of the key priorities for this EU Presidency trio, consisting of Ireland, Lithuania and Greece, Praxis Community Projects and the Platform for International Cooperation for Undocumented Migrants (PICUM) led a working group addressing the importance of campaigning and awareness raising to challenge practices, policies and legislation which violate the human rights of undocumented migrants.<sup>1</sup>

Despite the benefits which migration has brought to social and economic development within the EU, migration remains a polarizing topic in national and European politics. Trends in national and European immigration policies have been towards the rapid adoption of restrictive measures at both Europe's borders and within them.<sup>2</sup> As Europe has moved towards a common immigration and asylum policy,<sup>3</sup> the EU has framed irregular migration as a security concern to be 'fought', with a strong focus on border controls, the fight against trafficking in human beings and the facilitation of return of migrants.

Irregular migration continues to be addressed in this vein by the [EU Presidency programme \(IE, LT and EL\)](#), which outlines external border management, (voluntary) returns and readmission agreements as priorities.

The increasing securitisation and criminalisation of cross-border movements as well as the lack of focus on the human rights dimensions of migration have resulted in an erosion of migrant's rights. As the Special Rapporteur on the human rights of migrants, François Crépeau, stated at the UN Human Rights Council in Geneva, "Within EU institutional and policy structures, migration and border control have been increasingly integrated into security frameworks that emphasize policing, defence and criminality over a rights-based approach."<sup>4</sup>

The use of negative terminology is exacerbating this approach; how an issue is framed influences the responses which are developed and implemented. Framing migration and individuals that migrate irregularly or who fall into irregularity as 'illegal' encourages restrictive responses which risk human rights infringements. Further, using such terminology paints a picture that those that find themselves in an irregular situation do so through irregular entry.<sup>5</sup> This does not reflect the most common variety of ways,

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<sup>1</sup> PICUM leads a network of concerned individuals and organisations working with undocumented migrants across Europe committed to ensuring real sustainable change for undocumented migrants by informing and influencing policy makers at the national, European and international as well as by engaging local, national and regional actors with the aim of developing evidence-based advocacy and action.

Praxis Community Projects is a human rights charity working alongside vulnerable migrants in the UK. Our work increasingly engages those who are in a position of irregularity or have no recourse to public funds as a result of their immigration status through a range of interventions including advice and guidance, community projects and advocacy.

<sup>2</sup> Over the last years, the EU has adopted several measures to 'fight' irregular migration, such as the 'Facilitation Directive', the 'Return Directive' and the 'Employers Sanctions Directive'. Also within the sphere of regular migration, measures have focused on conditions of entry and residence for certain categories of migrants (e.g. highly-paid workers ('Blue Card' Directive), students and researchers, family members of certain groups of regular migrants, seasonal workers and posted workers [directives for latter two still under discussion]), as well as a harmonization of the permits member states provide to some categories of regular migrants ('Single Permit' Directive).

<sup>3</sup> See the [Tampere Agreement](#), followed by the Hague and Stockholm programmes

<sup>4</sup> UN News Centre, "European Union must guarantee human rights of migrants – UN expert" 28 May 2013, available at: <http://www.un.org/apps/news/story.asp?NewsID=45020&Cr=migrants&Cr1=#.UcnNEfk0VBk>

<sup>5</sup> Already in 1975 in a General Assembly Resolution, the United Nations outline its position by requesting the use of the term 'irregular'. In recent years, the Council of Europe, European Parliament, European Commission as well as the EU Fundamental Rights Agency (FRA) have emphasised the importance of correct terminology in relation to migrants.

through which many find themselves undocumented. As regular routes of migration for work and family reunification have narrowed and immigration and asylum policies have become more restrictive, increasing numbers of migrants fall foul of changing visa criteria, are refused asylum (or in some cases, access to the asylum system altogether),<sup>6</sup> or lose their residence or work permit when a personal or work relationship breaks down, and so find themselves in a position of irregularity. Administrative failures and difficulties in understanding the complex procedures also play a role.

Once with an irregular status, migrants are systematically denied those elements which constitute a dignified standard of living including the right to work, access to justice and access to services, such as health care and shelter, frequently in violation of their human rights. Undocumented migrants are made vulnerable to exploitation by the privileging of immigration control over protection of rights, where survivors of violence and abuse by employers, landlords and criminals are subject to arrest, detention and deportation while perpetrators walk free.

While Research from the European Commission-funded “Clandestino” project in 2009 estimated 1.9 to 3.8 million undocumented migrants in Europe, their rights are both directly restricted in policies and legislation on migration, and absent from mainstream public policies, such as on labour, health care, children’s rights, etc. This situation puts enormous strain on local actors such as NGOs, health care and educational professionals, and local authorities, who often work with limited resources to defend undocumented migrants’ human rights and provide them essential services. There is clear disconnect between the European and national level policies and the realities on local level.

In order to address the current challenges faced by undocumented migrants and the communities they live in, EU member states must reform existing legislation, policies and practices to develop a common and comprehensive human rights-based approach to migration. The EU Victims of Crime Directive,<sup>7</sup> which will be transposed in every EU member state in the next three years, makes important progress in this regard, guaranteeing minimum standards on the rights, support and protection of victims of crime, regardless of residence status. Limited progress is also being made in in some European countries, such as Sweden, which previously had one of the most restrictive regimes for access to health care for undocumented migrants and has recently extended it, to provide some subsidised health care.<sup>8</sup> However, some countries are introducing retrogressive measures. For example, Spain recently terminated its system providing equally-subsidised health care for all residents, regardless of residence status, and now limits access for undocumented migrants to emergency, maternity and child care.<sup>9</sup> The impacts of the new legislation are already sadly evident.<sup>10</sup> Within the UK, new policies currently at consultation stage would restrict access to

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<sup>6</sup> There is an urgency to ensure that the rights of those entering the EU and particularly those seeking protection are able to access the asylum process in a timely and effective manner. In Greece, [NGOs have reported](#) that access to the asylum system is almost impossible and currently the ‘Asylum Department of the Aliens Police Directorate of Attica’ is the only competent authority to receive asylum applications in the region of Attica. This is where the vast majority of asylum seekers are referred to, however the number of applications registered is limited to 20 applications per week. Such a restrictive framework and bureaucratic system forces those seeking protection into irregularity, leaving them open to exploitation and heightening their vulnerability.

<sup>7</sup> [Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA](#)

<sup>8</sup> The new law, which came into effect on 1 July 2013, provides undocumented migrants with some subsidised health care. This includes care that is acute and ‘cannot be postponed’, including dental care, all care for children, family planning counseling, prenatal care and abortion.

<sup>9</sup> Royal Decree Act 16/2012 of 20 April 2012 on urgent measures to ensure the sustainability of the national healthcare system and improve the quality of its services. The reform has introduced substantive changes in the Spanish health care system (not only for undocumented migrants).

<sup>10</sup> The first person recorded to have died as a direct result of the new law; a young Senegalese man died of Tuberculosis on 7 May 2013 after not having been able to receive treatment. Further information: Médicos del Mundo,

both healthcare and the private housing market, and various measures limiting access to justice are also being implemented and considered.

At the same time, the Lithuanian Presidency of the EU has welcomed the European Commission's efforts to reassert a social dimension to the European Union through the Social Investment Package (SIP). The European Commission recommendation "Investing in Children: Breaking the Cycle of Disadvantage, which forms part of the SIP, along with the Lithuanian Presidency's commitment to promoting multi-stakeholder implementation of the recommendation, are welcome steps, recognizing the need to prioritise integrated social investment, particularly in times of crisis. With access to quality services as one of the central pillars of the Recommendation, member states are urged to ensure health care services are adapted to ensure undocumented children can enjoy their right to health.

The renewed commitment to smart, sustainable and inclusive growth in Europe must consider the rights of all EU residents, regardless of their residence status, guarantee access to human rights, including education, health care, shelter, protection from violence and justice, as well as develop regular migration channels that would increase the participation of low-wage workers from third countries in formal employment and enable their family members to live with them regularly. Limiting the human rights of undocumented migrants and denying access to essential services does not reduce the numbers of irregularly staying migrants but causes great individual harm and exacerbates social inequalities to the detriment of individuals, families and communities alike. Investing in the fundamental rights of all persons and universal access to essential services is vital to reduce poverty and social exclusion, improve social cohesion, increase equality and generate inclusive growth.

**Praxis and PICUM are calling on Lithuania and Greece, who will hold the next EU Presidency, as well as all EU Member States to reflect the core values of the European Union of fundamental rights, non-discrimination, justice, solidarity and equality, and their human rights obligations under national, European and international laws, in their approach to migration and treatment of migrants. In particular, we propose the following recommendations:**

- Ensure the implementation of a human rights-based approach to migration policy and border management, which upholds the rights of all migrants. This includes ensuring that the human rights of all migrants are respected in the context of arrest, detention and deportation, including through proper implementation of the human rights safeguards included in the 'Employers Sanctions' Directive and 'Returns' Directive.
- Ensure the priority to address irregular migration also considers accessibility of formal migration mechanisms, such the asylum system and regular channels for migration for work and family reunification.
- Explore and implement further practical and efficient channels for regular migration for work and family reunification, without discrimination according to 'skill' or sector, to structure labour migration policy to reflect the actual needs of the EU labour market and respect the rights of all migrant workers. Urge all European Union member states to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
- Promote solidarity and responsibility-sharing amongst all EU member states, and ensure human rights are respected, when implementing policies on border management.

- Establish concrete and appropriate mechanisms to address the situation of migrations who for multiple reasons cannot be returned to ensure they are not left in limbo and viable solutions are found to ensure they can enjoy their fundamental rights.
- Stop use of the word ‘illegal’ when referencing migration and migrants and use the terms ‘irregular’ or ‘undocumented’ in its place in order to avoid criminalising migrants or the concept of migration.
- Ensure that all migrants, regardless of their residence status are not restricted from accessing healthcare, education, housing, shelter, fair working conditions, or justice when rights are violated by reforming legislation, policy and practice to establish a strict firewall between immigration control and the provision of services, protection and justice, along the guidelines of the European Union Agency for Fundamental Rights’ (FRA): [‘Apprehension of migrants in an irregular situation – fundamental rights considerations’](#).
- Promote correct transposition and implementation of the Victim’s Directive that will provide equal and effective access to the rights of information, support, respect and protection contained therein, for all victims in a non-discriminatory manner, regardless of residence status (as per Article 1).
- Encourage EU Member States to implement the European Commission Recommendation “Investing in children: breaking the cycle of disadvantage”, including through providing access to quality services without discrimination (in particular, providing equal access to health care for all children, regardless of residence status and ensuring effective access in practice).

Respectfully,

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Commission for Filipino Migrant Workers	Netherlands
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