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# DEFENDING UNDOCUMENTED WORKERS

MEANS DEFENDING  
ALL WORKERS



STAND UP FOR  
UNDOCUMENTED  
WORKERS



CONFEDERATION **SYNDICAT**  
EUROPÉEN **TRADE UNION**







# On International Migrants Day, the ETUC wishes to express its solidarity and support for undocumented migrants. Too often, sans papiers suffer the humiliating and degrading experience of being excluded from society, on top of inhumane working conditions.

## Undocumented migrants have rights

It is a myth that undocumented migrants do not have any rights. International bills of human rights also apply to undocumented migrants. Examples:

- Universal Declaration of Human Rights (1948)
- UDHR, International Covenant on Civil and Political Rights (1966)
- ICCPR, International Covenant on Economic, Social and Cultural Rights (1966)

The European law also recognises rights of undocumented migrants in Directive 2009/52/EC.

See Picum Publication 'Undocumented migrants have rights'

All workers have rights, including undocumented migrant workers, and trade unions must fight to enforce those rights. ETUC members are on the front line when it comes to fighting racism and supporting and assisting undocumented migrants. Unfortunately, the austerity measures imposed in Europe in recent years, and the wholesale privatisation of public services, have undermined the services offered by administrations dealing with migration or asylum requests. They have also made it harder to access quality education, healthcare, housing etc.

All this makes the trade unions' work more difficult.

In the New York Declaration, signed at the UN Summit in 2016, Member States subscribed to bold commitments. These include protecting the human rights of all refugees and migrants, regardless of status, especially the rights of women and girls, and promoting their full, equal and meaningful participation in finding solutions.

The number of people who find themselves undocumented is on the rise. Restrictive policies adopted by Member States, especially in conditions of high

unemployment, are the main cause. The mismanagement of migration and asylum policies in Europe is another significant factor leading to undocumented stays in the European Union.

Thirty-four million migrants represent barely 7% of the EU population, and non-EU citizens are an even smaller share. Migration is declining or stagnating in almost all Member States. Migrant populations are the main force countering demographic decline in Europe. Migrants' contribution to the economy and to the sustainability of our welfare systems is well established.

The presence of more than 3 million undocumented people in Europe should make us think. National governments decided to pursue repressive policies which serve merely to criminalise people whose only fault is trying to live and work. There must be something wrong in the legal framework and the migration policies Europe has implemented so far if they lead to undeclared work and irregular stays making undocumented migrants more vulnerable, stripping them of basic human rights and stopping them contributing fully to the economy.

## How many migrants are undocumented?

CFDT estimates 400,000 undocumented migrants in France, CSC estimates 100,000 undocumented individuals in Brussels, UIL estimates 600,000 more undocumented migrants in Italy because of the crisis. In Spain there are 600,000. Clandestino estimated the number of undocumented migrants in the EU ranges from 1.9 to 3.8 million. The numbers are increasing, because in times of high unemployment, thousands are deprived of their right to work and reside without having credible options for returning home. On top of that, the ETUC estimates that at least 600,000 asylum-seekers out of the 2 million who have arrived in Europe since 2013 have not received documents. One million people are without a reasonable hope of receiving a work permit and at risk of joining the ranks of undeclared workers.

Depriving people of their fundamental rights at work, and of access to health-care, housing, education, justice and other basic services, is intolerable within a Europe that aspires to offer fundamental rights to all, regardless of their passport. Amid these invisible citizens are thousands of children. Being undocumented worsens inequalities and vulnerabilities that already exist, and this is a particular problem for women, ethnic minorities and LGBTI people.

Offering a future to undocumented migrants is a common European challenge. It is intolerable that Europe – which aspires to stem poverty, social exclusion and unemployment – leaves millions of families outside the circle of solidarity. In many Member States, undocumented migrants are criminalised. It means that they cannot have access to health services, their children cannot go to school, they are usually underpaid or exploited and cannot get access to justice. Simply visiting a hospital or reporting abuses at work can bring the risk of being arrested, detained and probably deported.

The ETUC denounces the lack of humane policies that would give a future to undocumented migrants.

### **Solidarity for our undocumented brothers and sisters in brussels**

In Brussels, repression takes place against the movement to support people 'sans papiers', of which the migrant and undocumented workers' committee of the CSC is a member. Police officers arrive in the middle of the night or at dawn at the homes of our affiliates and activists, to detain them or send them to closed centres, all with the aim of obstructing or stopping the sans papiers' movement and its supporters, including the trade unions. We resist, and continue to fight as hard as ever. "We work here, we live here, we stay here!" We will not give up. It is the law that needs to change!

There are some false myths about undocumented migrants in Europe that must be rejected.

It is said that they are 'illegal' because they cross EU borders unofficially. It is true that the lack of regular channels to enter Europe does not help, but the relationship between the irregular crossing of borders and undocumented residence is not as straightforward as one might think. Those who work with migrants on a daily basis – as UnionMigrantNet contact points do – testify that undocumented situations arise after regular

arrivals. The reasons for becoming undocumented may relate to how permits are issued (lack of transparency or absence of safeguards in processing applications), the repressive attitude of migration authorities, excessive administrative costs to obtain or renew permits, secondary movements, job loss or forced undeclared employment. The need to escape from domestic violence may be a reason for migrant women to become undocumented as well.

Another falsehood is that there are too many migrants and our labour markets cannot absorb workers from abroad. In reality, net migration in

Europe is negative or very negative in 12 EU countries, and countries with positive net migration are the ones that have shown greater solidarity with asylum-seekers. Europe needs workers, and not necessarily just highly-skilled ones. Some sectors see a dominant presence of foreign workers. Even when regular channels are not available, large numbers of undocumented migrants continue to work in labour intensive sectors such as tourism, agriculture, construction, healthcare and domestic work. That is why governments tolerate the presence of undocumented migrants, but they are not willing to regularise their status, so feeding exploitation, vulnerability, and poverty.

### **Out of sight, out of mind ...**

The lack of migration statistics can lead to further inequalities, discrimination, and increased vulnerability of undocumented migrants. Their stories and everyday realities, as well as how they are treated and the outcomes are not properly monitored. Women and children are disproportionately affected by lack of visibility in data and evaluation of the impact of migration policies. Who cares about that if nobody knows who they are and what problems they have?

become undocumented as well.

### **Who is an undocumented migrant?**

Undocumented migrants are those without a residence permit authorising them to stay legally in their country of destination. They may have been unsuccessful in the asylum procedure, have overstayed their visa or have entered irregularly.

They are often asylum-seekers whose application was unsuccessful, people who have lost their jobs and with them the right to reside where they were working, people who overstayed a travelling visa to join their family, students who decided to find a job at the end of their study period, young people who having been born or grown up in a Member State are not recognised as citizens.

Today they mostly escape from war (Syrians, Libyans, Iraqis), or from dangerous regimes (Eritreans, Afghans). But for the reasons explained above, every foreign citizen can become undocumented for a period of residence and against his/her will.

Post-truth advocates say that giving permits to all migrants would cost too much for state finances. The truth is that excluding millions of people from the solidarity circle costs EU citizens much more than including them. Feeding the informal economy deprives the state of tax revenues. Denying children an education hinders them from participating in their communities and developing their full potential. The informal economy is an obstacle to development and an environment where criminal organisations thrive.

The list of falsehoods is longer, and is fed daily by populism and xenophobia. The trade union movement puts forward a fact-based narrative in the interest of all workers.

Trade unions call for a right-based approach to migration and inclusion, especially for undocumented migrants. Trade unions represent a strong force for integration and an opportunity for all migrants to get organised and stand up for their own rights. In doing so, they become owners of their own destiny. Trade unions are at the forefront of the fight against undeclared work, exploitation and trafficking. Cases of irregular employment of third-country nationals, raised by trade unions, should lead to their regularisation.

We propose:

- Opening of regular channels with new legislative instruments, or better enforcement of existing ones. Member States should make available volumes of admissions for new and regularised migrants.
- Transparent regular channels. Restrictive and discriminatory selection criteria should be removed, especially for those who exercise the right to family reunification.
- The right to change employer, and to do so through participation in the labour market, should be a basic right for all third-country nationals.
- Giving dignity to undocumented migrants, guaranteeing them fundamental services. All migrants should have access to public service providers such as healthcare

professionals, school staff, labour inspectors, social workers, housing authorities and local police. This includes irregular migrants, who should not fear immigration sanctions when calling for help. Public services must be able to perform their important social mission without interference, and 'firewalls' must be established between public services and immigration authorities.

### What is a firewall?

A 'firewall' between immigration and public services means that public services should not be used to enforce immigration rules: irregular migrants should be able to access healthcare, education, police and social services, public housing, labour inspectors and other public service providers, without risking being reported to immigration authorities. If not, migrants will never report human rights violations and the perpetrators will benefit, in effect, from immunity.

- Supporting trade unions which demand legal frameworks for regularising undocumented migrants and migrants in the undeclared/informal economy. Pathways to regularisation in EU legislation cannot be limited to cases of severe exploitation as set out in the Employer Sanction Directive.
- The status of 'worker' must prevail. Complaints mechanisms should be introduced to enable all workers to enforce their labour rights and access remedies in case of disputes and exploitation. There must be a firewall between labour rights procedures (inspections, courts, etc.), which should be accessible to undocumented workers, and immigration controls. This is not the case in most national legal systems, leading to impunity for exploitation and a lowering of overall labour standards. Effective complaints mechanisms for undocumented workers are required by EU law.
- Sheltering victims of exploitation and trafficking is a top priority. Europe is not equipped with a solid legislative framework for identifying crimes of exploitation and trafficking, and for sheltering victims and providing them a permanent right to stay and work. These shortcomings often result in further victimisation of victims, which is at odds with European fundamental values.
- Introducing incentives to transform the informal economy into a formal one. The informal economy does not promote progress either for the economy or for the social well-being of the population.



- Reinforcing trade unions and other civil society organisations that offer assistance and support to undocumented migrants. The right of such organisations to represent victims of abuse or exploitation before national courts or appropriate authorities should always be recognised.
- European Countries should promptly ratify the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, the ILO Domestic Work Convention, and the 2014 Protocol (P029) to the Forced Labour Convention.

WHAT CAN THE EU DO? Activation of EU programmes to achieve these policies

- **Social pillar.** Following the letter and the spirit of the EU Charter of Fundamental Rights, the European Pillar of Social Rights has to apply to undocumented migrants as well. Specific measures should be designed for undocumented migrants at work and to ensure them access to social protection and assistance.
- **EU Dialogue on Skills and Migration.** The dialogue should identify sectors with a higher presence and higher demand for foreign workers and promote regularisation patterns matched with upskilling and re-skilling of regularised migrants.
- **European Semester.** Deepening the country-based analysis of the migrant population, covering challenges related to the presence of undocumented migrants and defining policies to bring them into a regular situation.
- **EU funds,** especially EFS and AMIF, should be open to finance projects in favour of third-country nationals regardless of their status, to promote inclusion in society, the labour market and the workplace.
- **European Migration Forum.** We ask that in 2017, one meeting of the European Migration Forum should be dedicated to undocumented migrants in order to set out policy proposals to address this issue at European level.

- **Eurostat** to develop a methodology to quantify and investigate the living conditions of undocumented migrants, to support policy design.

ETUC affiliates are leading organisations in supporting, assisting and integrating undocumented migrants and their families.

**CSC Bruxelles-Hal-Vilvorde (Belgium):** The Council of Migrant and Undocumented Workers, with trade union support, enables undocumented migrants to organise themselves and stand up for their rights together with other workers. CSC offices in Brussels provide legal assistance to all migrants. Eva Maria Jimenez Lamas coordinates CSC activities and advice for migrants in Brussels.

“Trade unions bring workers together and overcome differences,” she says. “Nowadays more than ever, we must stay united and build our demands and our actions together, because workers are being pitted against one another. In Brussels there are about 100,000 undocumented migrants. Our concern is that a large proportion of the newly arrived asylum-seekers will fall into the trap of undeclared work. So we must be attentive and bring our demands into line with one another. I mean asylum-seekers’ demands, undocumented workers’ demands, regular workers’ demands, and so on.” Eva warns that “criminalising them is counterproductive. Opposing xenophobia, we work for solidarity and inclusion. We offer individual assistance as well, but what matters is our collective action, as it is the only way we can achieve our equal rights objectives.” It was the collective work of organised migrants that enabled CSC to launch proposals to transform the undeclared employment of undocumented migrants into regular work of documented migrants. “We expect the Belgian authorities to move forward in the general interest of all Belgian workers,” she concludes.

UnionMigrantNet is a Network that helps migrant workers and other categories of migrants and their families, with the aim of encouraging their integration through active participation in representative trade unions. Its Charter of Values states that all migrants and their families deserve integration assistance irrespective of their legal status. According to UnionMigrantNet, the principle of equal treatment is fundamental in order to pursue non-discrimination and integration, avoid social dumping and support regularisation processes. [www.unionmigrantnet.eu](http://www.unionmigrantnet.eu)

## Organising undocumented workers to prevent exploitation

“The efforts of the trade union movement to represent and advocate for undocumented workers are essential and welcome, as is the increasing cooperation between trade unions and migrants’ rights organisations in Europe. Collective organising is one of the key ways to empower undocumented workers and prevent exploitation. On a policy level, the establishment of effective complaints mechanisms are critical to break the cycle of impunity and uphold labour standards for all.” – Michele LeVoy, PICUM – the Platform for International Cooperation on Undocumented Migrants.

President Bengt Sandberg explains that the “Swedish legislation does not provide any instruments to regularise the position of undocumented migrants in Sweden. However, the centre exercises a role in preventing or sheltering against abuses and exploitation.” The presence of undocumented migrants in Sweden is limited but risks increasing because many asylum-seekers are not receiving permits to stay and work. Migrants’ undeclared work represents a specific challenge for the trade union movement. “We defend undocumented migrants as employees,” he explains. “All workers have rights, regardless of their migration status and we can never allow them to be exploited by employers. Workers have to be recognised and paid according to collective agreements. By defending undocumented migrants, we defend collective agreements.”

The **CGT** presidium for undocumented migrants (France) promotes union membership and organisation of undocumented migrants or migrants victimised by their employers. Like the **CSC**, **CGT** helps undocumented migrants to stand up for their rights and become the best advocates for their own demands. **CGT** has succeeded in regularising thousands of undocumented migrants, winning national criteria for the legalisation of workers.

Set up and managed by the **Swedish trade unions** and the confederations **LO and TCO**, the Trade Union Centre for undocumented migrants in Stockholm provides counselling and assistance to undocumented migrants with problems at work. The centre is run by trade union representatives, professional staff, trade union specialists or elected leaders. The cases are handled by the affiliate that organises the sector or occupation in which the undocumented worker is employed.

**CGT** has permanent desks in different French cities, which are accessible for free to all migrants. Francine Blanche explains that “since we opened our Confederation’s permanent desks, we have been receiving about 80 migrants a week. Some 2,000 migrants have decided to become **CGT** members. They are migrants who were exploited at work, undocumented, and who thanks to the trade union movement have found a way to solve their problems at work and to receive a work permit and thus the opportunity to stay.” **CGT** has helped people to escape employers’ blackmail. “The paradox and the hypocrisy,” Francine adds, “is that employers want foreign workers. They repeatedly say that they need migrants. What we cannot accept as trade unions is that some employers may see, in the migration background, a person who deserves less pay or, even worse, to be heavily exploited.”

Lack of perspectives for regularisation is an issue in many European countries. In this context, undocumented migrants can be better protected using the negotiating capacity of trade unions or counselling offices. “In Germany, theoretically, labour rights are not dependent on residency status or labour permit. However, the legislation does not help in cases of undocumented migrants.” Birgitta Wodke works in **Arbeit und Leben e.V. DGB/VHS** in Berlin and explains that “counselling centres of **Arbeit und Leben** and other NGOs defend the labour rights of exploited migrants. When it comes to undocumented migrants, what is the price if the person becomes known to the authorities? The answer is that the person must be reported to immigration authorities and may face deportation. So, we try to solve the problem directly with the employers.”

Giuseppe Casucci is the Head of the Migration Department of **UIL** in Italy. “In Italy, in the last four years, 700,000 migrants have lost their jobs and their residence permits with them. At present, about half a million migrant workers are unemployed and 1.2 million ‘inactive’. The unemployment rate of foreign workers is four points higher than that of Italian people (Istat). A number of these people have left Italy, but the majority swell the ranks of undeclared workers. The Italian trade unions have asked for and obtained from the government an extension of residence permits even for migrants who lose their jobs and do not find employment within a year. Currently, the permit can be renewed beyond this limit, for up to two years. Italian trade unions also demanded the right for unemployed

migrants to participate in the labour market and for the removal of obstacles to active labour market instruments.”

Giuseppe sees another challenge to be addressed: “Since 2013, Italy has saved more than 500,000 lives in the Mediterranean and is hosting almost 180,000 people in reception centres, whose only desire is to leave the country for another Member State or to have a residence permit and work in Italy. Europe has to say and do something because the current rules on asylum are not adequate to deal with the landing of economic migrants, and merely have the effect of generating hundreds of thousands of undocumented migrants.”

The **Irish Congress of Trade Unions** supports the Justice for the Undocumented campaign. SIPTU (the ICTU largest affiliate) has been working with the Migrant Rights Centre Ireland on their campaign ‘Justice for the Undocumented’ and hosted an origami exhibition, visited by the President of Ireland.

Jayson Montenegro from the Philippines found support from Irish trade unions. “I have left my three kids back at home since 2004. It is difficult for me not to be with them when they need a father. But I have no choice. I want to give them a good future, but work in my country is not enough to give them a good education and better life. I also supported my dad, who sadly passed away two years ago. It was difficult not to see him for a last time. The last time I talked to him he told me to continue helping others. I took a course to work as a carer, and now work as a live-in carer in a lovely family. They treat me well, just like my family. Sadly, the man I cared for passed away, but I am still helping them. At the moment I am one of the founder leaders in the campaign for Justice for Undocumented Ireland. We started with six people, and now we have 1,500 members and 50 allies including great support from the trade union SIPTU. It makes a big difference to the group, and gives us courage to stand up and continue to fight for the rights of others. Our group believes that SIPTU is good, and that you can depend on trade unions for workers’ rights.”

**FNV** is the Dutch trade union confederation. Maria is Filipino. “I love my country despite its poverty,” she says. “I came to look for work as a cleaner or nanny here in Europe, and I arrived in Amsterdam. After a year (the maximum

temporary work permit) my papers expired and I found myself undocumented. I joined the FNV.”

Maurizio Bove is President of the **Associazione Nazionale Oltre le Frontiere** (ANOLF) in Milan. “At least 10% of the more than 10 thousand requests that we receive each year at our counters relate to people who are forced to work in the black because they are refused a residence permit,” he says. “It is not a question of choice, but of a serious gap in national legislation. The employers (for the most part families who need domestic help or assistance for elderly relatives), who would often be ready to regularise the employment relationship, are unable to do so because of the lack of rules that permit it.”

It is necessary to identify new measures to regulate arrivals for work in Italy, putting aside once and for all the existing bankrupt law, which only allows for periodic ‘amnesties’. He concludes by appealing that “for all those who already live in our country and are forced into undeclared work, we believe that we should take a step further and that the work itself must finally be considered as a bonus factor for escaping from irregularity. ”

Teresa arrived in Italy from El Salvador in 2001. “In 2002, thanks to the Bossi Fini amnesty, I managed to get permission to stay. In all these years I continued to work legally as a home help for the same lady, who unfortunately passed away two years ago. Since then I was not able to find full-time work, but only a few jobs paid ‘by the hour’ that no longer allowed me to renew my residence permit. Alone with three children, my income failed to meet the level demanded by the authorities. Today I work in the black, like when I arrived in Italy 15 years ago. I am very concerned because even my children – the last one was born in Italy – have lost the right to stay. One of them is dyslexic and the hospital refused to visit him any more because he had no health card. Finally I went to ANOLF Milan, where I found out that even children without a residence permit are entitled to treatment. Now I have found a family that would like to hire me, but without a residence permit they cannot. I’m waiting for the appeal against refusal of my permit, submitted with the ANOLF lawyer. I hope that the court will award a residence permit to me, but above all to my children.”







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