A SOCIAL PLATFORM FACT SHEET

MIGRATION - A HUMAN RIGHTS APPROACH

Third country nationals are not second class citizens

This fact sheet outlines Social Platform's position on migration in relation to human rights. It is based on Social Platform's position paper on migration, which includes the human rights concerns of regular and irregular migrants, asylum seekers and beneficiaries of international protection.

EU migration and integration policies must be based on a human rights approach, where equality is promoted and migrants are recognised and respected as rights holders. Just because third country nationals are born outside the EU, they should not be treated as second class citizens.

25% of all EU-27 residents will be foreign-born or have at least one foreign-born parent by 2060. The EU must seize the opportunities revolving around migration movements and reap the benefits related to this in response to addressing the European demographical and economic challenges. It is also crucial to ensure that migrants are not only seen as economic units and as 'solutions' to Europe's problems. All the EU member states have signed most of the core international human rights instruments and are thus legally obliged to protect the rights of all individuals in their territories. However there is often a gap between law, and its implementation and practice at national level.

In light of the effects of the economic crisis and the fact that one out of ten people at risk of poverty and social exclusion have a migrant background in the EU, urgent action is needed. We need to combat and prevent discrimination, racism, administrative barriers, poverty and social exclusion; which hinder migrants from accessing the labour market, housing, education, health and other essential goods and social services; as well as resources enabling them to lead dignified lives.

We are concerned about the increase of xenophobia and racism and the spread of hate in European political parties and movements, particularly as these anti-immigration discourses have become normalised in the EU political mainstream. This is also important to underline since 'anti-migrant' political discourse has been extending beyond the 'extreme' or 'far-right' political parties. Migrants face a strongly negative political climate, proposals to restrict immigration flows have been supported in several countries, fuelled in some by the growing influence of populist parties.

Crimes and discrimination against migrants on the grounds of race, ethnic origin, religion and belief, nationality and citizenship go unpunished; due to under-reporting linked to fear or mistrust of authorities, to lack of access to justice mechanisms and redress and to lack of knowledge about their rights as migrants. Some migrants, e.g. migrant women or migrants with disabilities, are made more vulnerable when facing multiple discrimination because of their characteristics, identities and/or situation.

POLICY RECOMMENDATIONS TO MEMBER STATES

Legislative measures:

- Properly implement the European Convention on Human Rights and the Council of Europe's European Social Charter.
- Enshrine the UN Convention on the Rights of the Child in national legislations, including the protection of unaccompanied children and undocumented children living with families or with other caregivers.
- Ensure that apprehension and reporting practices do not curtail undocumented migrants' fundamental rights.
- Respect the Return Directive's (2008/115/EC), procedural safeguards.
- When transposing and implementing the EU Victim's Rights Directive (2012/29/EU) into national legislation, consider introducing specific safeguards allowing undocumented victims to report crime to law enforcement authorities without fear of prompting proceedings related to their irregular residence status.
- Implement the Anti-Trafficking Directive (2011/36/EU) to provide victims of trafficking with residence permits whether or not they denounce the perpetrators.
- Adopt the (recast) Reception Condition Directive (COM(2011)320) in terms of information, documentation, material reception conditions (housing, food and clothing) and access to health, schooling, and employment.
- Implement the Qualification Directive (2011/95/EU) with regard to the definition of dependent family members such as children over 18 and grandparents living with and economically dependent on the family, rights of refugees, and beneficiaries of subsidiarity protection; with regard to family unity, access to employment and health care, recognition of professional qualifications and better standards for vulnerable persons with special needs.
- Adopt a clear legal standard outlawing the use of racial profiling in all circumstances and to ensure effective monitoring of all police, security and immigration practices, particularly those where discretion may be exercised, in order to identify profiling practices.

Non-legislative measures:

- Share between member states good practices of sustainable processes and administration of regularisation and flexible extension of residence permits and visas. When taking regularisation decisions, the length of stay in the host country, extent of social and family ties, health status, as well as the possibility to fill a labour market shortage with a migrant workforce living in the host country, should be assessed. This will prevent migrants from losing their regular migration status, facilitate access to secure and regular residence for those that have lost their status and avoid exploitation and degrading treatment and violation of human rights due to residence status.

POLICY RECOMMENDATIONS TO EU INSTITUTIONS

Legislative measures:

- Conclude the EU accession process to the European Convention on Human Rights;
- Enforce EU law for the proper quality transposition of the first generation of migration, asylum, residence, and anti-discrimination laws, leading to the further use of infringement proceedings. Ensure that the implementation of international human rights standards applies to all migrants, irrespective of residence status.
- Ensure that the human rights of asylum seekers and beneficiaries of international protection are guaranteed through the transposition of the new 'Asylum Package' (adopted June 11, 2013) including their basic rights.
- Monitor the transposition of the Framework Decision on combating racism and xenophobia (2008/913/JHA) including the application of infringement procedures, when needed, and amend it to address all forms of bias violence. Taking into account the recommendations of the Council of Europe within the framework of its campaign on hate speech, improve legislation that prohibits incitement to hatred, (e.g. the media's coverage of migrant issues) and remove practices that restrict migrants' engagement with civil society and the media.
- Based on the impact assessment (issued 2013) of the Return Directive (2008/115/EC), the Commission shall gather best practices regarding its implementation to ensure that the fundamental rights of persons in detention and/or whose return procedures are postponed or stopped, and who cannot be removed, are respected.
- Amend the Dublin Regulation to promote a shared EU responsibility and solidarity among member states by applying a burden sharing strategy at the borders of those countries receiving a higher number of asylum seekers and/or undocumented migrants. This must respect the individual human rights of each newcomer regardless of the number of new arrivals.
- Adopt the proposal for the revision of the Council Directive on the conditions of entry and residency of third country nationals (COM(2013)151) for the purpose of scientific research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au pairing. Make provisions for all visa-holders under this Directive to have freedom of movement throughout the EU during the period of their visa. Mobility of young migrants is a vital contribution to intercultural understanding.

Non-legislative measures:

- Mainstream migrants explicitly into, and across, the EU's regular policy priorities, information and cooperation on education, employment and social inclusion.
- Mainstream a rights-based approach throughout the Europe 2020 Strategy, including the National Reform Programmes, the National Social Reports and the Country-Specific Recommendations as a part of the European Semester to ensure that all migrants have equal access to rights, resources and opportunities.
- Allocate sufficient resources to the European Union Agency for Fundamental Rights to ensure and monitor the implementation of the European Charter of Fundamental Rights, guaranteeing equality before the law (Art 20), non-discrimination (Art 21), the right to fair and just working conditions (Art 31), as well as to collective bargaining/actions (Art 28).

- Apply systematic standards for disaggregated equality data collection as a way of monitoring equality and progress made at the member State level over time. Adhering to data protection regulations, ensure that sensitive date is protected from misuse and only used for equality purposes.
- Propose interpretative guidelines to the implementation of the Family Reunification Directive (2003/86/EC) to help member states to correctly implement the law by also transposing all 'more favourable' optional clauses to remove the legal, financial and practical obstacles to family reunion that exist today.
    - Guarantee access to residence permit independent from sponsors of family applicants as soon as possible. This is especially crucial in relation to migrant women who are subject to domestic violence.
- Pay migrant women special attention in the current (2010-2015) and forthcoming (from 2015 on) EU Strategy on Equality between Women and Men and its action, measures and programme on ending Violence Against Women;
- Implement the EU's commitment to policy coherence for development with a 'migrant centred approach' when dealing with migration and development issues;
    - Develop mobility strategies and migration policies between the receiving countries and the countries of origin, by involving social partners and civil society organisations, to avoid an unnecessary brain-drain that can contribute to the increase of geographical imbalances and of negatively effects families and children left behind. Promote the application of ethical recruitment practices, for instance by allowing family reunification, granting multiple entry visas and allowing more channels for legal migration, including for manual, low-skilled and domestic workers.
- Ensure that resources within the new Home Affairs Funds are allocated among various policy areas in a way that fully takes into account the EU and the member states commitments to protect and ensure the human rights of migrants in order to support their reception and integration and ensure their full participation. Ensure that civil society and international organisations are formally consulted when defining the future national priorities under the Asylum and Migration Fund in order to increase the impact of the activities funded.
- Encourage member states to implement the Common Basic Principles on Integration - Framework for the Integration of Third-Country Nationals in the EU, emphasising its' dynamic two-way process by all immigrants and residents'.
- Take appropriate measures to prevent any kind of inhumane, degrading, or forced treatment, resulting in the deprivation of migrants' liberty; e.g. when migrants come into contact with law enforcement agents and are stopped due to racial/ethnic profiling and/or are at risk of bias violations. Detention should be a measure of last resort and assessed within the context of proportionality. Children should never be detained nor should they be separated from their parents in that context.
- Asylum seekers should not be deprived of their freedom of movement within their host countries so that they can maintain social and family ties and explore relevant opportunities for work and education.

For more information on our position and other fact sheets on migration (including Social Inclusion, Employment, Services of General Interest and Civil Dialogue) visit www.socialplatform.org/migration