



Congress submission to Department of Justice draft scheme to regularise undocumented migrants

May 2021

**Irish Congress of Trade Unions
31/32 Parnell Square
Dublin 1
www.ictu.ie**

Many undocumented migrants, including families and children, live in Ireland. According to a Migrant Right's Centre Ireland survey, the vast majority have been here for over five years and are working to support themselves and their families. Key economic sectors (elder care in private home, childcare, construction, hospitality, cleaning and retail) have benefitted from the hard work of undocumented workers. They face many challenges and exploitation including long hours - 46% working more than 40 hours per week, and, low pay with 26% not even receiving the minimum wage due to their irregular residence status¹.

The COVID-19 pandemic has increased attention across Europe to the issue of regularisation. Calls for regularisation schemes have been voiced by an increasing range of actors due to economic, humanitarian, social justice and public health reasons.

While regularisation is considered a taboo for some, regularisation has been – and continues to be - used regularly as a policy option to bring people fully within public administration, increase fiscal contributions and redress failures in immigration and asylum law and procedures. Between 1996 and 2008, 3.5 million people were regularised in Europe. In the past year, new regularisation measures were implemented in Italy, Portugal and Luxembourg.

It is a very welcome development that Ireland now plans to introduce such a regularisation scheme in line with the clear commitments made in the programme for government to “create new pathways for long-term undocumented people and their dependents...”.

This is an issue of importance to the trade union movement. Undocumented and undeclared workers must be able to claim their employment rights. Limitations to the enforceability of labour rights,

¹ <https://www.mrci.ie/2020/10/14/live-here-work-here-belong-here-survey-findings/>

based on whether a worker has a work permit, rather than the factual existence of an employment relationship, and laws that criminalise workers, are incompatible with labour rights. Most importantly however, undocumented workers should be provided with possibilities to regularise their status and be protected against unlawful or irregular forms of employment.

Effective complaint mechanisms must be available for all workers regardless of status. Firewalls between labour inspectorates and migration authorities must ensure undocumented migrant workers do not run the risk of detention or deportation due to interactions with labour inspectors or pursuing judicial remedy. The affect of any scheme of course is that workers regularised would then be able to safely report exploitation in the workplace without fear.

Congress believes that there is no barrier or opposition to introducing a very broad and inclusive scheme. We believe in rights-based approaches allowing undeclared and undocumented workers to transition to declared employment and regularisation. Working undeclared is not the choice of a worker, and fundamental workers' rights should never be made dependent on employment, migration or residence status.

Any undocumented people left behind will remain in Ireland and continue to live in a very precarious situation. An inclusive approach should be taken to improve the lives of as many people living in Ireland as possible.

In terms of the scheme to be introduced, Congress would like to stress the following points:

In relation to how undocumented should be defined:

Any definition of undocumented used for the purposes of this scheme must include those in the Section 3 process and with deportation orders. Their exclusion could mean up to 6,000 people at risk of not being included in this scheme and at risk of further exploitation and denial of their fundamental rights at work.

In relation to the residence requirements:

Congress believes that the residency requirements are too narrowly drawn and would in effect leave behind between 2,000 and 3,000 people. The Catherine Day report suggested 2 years for the asylum system and we believe this sensible timeframe could be applied to undocumented people in this scheme.

We recommend a shorter residence requirement be included as part of this scheme and that that all those who reach the residence requirement during the lifetime of the scheme be included, and that the undocumented residence requirement should not have to be continuous and unbroken

In relation to legal residence prior to becoming undocumented:

We recommend that legal residence prior to becoming undocumented should also be taken into account and that a simple residence requirement be applied and a date from which applicants must be undocumented e.g. start date of the scheme/1st Jan 2021/1st Jan 2020.