

Protecting Undocumented Workers in Europe: Successes and Strategies

March 23, 2006

Conference Report

The **Platform for International Cooperation on Undocumented Migrants (PICUM)**, with the support of the **European Trade Union Confederation (ETUC)**, held a conference on 23 March 2006 in Brussels, Belgium, on the protection of undocumented migrant workers. More than 100 representatives of NGOs, trade unions, governmental bodies, researchers, and other actors shared experiences and ideas about how to protect undocumented workers from exploitation and abuse. This report is an overview of the contributions made by keynote speakers in the plenary sessions and workshops, and the main themes of discussion in the workshop sessions.

Opening Remarks

Catelene Passchier, Confederal Secretary of the European Trade Union Confederation (ETUC), opened the conference by stating that nowadays there are increasing concerns from many actors about workplace problems faced by undocumented migrants, and in this sense PICUM's activities and objectives are of fundamental importance by providing solutions to prevent the exploitation and discrimination of these workers.

Michele LeVoy, Director of the Platform for International Cooperation on Undocumented Migrants (PICUM), provided a short description of PICUM, which is a network of grassroots organizations in Europe that aims to promote the basic social rights of undocumented migrants, such as the right to housing, health care, education for minors, and fair working conditions. Ms. LeVoy explained that fair working conditions are embodied by the right to receive a fair wage and compensation in the case of workplace accidents, the right to organize, and to right to have access to labor courts in the country of employment.

This conference builds on previous work carried out by PICUM on undocumented migrant workers. In 2003, PICUM held a conference in the European Parliament entitled "Undocumented Migrant Workers in Europe." The focus was to highlight different sectors in which undocumented workers are employed as well as actors that provide assistance to these workers who encounter specific problems in the workplace. The findings of PICUM's previous conference and report demonstrated that there is widespread exploitation and abuse of undocumented workers in Europe and showed a need to provide answers.

<p style="text-align: center;">Part I:</p> <p style="text-align: center;">Collecting data</p> <p style="text-align: center;">Establishing constructive relations with labor inspection</p>

Keynote Speakers - Plenary Session

Thierry Timmermans of the **King Baudouin Foundation** outlined the three main themes of the morning plenary session, respectively the protection of undocumented workers in different sectors, the collection of data and the establishment of constructive relations with labor inspection.

Manuel Correia of the **União dos Sindicatos de Lisboa** (Lisbon Trades Council) gave an overview of the situation of undocumented workers in Portugal. Mr. Correia affirmed that the protection of undocumented workers can only be assured through the establishment of a collective agreement with documented migrants, by respecting the equal work and equal rights principle contained in the Portuguese Constitution. The União dos Sindicatos de Lisboa has ensured that sector collective contracts are applied to all workers, without any discrimination between documented and undocumented workers.

In 1998, through the União dos Sindicatos de Lisboa's efforts to respect the principle of equal protection for all categories of workers, the Portuguese government approved the introduction of a new article in immigration law, the so-called *Responsabilidade Solidária dos Empregadores* (Social Responsibility of Employers). This legal provision obliges all employers, sub-contractors and foremen to respect legal obligations inherent in an employment relationship, such as the payment of salaries and social insurance. In addition, if workers' rights are violated (both documented and undocumented), this law allows for the blame to be placed on the person who contracted the worker. If this person cannot be located, then blame is put on the person who contacted that sub-contractor, until the blame is put on the main employer if necessary. In this way, it is always possible to ensure responsibility for upholding workers' rights in cases of sub-contracting.

Mr. Correa affirmed that the violation of undocumented migrants' rights and the lack of salaries should be considered violations of human rights. He concluded by asserting that the state in the quality of employer not only has to fulfill its legal obligations but also act in an exemplary way in order to serve as a model. Mr. Correa stated that the government does not have the right to violate undocumented workers' rights only because of their irregular legal status. He stressed that the Portuguese government should pay more attention both to documented and undocumented migrants'

conditions in light of Portugal's past experience as a country of emigration in which many Portuguese emigrated to the United States, Canada, as well as other countries in Europe.

Sissel Brodel of the **European Civic Forum** described the situation of undocumented workers in the agricultural sector in Europe.

The European Civic Forum has focused its attention on the protection of undocumented workers especially after the racist riots against North African workers that took place in Andalusia, Spain, in 2000. Undocumented workers in the agricultural sector in Andalusia are employed in greenhouses and pick fruits and vegetables that are sold in the European market. They live in very precarious housing, far from city centers and separated from the native population, and do not benefit from the protection of their rights. Ms. Brodel illustrated the total absence of respect of human rights of undocumented workers, who are often exposed to pesticides without any warning or protection. Ms. Brodel underlined that such situations exist not only in Andalusia but in every agricultural region in Europe.

The main objective of the European Civic Forum is to inform the public about the living and working conditions of undocumented migrants in the agricultural sector. In this light, the European Civic Forum has started to collaborate with trade unions in Andalusia to elaborate solutions capable of creating a balance between the different interests of employers, the native population and undocumented migrants.

In the final part of her presentation, Ms. Brodel provided a concrete example of an action undertaken by the European Civic Forum, describing the information campaign that the organization waged in Switzerland to inform consumers about the conditions in which fruits and vegetables grown in Almeria and sold in supermarkets are produced. The European Civic Forum has determined that an information campaign is much more effective than a boycott, since a boycott does not prevent the purchase of products grown in other regions under the same exploitative working conditions.

Maria Helena Bedoya of the **Centro de información para trabajadores y trabajadoras extranjeros de las Comisiones Obreras - CITE-CCOO** (Information Center for Foreign Workers of the Comisiones Obreras Trade Union) highlighted the work and activities of her organization, as well as the situation of undocumented migrants in Catalonia, Spain.

Firstly, Ms. Bedoya described the CITE-CCOO's main field of activities, including trade union actions, awareness-raising campaigns and, more in general, the fight against every form of discrimination, racism and xenophobia at work. In order to achieve these results the CITE-CCOO cooperates with the Spanish government, NGOs and international organizations.

Secondly, she presented Spanish legislation on immigration, with an analysis of the first Foreigners' Law that emanated in 1985 and was considered to be very restrictive. This law was intended for temporary workers, the majority of which were males, who were supposed to work and reside for a short period in Spain before returning to their countries of origin. In this sense, the right to family reunification and the right to education of minors were not indicated or assured. On the contrary, the new Foreigners' Law approved in 2000 confers real legal status to foreigners in Spain. More in particular, the new law specifies that foreign workers cannot be fired without any legal reasons and without receiving compensation. In addition, foreign workers obtained the right to be affiliated to a trade union. Nonetheless, Ms. Bedoya stated that all of the progress made by trade unions to protect foreign workers' rights were annulled by the restrictive Foreigners' Law approved in 2003 in response to the necessity of assuring greater security after the March 11, 2003 terrorist attacks in Madrid.

Ms. Bedoya underlined the important role the CITE-CCOO has played in the development and affirmation process of the idea that an undocumented worker is a worker with the same rights as other workers. In particular, a 2002 Supreme Court ruling affirmed that undocumented workers have inalienable labor rights which prior to the ruling went unrecognized. Consequently, undocumented workers can file a claim for withheld wages.

Ms. Bedoya also described the existing collaboration between trade unions and NGOs with the police and labor inspection service to guarantee protection of undocumented workers' rights. In particular, through the 2005 Foreigners' Law, an automatic regularization is assured to undocumented migrants who collaborate with the police by denouncing their employers.

The short discussion that followed the keynote speeches focused primarily on the correctness of considering and defining undocumented migrants as victims. Ms. Bedoya, to whom the greatest part of the participants questions were addressed, clarified that undocumented migrants in Spain are considered victims only in cases of trafficking; nevertheless exploited undocumented workers can denounce their situation to the police without the risk of being deported from Spain.

Keynote Speakers - Workshop Sessions

Marijke Bijl of the **OndersteuningsKomitee Illegale Arbeiders - OKIA** (Support Committee for Undocumented Workers) was the keynote speaker in the morning English-language workshop.

OKIA was founded in 1992 in Den Haag, Netherlands, and started as a common research project with a Dutch university on the working conditions of undocumented workers in the agricultural sector in the Westland region. The research concentrated on

the Westland region because of its importance as a greenhouse area in the production and exportation of flowers and tomatoes. The main aim of the study carried out by OKIA was to discover the working conditions and the reasons why such a high number of undocumented workers were employed in greenhouses. One of the main sources of information in the study was interviews conducted with undocumented migrants who worked in two different time periods: 1990-1991 and 2000-2001. By focusing on workers who had worked during these periods, it was possible to observe the changes and developments in the greenhouse sector over a period of ten years.

The main results of the research can be summarized as follows:

- In the '90s, Dutch migration policy and legislation were very strict, after the official end of the guest worker migration policy in the '80s. Before 1992, migrants - even if undocumented - could legally obtain employment because they could get fiscal numbers and legally work. After 1992, the government stopped giving fiscal numbers to people coming to the Netherlands. Consequently, the opportunities for migrant workers to legally enter and work in the Netherlands decreased dramatically. At the same time, the agricultural sector was growing incredibly fast, due to supermarkets' decision to buy products from everywhere in the world. In order to be competitive on the global market, Dutch producers were encouraged to employ a cheap labor force - undocumented migrants, whose numbers increased consistently.
- The main change that was possible to observe in 2000 was the decrease in the number of workers working directly for employers and the increase in the number of workers working for sub-contractors. Consequently, working relations in 2000 were more fragmented and employees moved from a fixed working condition to a flexible one. Workers' positions were thus weaker than in the past. As a result, workers suffered from more exploitation in terms of the number of hours worked, and working conditions worsened in general.

Denis Natalenic of the **Collectif de défense des travailleurs étrangers dans l'agriculture - CODRETAS** (Collective to Defend Seasonal Migrant Farmworkers) was the keynote speaker in the morning French-language workshop. His presentation focused on the dramatic situation of temporary workers (the so-called "saisonniers OMI") in the Bouches-du-Rhône province in the South of France.

Firstly, Mr. Natalenic provided a general overview of French immigration legislation. France, like the majority of countries in Europe, has restrictive legislation on immigration. In particular, after 1974, a temporary work permit was only given to seasonal workers who came to France for a period of six to eight months to be employed in the agricultural sector. A convention was signed with three countries, namely Poland,

Morocco and Tunisia, which every year send a certain number of workers to France to be employed as seasonal workers in the countryside.¹

Secondly, Mr. Natalenic described CODETRAS, whose objective is to assure that “saisonniers OMI” (seasonal migrant workers) are guaranteed equal dignity, equal rights and respect for their work. In fact, seasonal workers experience a very difficult and discriminatory situation in which their rights are constantly violated and denied. In particular, as seasonal workers they do not have the right to residency in France beyond the length of their contract nor to the right to family reunification. They also do not have access to the pension system beyond the length of their contract, contrary to current legislative practices.

More in general, their specializations are not recognized and their salaries do not correspond to their work experience. Due to the total absence of recognized rights, seasonal workers are easily exploited by their employers who often do not pay them adequately and do not provide them with decent living conditions. Workers are relegated to silence because the renewal of their contract for the next season depends on their attitude towards their employers: if they dare to speak out against their employers they jeopardize their chances of being hired again. To be able to change employer from one year to the next, until recently a worker had to negotiate a “declaration of freedom” with their employer. This was not a formally recognized practice and not legalized but practiced throughout the French countryside.

Mr. Natalenic stated that the activities undertaken by the authorities are insufficient and their general behavior is lax. For this reason, CODRETAS fights to change this situation and to assure seasonal workers a permanent work and residence permit. In particular, CODRETAS undertakes the following activities and uses the following instruments to defend the rights of seasonal workers:

- Public demonstrations;
- Publication of brochures and other informative materials;
- Legal support in order to ensure workers who have pending legal cases in France the possibility to remain in France to directly follow their legal case;
- Awareness-raising initiatives amongst civil society and political parties about problems and discrimination faced by seasonal workers.

Pauline Doyle of the **British Transport and General Workers Union (T&G)** was the keynote speaker in the morning mixed-language workshop.

¹ As a consequence of this convention, offices of the O.M.I (Office des Migrations Internationales) have been set up in the capitals of Poland, Morocco and Tunisia to ensure the control and sending of workers to France. For this reason, these workers are also called “saisonniers OMI”.

Her presentation focused on the T&G's activities to help and protect migrant workers in the food industry sector, and the union's efforts to encourage these workers to become members.

Ms. Doyle described the difficult conditions of migrant workers employed in the food sector, where they are consistently exploited, working for long hours without receiving the minimum wage, and living in poor and cramped accommodations. Moreover, many immigrants in the food industry lack the necessary work permits. A substantial amount of gangmasters are involved in the business of frauding documents and there is a general lack of control of these practices. As such, in many cases migrant workers employed in the food sector are both victims of exploitation and of organised crime.

In order to provide a solution to this situation and to change the public policy environment, the T&G encouraged the preparation and acceptance of the Gangmasters Licensing Act, whose objective is to regulate gangmasters to tackle the exploitation of workers. Through this act, the T&G aimed to change the government's attitude, which focused on efforts to punish workers for being employed illegally rather than sanctioning employers who exploited and abused workers.

The campaign started in the food sector, because this is a big industry where T&G has a lot of evidence and strong track record. This was a strategic decision, and other sectors can profit from the success. More in particular, the T&G underlined that it what the campaign was focusing on was an exploitation issue, not a migration issue. This kind of message allowed the T&G to engage in policy measures across the policy agenda to the top of the government, because public opinion is not in favour of migration issues.

The Gangmasters Licensing Act was adopted in 2006, thanks to the efforts of the coalition composed by farm workers, unions, supermarkets and NGOs, and to the positive support of the Farming, Immigration and Pension Ministers. The act provides a definition of gangmasters, employers and employees. Gangmasters need licences and therefore public registration, in this way the whole chain becomes responsible and in case of non-compliance the penalty consists of ten years of imprisonment. An inspection system has been created to control the application of the act and consequently, starting from Fall 2006, gangmasters who are working without licenses are liable to go to jail.

Ms. Doyle ended her presentation affirming that as a union, the T&G is still not satisfied with the level of organization of workers in the food industry and hopes to increase its importance and visibility among migrant workers in order to better protect their rights.

Discussion - Workshop Sessions

The morning workshop sessions were moderated by Nele Verbruggen (Migration Policy Group), Didier Vanderslycke (Organisatie voor Clandestiene Arbeidsmigranten -

OR.C.A.), and Yongmi Schibel (Migration Policy Group). Moderators invited participants to describe their particular experiences and the situations in their countries regarding the following issues:

1. Data collection and research as a methodology to improve the protection of the undocumented workers: What are the challenges? How is data on undocumented workers organized - on a collective or individual basis? What is the legal definition and consideration of undocumented workers in databases - are they defined such as illegal, foreigners, not included, etc.?
2. Labor inspectors: What is the relationship between NGOs and trade unions with the labor inspection in various countries in Europe? How should the labor inspection be involved in protecting undocumented workers?

The following two sections highlight some of the main themes that were discussed in the morning workshop sessions.

Collecting Data

- NGOs need hard facts in order to be convincing. In this sense NGOs should collect data and bat states on the head with numbers and facts. Some examples of advantages of hard facts were provided. Research data enable policymakers to realize that the majority of undocumented migrants may have been documented at one point, that very few undocumented migrants understood the process of how they became undocumented, and that the major irregularity comes from the bureaucratic procedure. An example was given of a project undertaken by the Immigrant Council of Ireland to educate concerned agencies about roads into illegality. This example shows how it is possible to undertake cooperation with official enforcement agencies to combat the lack of knowledge and myths about how people end up in illegality.
- Tools are needed for NGOs to know how to do research. In this light, a suggestion was made to create a website containing practical tips on how to gather and collect data, such as different formats to present the data, issues on which to collect data, etc.
- It is important to involve undocumented migrants themselves, to empower them to become actors of change and to make them visible. For this reason, the Commission for Filipino Migrant Workers in the Netherlands uses the methodology of a Forum Theater, in which the audience is invited to participate in the plays suggesting ways to deal with the situation, as an instrument to increase migrants' visibility.

- It is important to frame the research in such a way that it appeals to a large audience composed not only of governments and that it can lead to concrete change. It was underlined that it could be more beneficial to do research on labor exploitation than on the human rights abuses of undocumented migrants, because this would enable deeper cooperation with trade unions.
- It is important to target the right audience with actions, and go beyond the idea that the central government is the target of campaigns. Consumers and supermarkets can also be the target of actions.
- NGOs can benefit from collecting data by having the possibility of mapping out the terrain in which they are working, and consequently, having increased capability of strategizing. In addition, NGOs always have to consider how research can benefit undocumented migrants. For this reason, it should always be communicated to undocumented migrants that information is necessary to denounce problems but that the research may not have an effect on their particular situation in the short term.
- Throughout Europe, there are no national-based systems that allow for collecting data and information on undocumented migrants. Data are collected on the regional and local levels by NGOs, trade unions, and other actors; consequently some areas have more valuable and well-organized data than others. Spain is an exception, in that all migrants, both documented and undocumented, are encouraged to enroll in public registers in order to have access to health care services that are guaranteed for everyone that is registered. For this reason, data concerning the number of undocumented workers in Spain is quite precise and it is possible to calculate their numbers in a realistic way.
- The experience of unions and NGOs in the United States has shown that regulation raises standards, because employers know they are being checked. Research has to be carried out concerning policy issues. Workers have a lot of information and if they are empowered and organized, they can transmit this information to researchers and activists. There is also the question about who gets the information and how it is used. Unions have a good model, of using one worker's case all the way to policy levels.
- The collection of data on the federal level in Switzerland has different objectives, such as to find out who are undocumented people and to try to legalize them. Information present in the canton of Geneva has to be submitted to a political level. The collection has been done by Caritas, trade unions, etc. Protection of information is necessary in order to avoid misuse of data.

- A regularization campaign was organized in Belgium in 2000, based on four arguments that could be used for regularization, one being “integration in society.” Through this campaign a huge amount of data was collected but this information is not used due to the fear that the decisions will be reconsidered. A similar situation is present in all European countries and consequently a mass of information about undocumented migrants is not adequately used in the EU. The political agenda should contain an awareness raising strategy to give a better picture of the realities of undocumented migrants.
- PICUM underlined that organizations have a lot of information that can be shared with governments in a strategic way, to influence policies that affect undocumented migrants. Currently, PICUM is working on a template that can be used to report about access to health care for undocumented migrants in different countries in Europe. PICUM works on data collection but also on the way to report this information.
- Often the state is not interested in data because then they have to do something with it, and support groups are often reluctant to give data because they are afraid it will be misused. Therefore support groups have to collect data in a strategic way: what do we want to know? How do we use the data?
- We have to bear in mind our strategic interest, to bring undocumented workers out of illegality, and to work together with unions, local authorities and workers themselves to reach common objectives, such as to prevent the development of an underclass society. One participant raised the issue of what type of social model we are aiming for: e.g. a society like in Scandinavia, which is known for its social welfare system but where undocumented migrants are invisible due to their lack of documentation, versus a society like that found in a number of countries in Southern Europe, where undocumented migrants generally have access to certain social services such as health care and education, and can join trade unions?

Establishing Constructive Relations with Labor Inspection

- In some EU countries (Ireland and Belgium were given as examples by some participants), the labor inspectorate has very limited resources, making their work a token exercise.
- Workplace inspections should be increased, and controls should be about working conditions and not about migration status. This will shift the focus away from border controls, which are ineffective and portray undocumented workers as lawbreakers.
- The labor inspectorate should be trained and sensitized to deal with undocumented workers as victims. In this sense a very good experience is that of the Migrant Rights

Centre in Ireland that has contacts with labor inspectorate to teach them to cope with undocumented workers as victims.

- Labor inspection should focus on their mission of protecting workers and any intervention should not lead to deportation.
- One participant stressed that it is crucial not to deal with labor inspectorate in an isolated way. It is important at the same time to advocate for changes in migration policy in general. It is unrealistic to think that when migration policies continue to be more restrictive, that you will manage to have good sustainable work relations with labor inspectorate.
- The French organization CODETRAS cooperates with the labor inspection, which shares a common objective of protecting of the undocumented workers. However, the restricted number of inspectors constitutes a serious limit of this collaboration.
- A general observation is that proficient collaboration with labor inspection still largely depends on the attitudes of individual labor inspectors. Consequently, good collaboration in many cases is arbitrary. All participants underlined the necessity of establishing a policy to change the existing situation and to be able to create formalized cooperation with labor inspection officials.
- The quality of labour inspection depends on its organisation. Some participants said that in the UK and in Sweden, there is a roaring safety inspection whose numbers are publicised. Unions have the task of labour protection which has an excellent effect. But in other countries (such as in the Baltic States, for instance) labour protection is in private hands which has rather negative effects. In Germany and France, labour protection is a shared responsibility of unions and the state together. In general one can say that the stronger the unions are involved the better the labour protection and integration.
- In Ireland there are only thirty labour inspectors for the whole country so there is a low risk to get discovered. The enforcement culture in various European countries is very different and in some countries the labour movement will have difficulties in getting enforcement for undocumented workers.
- One participant mentioned that in Belgium labor inspectors are quite supportive and do not denounce undocumented workers when they fill a complaint. On the other hand, they are understaffed; they cannot make an inspection if it is urgent and they are not very experienced with undocumented workers because they usually deal with legal workers. The biggest problem is that if they find out during an inspection that a worker is undocumented, they are obliged to call the police. So they are usually only called when the undocumented worker stops working. In cases where

the undocumented worker is deported, it is almost impossible to get his/her last salary.

- The question of a labor inspector's duty to report the worker's irregular migration status to the police was also raised. Participants in one workshop remarked the following:
 - In Spain, in general, labor inspectors collaborate with organizations and with trade unions without being obliged to denounce undocumented workers to the police;
 - In France, labor inspection is not legally obliged to denounce undocumented workers but it could happen;
 - In Italy, labor inspection does not denounce irregular workers but the police can accompany the inspectors to control the workplace;
 - In Switzerland there is not a legally binding relationship between the labor inspection and the police, but the tendencies in this sense are constantly growing.
- In Los Angeles, U.S.A., there is a new organisation called the "Industrial Maintenance Fund," an oversight group which is funded by employers. It is a scientific, objective fund that can do research and has a relationship with the government and courts; consequently when they bring a case, it has a lot of weight.

Part II:

Organizing and empowering workers Mediation with the employer Legal strategies to address exploitation and abuse

Keynote Speakers - Plenary Session

Catelene Passchier of the **European Trade Union Confederation** outlined the main themes of the afternoon plenary session, respectively the organization and empowerment of undocumented workers, and using mediation with the employer and legal strategies to address exploitation and abuse.

Valery Alzaga of the **Service Employees International Union (SEIU)** described the situation of unions in the United States. In the past, unions had a lot of power. On the contrary, unions have nowadays lost their capacity to fight and consequently their capacity to attract members. In the U.S., unions are getting weak while at the same time the service sector is employing more immigrants, especially in the cleaning sector. In this context, SEIU fights to defend the rights of undocumented workers, to prevent their exploitation and to assure them humane working and living conditions. SEIU

concentrates its activities especially in three main sectors: health care, public sector and property services.

Ms. Alzaga presented the successful results of the Justice for Janitors campaign which was organized in order to fight the exploitation of cleaners. One of the main problems of the cleaning sector is the growing practice of the use of sub-contracting in which it is difficult and sometimes even impossible to determine the real identity of the employer. In addition, a large percentage of janitors in the U.S. are undocumented workers from Latin America, who due to their irregular situation are frequently exploited and badly paid.

Through the Justice for Janitors campaign the SEIU adopted a comprehensive approach of putting pressure on sub-contractors and using the media in a different way, by making the workers the messengers. The SEIU also acted on the community and political level and in this way, created a huge movement around janitors, in order to emphasize and clarify the concept that the lack of protection of undocumented workers led to the lack of protection of all workers.

During her presentation, Ms. Alzaga showed a short video about the Justice for Janitors campaign in order to give the opportunity to have a clear view on the campaign and SEIU's objectives, concentrating on the fight against poverty and social exclusion.

The results of the Justice for Janitors campaign were very successful and can be used as a model to follow in order to protect undocumented workers in other sectors. Cleaners obtained a 23% raise in salaries and consequently had substantial improvement of their living conditions.

Ms. Alzaga concluded her presentation with a description of SEIU's current activities in Europe. A similar defense of the janitors' rights campaign has been organized in the UK with positive results: the SEIU has been able to obtain the first contract for janitors in the House of Parliament.

Ms. Alzaga made her final reflections on the change of unions, deeply transformed by the change incurred in their membership and especially through the access of migrant workers. The objectives of unions in era of globalization are to understand new challenges and to provide an answer to these, to consider migrants not as victims but as political actors and to continue to broaden the social justice movement.

Federico Pacheco, the second speaker in the afternoon plenary session, is a member of the Spanish **Sindicato de los Obreros del Campo – SOC** (The Farmworkers' Union), an organization of workers whose aim is to protect all workers, both documented as well as undocumented.

Mr. Pacheco discussed the situation in Spain concerning undocumented workers. Spanish legislation on immigration does not differ so much from other European countries and consequently is quite repressive. More in particular, in the regions of Almeria and Andalusia, there is a phenomenon of stratification of the working class, in which every level is entitled to less rights and in which the last level is composed by undocumented workers.

The SOC encourages and favors the organization of workers who have to organize and to defend their rights. In particular, the SOC aims to:

- Inform undocumented workers about their rights;
- Unionize undocumented workers;
- Raise awareness amongst undocumented workers about their situation;
- Present individual cases that can be used by others as didactic models.

Mr. Pacheco stated that labor inspectors are not the right partners to collaborate with to defend undocumented migrants because they often collaborate with the police and they can denounce irregular workers. In this perspective, a more rational way to protect undocumented workers' rights is constituted by mediation with the employer, which in many cases achieves positive results. Mediation represents a direct way to defend workers and to make them less afraid about their possibility of defending their rights. However, mediation requires a prior training of workers, who should be informed not only about their rights but also about the actions to take in order to defend these rights.

Mr. Pacheco concluded his presentation by affirming that the SOC's objective in the long term is to promote the organization and mobilization of all workers, be they native, documented or undocumented.

Marco Paggi of the **Associazione per gli Studi Giuridici sull'Immigrazione - ASGI** (Immigration Legal Studies Association), closed the afternoon plenary session by describing the legal situation of undocumented migrants in Italy.

The growing number of irregular immigrants in Italy is a consequence of perverse legislation, which generates workers with irregular status. In fact, following Italian legislation based on the quota system, foreign workers can arrive in Italy only after having found a job. In reality, all foreign workers come to Italy without a job, they start to work as undocumented and only during a regularization campaign do they have a chance of becoming registered and recognized as legal workers. However, there are few quotas and too many requests for registration, consequently a great number of undocumented workers are unable to become registered and are obliged to remain with irregular status in Italy. During the last regularization campaign, which started on 14 March 2006, approximately 500,000 undocumented migrants submitted a request for registration for approximately 170,000 available places. In such situations it is clear that

the Italian government is responsible for maintaining undocumented migrants on its territory by not elaborating a rational quota system and by not allowing all workers to be registered. Practically, during past regularization campaigns, the government recognized the breach of law by registering people who arrived in Italy not following the planned schema indicated by the legislation.

In such situations of irregularity and exploitation of undocumented workers, it is not very straightforward to grant these workers protection, even if according to the 1942 Italian Civil Code undocumented workers have the right to a guaranteed salary and can have access to social security in case of illness and accidents. In reality, the protection of undocumented workers is entrusted to few actors, such as:

- Trade unions (even if due to the lack of coordination among trade unions the protection of undocumented workers is not always guaranteed);
- Voluntary associations;
- Juridical associations such as ASGI, whose aim is to provide training for trade unions and other associations to assist and to protect the rights of undocumented workers.

On the contrary, labor inspection does not provide any kind of protection to undocumented workers and because of its collaboration with the police it can lead to the expulsion of irregular workers. From a legal point of view, labor inspection is not obliged to collaborate with the police and to communicate to them the presence of undocumented workers, nevertheless from a practical point of view even if an undocumented worker makes a spontaneous denunciation of his/her exploitation, the labor inspection accepts this denunciation only after having called the police.

Italian legislation lacks an ad hoc system for the protection of undocumented workers. Protection is assured only by Article 18 of the so-called law “Testo Unico sull’Immigrazione” that assures protection to victims of human trafficking, and by Law 228/2003 on slavery. However, both of these laws assure protection to undocumented migrants only in specific cases and only under certain circumstances:

- Under Article 18 residence permits are issued to victims of prostitution and of human trafficking only once the criminal nature of the exploitation is demonstrated. However, it is not always easy to demonstrate the criminal nature, and for this reason residence permits are sometimes issued for judicial reasons, in order to allow people who have a legal case in Italy to directly follow the developments of the case.
- The new Law 228/2003 changed the previous legislation contained in Article 600 of the Italian Penal Code on slavery. The new law introduces a new category of slavery, the so-called “subservience” in cases of extreme work exploitation. This

law should protect the rights of undocumented workers, recognize them as “subservient” and provide them with financial assistance through the financial measures associated to that legal provision. However, the subservience condition is very difficult to demonstrate during a case because it should be demonstrated that the employer constantly and continually exploited the worker. Furthermore, to have concrete proof in this sense is very complicated.

The brief discussion that followed the keynote speeches focused on the role of trade unions and on the necessity of better communication between unions and employers. In addition, a description of the difference in the organization of trade unions in Europe and in the United States was provided, focusing on the different approaches to deal with or to fight against multinationals.

Keynote Speakers - Workshop Sessions

Elisa Escobar of the Swiss organization **Collectif des travailleurs/euses sans statut légal - Genève** (Geneva Collective of Undocumented Workers) was the keynote speaker in the afternoon French-language workshop session. Ms. Escobar’s presentation focused on Swiss legislation regarding undocumented workers and the activities of her organization.

Switzerland is a federalist country in which a great part of competencies are exercised at the level of the cantons. However, immigration and asylum are national policies and this constitutes a problem because of the lack of coordination among the cantons on this issue. Consequently, the protection of migrant workers is not always assured and much progress still has to be reached. In this context, Geneva and the **Collectif des travailleurs/euses sans statut légal** are a pleasant exception.

The organization is currently composed of approximately twenty active members, the majority of whom are Latin American women employed as domestic workers. The main aims of the organization are to prevent the exploitation of undocumented workers, to favor collective regularization, and to identify and support undocumented workers.

The keynote speakers in the afternoon mixed-languages workshop were **Hervé Gouyer** of the **Collectif de défense des travailleurs étrangers dans l’agriculture - CODRETAS** (Collective to Defend Seasonal Migrant Farmworkers) and **Shivaun Scanlan** of the **OSCE/ODIHR - Organization for Security and Cooperation in Europe / Office for Democratic Institutions and Human Rights**.

Mr. Gouyer focused on the situation of seasonal workers in France and on the activities of CODETRAS. The main objective of CODETRAS is to defend the rights of seasonal workers by preventing and avoiding their exploitation. For this reason, CODETRAS fights legal battles in order to abolish the form of “modern slavery” that affects seasonal

workers in France. CODETRAS tries to obtain residence permits for seasonal workers who are unable to work due to a workplace accident. In addition, CODETRAS aims to protect workers by assisting them in their fight to obtain the right salary, decent living conditions and avoiding forced labor.

Ms. Scanlan described ODIHR's activities in the anti-trafficking sector. ODIHR has been active in anti-trafficking since 1998. Its current activities focus on strengthening protection of trafficked persons and vulnerable groups in situations both of labor and sexual exploitation through support to national referral mechanisms responsible for developing human rights centered policies and practices on trafficking; improving strategies permitting the identification of trafficked persons by raising awareness in gaps in identification models; strengthening trafficked persons' access to remedies and rights by raising awareness of rights amongst exploited persons and strengthening linkages to protections available to other groups such as migrant workers.

The purpose of Ms. Scanlan's intervention was to make a plea to all present that the protections and discourse around protecting migrant workers must be heard both by the associations working on trafficking and by those working on the protection of migrants. Partnerships need to be created and resources need to be shared in order to better protect migrants from exploitation and abuse. She affirmed that supporting the initiatives designed to protect migrant workers would have a very beneficial effect also for the protection of trafficked persons, since in many cases migrant workers and trafficked persons are the same individuals.

OSCE/ODHIR searches to promote the protection of trafficked people's rights by promoting immigration-related solutions such as residence permits and by promoting access to remedies and compensation. In this light, one of the greatest difficulties that OSCE/ODHIR has to face is represented by the difficulty defining clearly who is a trafficked person, given the hard subdivision among trafficked people, forced laborers and exploited migrants.

The keynote speakers in the afternoon English-language workshop were **Sean Bamford** of the **Trade Union Congress (TUC)** and **Katrien De Puydt** of the **Organisatie voor Clandestiene Arbeidsmigranten - O.R.C.A.** (Organization for Undocumented Migrant Workers).

Mr. Bamford highlighted ways in which trade unions could better organize undocumented workers, guaranteeing them enforceable employment rights and avoiding their exploitation.

As Mr. Bamford affirmed, undocumented workers and (legal) migrant workers share the same problems and difficulties such as a lack of linguistic skills, lack of knowledge of employment rights, and lack of enforcement and overall mechanisms in general. In

addition, undocumented and migrant workers work in sectors that are difficult to organize, such as agriculture and domestic services. However, the situation of undocumented workers is more complicated than that of migrant workers, as the former are more vulnerable to exploitation having payment below minimum wages, no paid holidays, no tax reductions and no written contract. Undocumented workers are obliged to work for long working hours suffering unlawful deductions from pay in an environment in which health and safety conditions are ignored. Moreover, undocumented workers are often forced to stay with their employer, especially in cases of trafficked workers, and work and live in the constant fear of being removed. Undocumented workers often work alongside migrant workers. They can be used by employers to limit demands of documented workers.

Trade unions have many difficulties to deal with and to protect undocumented workers' rights, given the irregular status of these workers and the declining resources of the unions themselves. Trade unions in the UK cover 25% of the workforce, but 60% of organized labor is working in the public sector, whereas 20% is working in the private sector. For them it is difficult to reach undocumented workers, because of the language, the culture of illegality of some employers who leave businesses with great debts, and the rules of the union (no individual services in the first six months of membership). For this reason, Mr. Bamford suggested ways in which unions can reach undocumented workers:

- Using migrant workers as organizers;
- Disseminating information about workers' rights in different languages;
- Working with associations of workers (for instance the Portuguese-speaking or Polish community in the UK);
- Working with NGOs;
- Working with unions in sending countries.

Ms. De Puydt described the mission of OR.C.A., a new organization in Belgium whose aim is to support undocumented workers. OR.C.A. has a help desk to develop more expertise about solutions to actual problems of undocumented workers. For this reason, OR.C.A. works together with other organizations as well as labor inspection and trade unions.

In Belgium, undocumented workers have the same rights to minimum wages and protection against workplace accidents as documented workers. In order to inform undocumented workers and organizations defending their rights, OR.C.A. organizes training sessions for community leaders and NGOs. OR.C.A. is also preparing a legal guide for undocumented migrants, in which workers' rights are described in four different languages, and where the worker can register his/her working hours and information about his/her employer.

Problems most undocumented workers face consist of the non-payment of wages and workplace accidents. In order to provide a solution to these problems, OR.C.A. tries to mediate with the employer, file complaints at the labor inspectorate, and is looking for a specific case to take to court, since all labor regulations also apply to undocumented workers but so far have not tried out in practice.

Discussion - Workshop Sessions

The afternoon workshop sessions were moderated by Katrin Hugendubel (Solidar), Serge Ducrocq (social worker), and Johan Wets (Higher institute for labor studies - HIVA). Moderators invited participants to describe their particular experiences and the situations in their countries regarding some of the following issues:

1. How can undocumented workers organize and increase their participation within an organization?
2. What are some strategies for reaching undocumented workers?
3. What kinds of experience exist concerning mediation with the employer?
4. What legal instruments exist to combat and prevent exploitation?

The following two sections highlight some of the main themes that were discussed in the afternoon workshop sessions.

Organizing and Empowering Undocumented Workers

- Precariousness and instability are the most dangerous enemies to fight in order to encourage the participation of undocumented workers in activities of various organizations. In fact, in many cases it is easier to organize workers who have been in a country for a long time than workers who have just arrived.
- In order to increase the organization of undocumented workers it is important to encourage their registration and participation in unions, especially for domestic workers who are often segregated and cannot easily communicate and collaborate with other workers.
- One participant highlighted that in Italy, migrants' rights organizations often collaborate with trade unions, even if this cooperation is not continuous and formalized. In fact, organizations frequently decide to cooperate with trade unions only in order to have access to their expertise and to their services and not because they really want to create political collaboration with them. On the other hand, independently of the real nature of this collaboration, some results have been achieved, such as for example the first migrants' strike, held in Vicenza in 2002. In addition, it is important to underline that in Italy undocumented workers'

organizations are few and organized on a temporary basis and not on a formal and permanent one.

- In some cases churches and religious groups can constitute a form of grouping and organization of undocumented workers.
- Organization of workers is fundamental and makes them aware of the legal tools that they can use in order to protect their rights. Migrants have to mobilize themselves and collaborate with trade unions.
- Unfortunately, there are not yet political organizations that defend undocumented migrants' rights. This sector is still organized on an individual basis and there is the necessity of stronger involvement by trade unions in this sector.
- Unions should have a more pragmatic approach and start with organizing instead of offering membership to workers.
- The example of the British association Kalayaan was quoted as successful. Kalayaan has organized approximately 4,000 domestic workers of 42 nationalities in the UK. They managed to get the immigration law changed, so that dependent migrant domestic workers could free themselves from their employer. The domestic workers became members of the union (T&G) and got a membership card, which was useful to them as an ID card as well.
- Participants underlined the growing necessity to negotiate with religious leaders, who constitute an influential part of the community.
- The British model of organizing is based on sectors, as for instance the health care sector, which is increasingly dependant on migrant workers. The British T&G union does not ask for the status of people when they join the organization. That is a very good example that other unions have to follow because often workers did not join unions simply because they were worried about their status.
- Unions should represent all workers and in particular the most vulnerable ones, migrant workers. Strategic actions are needed in order to organize together, across communities and skills, both documented and undocumented workers.
- The importance of organizing across countries, on a multi-national level, was also underlined.

Using Mediation with the Employer and Legal Strategies to Address Exploitation and Abuse

- Regarding the legal instruments that exist in European countries in order to prevent and to combat the exploitation of undocumented workers, a useful presentation of the Italian situation was made by Marco Paggi of the Associazione Studi Giuridici sull'Immigrazione. In Italy there are two different procedures in order to protect the rights of exploited undocumented workers:
 1. According to the first procedure, an undocumented worker who has not been paid can start a legal case against his/her employer. During the process s/he can be represented by a lawyer or by a trade unionist, eliminating the necessity for the worker to remain in Italy while the case is pending. However, this procedure is not very favorable for undocumented workers because of the lengthy procedures, which in some cases can come to an end only after several years.
 2. The second procedure to defend the rights of exploited undocumented workers is to start a so-called “enslavement process” in which the employer is accused of having enslaved the worker obliging her/him to work in inhumane conditions. Theoretically, this procedure could offer good protection to the worker, however given its newness and the lack of a consistent jurisprudence, it is not so frequently used in cases of exploitation of undocumented workers.
 - Both undocumented workers and trafficked people are victims of criminal activities such as exploitation and abuse and both groups have the right to claim for damages.
 - Belgian law contains a good legal framework concerning workplace accidents, according to that the employer has to take insurance for these accidents. This insurance covers all workplace accidents if one of the workers is registered and a fund exists for cases in which no worker has been registered. This means that all undocumented workers can ask for compensation for workplace accidents.
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Final Remarks

In the final part of the conference, **Michele LeVoy** of **PICUM** stated PICUM's intention to develop training models for NGOs and unions to give arguments and highlighting ways to defend undocumented workers' rights. A Spanish version of PICUM's report *Ten Ways to Protect Undocumented Workers* will be available soon, and other language versions will depend on funding. She underlined that PICUM will continue to report on policy trends and cases concerning undocumented workers in its monthly newsletter.

She concluded by indicating that PICUM hopes to widen its network on the issue of protecting undocumented workers and hopes to have more proficient and effective collaboration with new EU Member States, particularly from Central and Eastern Europe.

Ms. Catelene Passchier of the **ETUC** made a general reflection on the changing role of the trade union movement and organization. She described the growing involvement of the ETUC in the debate on undocumented workers and on an EU migration policy. She reiterated that unions should perhaps rethink their strategies about organizing workers, particularly those who are undocumented, since if unions want to survive they have to protect insiders and also outsiders. Unions have to regain territory and one way of dealing with undocumented workers is by going back to basics. Organizing is hard work but maybe some unions have forgotten how to do it.

What will you do to promote the protection of undocumented workers when you go home?

To stimulate the transfer of lessons learned during the conference to the various entities represented – NGOs, unions, community organizations, governmental bodies, research institutes, media, and others - PICUM invited participants to identify one or more concrete actions they could take to protect undocumented workers when returning to their own contexts.

The following are some of the responses made by participants. The various actions listed below demonstrate that there is a diversity of ways in which all actors can be involved in promoting the protection of undocumented workers:

- I will inform about local and seasonal food, to understand the effects of supermarkets on the local and migrant workforce; I will also find out about research strategies and how to link the outcomes to have an effect.
- Continue the work of my organization, OR.C.A., the Organization for Undocumented Migrant Workers! Also, look into the options of organizing workers and engaging in collective mediation, as for example what has been demonstrated by the U.S. union SEIU.
- Do a piece of research on routes into undocumented status to inform policy makers and government officials; make better and stronger links with trade unions so as to target the exploitation of migrant workers both documented and undocumented in various sectors, most particularly domestic home, agro-food, construction and hotel

catering; finally, dialogue and mediate with government on the regularization of undocumented workers on an individual basis.

- Work on a campaign within my organization combating xenophobia and produce a publication for the campaign; participate in the creation of an alternative workers' association that will raise the topic of organizing precariously employed people, including undocumented workers; organize an event around the September 2006 EU summit meeting in Finland, where ministers of the interior and justice will meet and plan measures that will have negative effects on migrants and precarious workers' rights.
- Write my master's thesis on the way Filipino domestic workers communicate with their families, to work on how to create a sense of socio-cultural community abroad and to contribute to the economy and society of the Netherlands.
- Start organizing on the grassroots level.
- Engage in the public debate on this issue, through feature articles in major newspapers and by arranging seminars to raise public awareness.
- Conduct policy-oriented research.
- Make use of existing legal instruments in certain countries to inspire the optimization of existing measures to protect undocumented workers in Liege, Belgium; provide organizations and actors in Liege with information about this conference, its main achievements and results; analyze the adequacy of proposed policies to the specific needs of undocumented migrants.
- The protection of undocumented workers is already part of my organization's work, but it should get a stronger emphasis. We would like to share information about the protection of undocumented workers with core organizations in developing countries, to inform them about the poor living conditions of migrants in Europe and about their need to obtain a permit of work in order to obtain a legal status to remain in the country.