



PLATFORM FOR INTERNATIONAL COOPERATION ON UNDOCUMENTED MIGRANTS

and



Undocumented Migrants Have Rights! Workshop on Protection and Gaps Under the International Human Rights Framework

Brussels, March 30, 2007

Workshop Report

The **Platform for International Cooperation on Undocumented Migrants (PICUM)** and **Migrants Rights International (MRI)** jointly held a workshop on the international human rights framework and its application to undocumented migrants on 30 March 2007 in Brussels, Belgium.

More than 80 representatives of NGOs, trade unions, governmental bodies, researchers, and other actors shared experiences and ideas about how to protect undocumented migrants' human rights. This report is an overview of the contributions made by keynote speakers in the plenary sessions and the main themes highlighted during the discussions in the workshop sessions.

Welcome and Introduction

Don Flynn, PICUM Chair / United Kingdom welcomed the workshop participants and gave a short introduction. He explained that the two hosting organisations PICUM and MRI had met in Geneva last year and subsequently had engaged in intensive discussions on the human rights situation of undocumented migrants. He pointed out the global relevance of the issue of undocumented migrants' human rights and the reality of their permanent violation and said that it can be observed that the rights of all migrant workers are being increasingly denied and that a person

is increasingly only permitted to stay in a country for the duration of his/her working contract.

Cathi Tactaquin, Migrants Rights International (MRI) and National Network for Immigrant and Refugee Rights (NNIRR) / United States, welcomed the workshop participants on behalf of MRI. She explained that the MRI steering committee had been meeting earlier that week at PICUM's office in Brussels where it had made preparations for the Global Forum on Migration and Development that will be taking place in July 2007 in Brussels. She further explained that the aim of MRI steering committee is to raise awareness for the need for a rights-based approach to migration among civil society organizations. This steering committee is also working to make the voices of migrants heard in July when governments will meet in Brussels for the Global Forum on Migration and Development hosted by the Belgian government.

Ms. Tactaquin briefly recalled the history of MRI and highlighted that the ratification of the UN Convention on Migrant Workers' Rights has been one of MRI's main concerns. MRI was happy to see the convention enter into force in 2003. However, up until today the convention has only been ratified by 36 countries, none of them a "migrant-receiving" country.

She went on to report that MRI is currently undergoing a transition process. It is at the moment stationed in Geneva but is about to move its headquarters to Manila, Philippines, where the Global Forum on Migration and Development 2008 will take place. Ms. Tactaquin expressed MRI's wish to enhance engaging relationships with many of PICUM's member organisations and with the participants at the workshop, and to establish and enhance its international network.



Part I - Plenary Session:
Presentation of PICUM's report:
Undocumented Migrants Have Rights!
An Overview of the International Human Rights Framework

After making a brief introduction to PICUM, a network of mainly grassroots organisations that work directly with undocumented migrants throughout Europe, **Michele LeVoy, Director of PICUM**, went on to present PICUM's publication *Undocumented Migrants Have Rights! An Overview of the International Human Rights Framework*.

She started off by making some remarks on terminology. She reported of her recurrent experience of having to explain to persons active in migration policy – especially government representatives – why they should not use the term “illegal migrants”. She explained that the term "illegal" produces associations with criminality and denies undocumented migrants' humanity. It can thus jeopardize asylum claims and is contradictory to our aims as it is de-legitimizes the claims of undocumented migrants. Ms. LeVoy went on to state that the term “illegal migrant” is, furthermore, not recognized in international human rights law. The UN conventions as well as the ILO and the Council of Europe instruments speak of "irregular" or of "undocumented migrants", and the UN General Assembly in its resolution “Measures to ensure the human rights of all migrant workers” of 1975 specified the terminology “non-documented or irregular migrant workers”.

Michele LeVoy then made a few preliminary remarks to create a common knowledge of what is meant by “human rights”. Usually people refer to the seven core human rights instruments combined in the United Nations International Bill of Human Rights. In addition to this other main human rights instruments that are either thematic or deal with the protection of a specific group are: the International Convention on the Elimination of All Forms of Racial Discrimination of 1965, the Convention on the Elimination of All Forms of Discrimination Against Women of 1979, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, the Convention on the Rights of the Child of 1989, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990. Ms. LeVoy then singled out the principle of non-discrimination as a key element of international human rights law. Non-discrimination, equality before the law and equal protection of the law without discrimination are basic and general principles relating to the protection of human rights. The principle of non-discrimination means that any differences in the treatment meted out to migrants must conform to international law and must not breach migrants' internationally recognized human rights.

After these more general remarks, Ms. LeVoy talked in depth about the International Convention on the Protection of the Rights of All Migrant Workers and Members of

Their Families and the rights of undocumented migrant workers that can be deduced from it. Part III of this convention reiterates that fundamental civil and political rights and economic and social rights apply to all migrants. However, no EU member state, the United States, Canada nor Australia - in short no major so-called immigrant "receiving" countries - have hitherto ratified the convention.

Ms. LeVoy then turned to the subject of undocumented migrants' rights in non-binding UN instruments. Even though these instruments are not legally binding, she noted, they would have an undeniable moral force and provide practical guidance to states in their conduct. As examples for such UN instruments she mentioned the resolution of the UN General Assembly on the Protection of Migrants of 2004, and the Special Procedures assumed by the Human Rights Council with the introduction of the Special Rapporteurs on Migrants, Torture, Housing, Food, etc.

Apart from the UN, the International Labour Organisation (ILO) is another key international institution in the field of migrant workers' rights . Ms. LeVoy referred especially to Part 1 of the ILO Convention on Migrant Workers from 1975, and the ILO Multilateral Framework on Labour Migration. She explained that the ILO is now advocating for the independence of labour and residence rights, which had been underscored in the ILO Convention on Migrant Workers.

European instruments on human rights concerning undocumented migrants have been framed by the Council of Europe, Ms. LeVoy went on to report. In this context she mentioned the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and the European Social Charter and Additional Protocols revised in 1996. This latter would explicitly exclude undocumented migrants, however, the European Court of Human Rights stated in a ruling in 2003 against France that the limitation of access to health care for children of undocumented migrants is a violation of Article 14 and 17 of the charter, which deal with the protection and assistance to children and young persons.

A last EU instrument mentioned was the Charter of Fundamental Rights of the European Union. All articles in the charter apply to undocumented migrants unless it is specified otherwise. However, the charter has not been ratified and is thus not in force. Currently, EU migration policy focuses on border control and migration management, Ms. LeVoy said at the conclusion of her presentation, while little attention is given to the human rights of undocumented migrants.

Part II - Plenary Session:

How can a rights-based approach be used to bridge the gap between the international framework and the reality on the ground?

Examples of defending undocumented migrants' human rights in different regions of the world

Keynote Speakers

Asia

Pill Kyu Hwang, Visiting Academic at COMPAS /Attorney at Law, Korean Public Interest Lawyers Group GONG-GAM / Korea outlined the generally deficient human rights situation of migrants in Korea by citing the UN Human Rights Committee's concluding observations of 2006 and a statement by the UN Rapporteur on the human rights of migrants, which both refer to persistent discrimination and abuse and deplore legal shortcomings and the general vulnerability of migrants in Korea. Regarding the situation of the nearly 200,000 undocumented migrant workers in Korea, Mr. Pill Kyu Hwang pointed out their continued poor working conditions, wage discrimination and lack of access to legal justice.

Mr Pill Kyu Hwang explained that his organisation, the Korean Public Interest Lawyers Group GONGGAM, networks with other organisations in order to assure the respect of the human rights of migrant workers and undocumented migrants. In order to obtain this aim, they mobilise all human rights tactics, including legal representations of migrant workers at courts, drafting shadow reports and NGO briefings for the UN bodies, campaigning for the revision of the Immigration Control Act, doing field research with international and comparative law perspectives, organising advocacy and training workshops for migrants and NGO staff, and seeking international cooperation with Asian and international NGOs.

He went on to highlight special aspects of rights violations against undocumented migrants, beginning with a report of cases of arrest and search without legal ground resulting in serious injuries and deaths. Even though according to the Immigration Control Act the detention of an undocumented migrant requires a detention order which can only in very exceptional cases be issued on the spot ("urgent" detention order), 70% of detainees were not presented with any documents when they were arrested, while 100% of detainees were arrested through the "urgent" detention system. Surveys among detainees shows that gross rights violations, abuse and violence are very common during arrest and detention.

Mr Pill Kyu Hwang went on to report that law as well as court rulings do grant basic labour rights to undocumented migrants and formally protect them from

discrimination. However, the Immigration Control Act comprises the “duty to report” obliging every government official to report any breaches of this law and thus effectively prevents undocumented migrants from seeking legal remedies against unfair or discriminatory treatment, crimes or other human rights violations cases that victimized them. In the view of this, Mr Pill Kyu Hwang said that his priority is on the enforcement of undocumented migrants’ human rights. Only after this, the enforcement of labour rights can be tackled.

Referring to undocumented migrants’ access to social security, Mr Pill Kyu Hwang reported that undocumented migrants are only eligible for industrial accident compensation insurance while it is not clear if they are eligible for emergency medical services.

In a recent fire at the Yeosu Detention Centre, Mr Pill Kyu Hwang recounted that 10 detainees were killed and 18 more were severely injured. On 11 February 2007, neither the alarm system operated nor were there sprinklers installed. After some minutes, a couple of officials tried to put out the fire using portable fire extinguishers while leaving the cells locked. Some other officials supposed to be on duty were not present at the scene. After a one-month clandestine investigation, the Korean government arrested three low-level officials and condemned one of the deceased migrants for arson without presenting any material evidence. During the investigation, the Korean government simply ignored the families of the dead and injured, deported many of the detainees who survived although many had psychological problems, and is now forcing hospitals to discharge those injured.

At the end of his presentation Mr Pill Kyu Hwang gave an overview of the challenges and limitations of the struggle for undocumented migrants’ rights. Major challenges are in his view the government’s ignorance and denial of the rights of undocumented migrants, the courts’ reluctance to resort to international human rights laws, the misunderstanding or prejudice of the public against undocumented migrants, the disagreements and tensions among undocumented migrants and those intending to work in their support, and the lack of experts and the close relationship of the existing experts with NGOs.

As a closing remark to his presentation, Mr Pill Kyu Hwang summed up that undocumented migrants were first denied their rights, then their existence and finally their lives.



Mayan Villalba, Executive Director of UNLAD KABAYAN / Philippines, an organisation fighting migrant poverty in Asia, explained that ever since immigration laws have been implemented, there have been plenty of undocumented migrants in Asia. She also explained that because of some regional specifics, it is difficult to collect valid data on the number of migrant workers in Asia. Ms. Villalba gave two examples: Is a Philippine worker in Saba to be regarded a migrant worker? And is a Burmese worker in Thailand to be considered a migrant worker or a refugee?

Labour migration policy is very much alike in some Asian countries, notably in Korea, Japan, Singapore and Taiwan, MS. Villalba went on to explain. The Japanese legislation, for example, does not know migrant workers but speaks of guest workers. People are supposed to come to Japan for short-term training programmes and leave after this period has passed. In addition to this, the Japanese government is trying to return people of Japanese descent to Japan. This restrictive labour immigration policy produces a lot of undocumented migrant workers, because this short period is insufficient for people to even recuperate their expenses and thus they stay on after the termination of their contract. A very similar development can be noticed in Thailand.

In the fight for the rights of migrant workers in Asia, NGOs have been achieving many positive results, Ms. Villalba recalled. For example, three years ago in Korea, they achieved a change in legislation, which made it possible for migrant workers to stay on in Korea for more than a three-year-traineeship and earn higher wages. In

Japan and Taiwan legislation was changed so that labour standards now apply to migrant workers and nationals alike.

Undocumented migrants, however, face widespread discrimination and abuse, Ms. Villalba reported. People get arbitrarily arrested and even deported because they cannot produce valid papers, no matter if they actually do possess valid documents or not. Once arrested, they are not provided with an interpreter, do not get a trial, and are deported, sometimes without any provisions taken to serve their basic needs. The outcome concerning the migrant depends on sheer luck and the person in charge, Ms. Villalba explained. Some cases of arbitrary deportation are currently being tried at courts.

As only two Asian countries have ratified the UN Migrants Rights Convention as of yet, only they can be held accountable for their actions according to that convention, Ms. Villalba added. She held that a regularization lobby and advocacy has to be established; also the recruitment and employment of migrant workers must be tackled as an issue.

South America

Pablo Ceriani, Lawyer / Spain spoke about the human rights situation for undocumented migrants in Argentina. Argentina has been a country of destination of migrants from different regions since the 19th century. In the course of the past decades, migration has increased substantially, especially from neighbouring countries. The immigration laws in force until 2004 were still remnants of the military dictatorship, he explained. Under this regime, migrants had been regarded first and foremost as a threat to security and potential enemies, so the immigration law was deeply restrictive regarding migrants' rights.

During the economic decline in the 1990s, Mr. Ceriani went on to report, neither government politics nor the WTO but the migrants were held responsible for the developments by all sides of the political spectrum. The government reacted and conducted massive deportations of thousands of migrants each year. The immigrants affected by this policy did not have any rights regarding the proceedings of deportation or detention. Also, social rights such as health care, education or social security were restricted or completely denied to migrants, especially for those who were without legal residence status. These violations of migrants' rights were put into practice in a xenophobic context, generated by some media and the government.

It was in this difficult situation, around 1996/97, that civil society actors got involved in discussions about immigration, Mr. Ceriani explained. Some trade unions, migrants' organisations, and NGOs involved in human rights issues started campaigning for the replacement of the old immigration law, the ratification of the Migrant Workers Convention and the adoption of a regularization process. These institutions, together or separately, developed different strategies for achieving these

goals (like litigation at the courts, advocacy at the parliament, campaigns, international claims, etc.).

After the social changes of 2001, the new context facilitated finding more allies at the civil society level but also within political parties. Eventually, a new immigration law was passed in 2003, coming into force in January 2004. The right to immigrate to Argentina is now laid down as a human right. Besides that, the right to health and education are fully recognized for all migrants, regardless of their immigration status. There have also been changes in the laws concerning detention: detention is now only lawful in cases where there has been a judicial sentence or order. Additionally, a large-scale regularisation campaign has been launched. Mr. Ceriani noted that, according to the government, in 2004 there were from 750,000 to 1 million migrants without legal residence living in Argentina.

The new legislation now has to be implemented, Mr. Ceriani said, and campaigning is needed in order to achieve this. The laws are there, but that does not necessarily mean that they are also practiced. Finally, he mentioned that in February 2007 Argentina ratified the UN Migrant Workers Convention.



United States

Cathi Tactaquin, Executive Director, National Network for Immigrant and Refugee Rights (NNIRR) / United States resumed that the problems reported are the same in all the countries and continents mentioned and they are also the same for the US.

She recalled that last year, massive demonstrations of undocumented workers took place in cities and small towns all over the US. The people taking part in these demonstrations had been mobilised by their rage at the anti-immigration legislation of the US government. In several cities these demonstrations turned out to be the biggest demonstrations ever to have taken place. This raised great expectations among participants. But, in fact, Ms. Tactaquin explained, although constituting an impressive experience, these demonstrations had been an expression of political will, not of political power. Accordingly, the immigration laws have not changed since then. The strength of the movement behind these events must now be transformed by organising and networking, Ms. Tactaquin said.

The last regularisation campaign in the US had been implemented in 1996, she went on to report, but was paralleled by a tightening of migration legislation. The events of 9/11 (September 11, 2001) have additionally contributed to a focus on security issues in migration policy and to further restrictions in immigration law. In recent weeks massive raids have taken place, she recounted, in the process of which a total disrespect of the rights of undocumented migrants became apparent.

In addition to the restrictions mentioned, Ms. Tactaquin reported of a tendency to strengthen local competence on immigration issues. For example, an increased militarisation of the Mexican border can be observed, where more than 4,000 bodies have been found in the past year, while nobody knows how many are there that have not been found. The plans to build new fences along this border have passed in Congress now, too, she added.

In the upcoming electoral campaigns for the presidency of the United States, immigration will also be an important issue, Ms. Tactaquin predicted. As nobody will want to appear "soft on migration" and taking into account the experience from past electoral campaigns, things are only going to get worse.

She summed up that no positive development is to be expected in the US in the next few years, but pointed out that fortunately, there are always people who assert international migrants' rights in US courts.

Europe

Sabine Craenen, Coordinator, Organization for Undocumented Workers (OR.C.A.) / Belgium gave a presentation, explaining what happens if one is trying to make use of existing labour rights for undocumented migrants. Her organisation, OR.C.A. has

existed since 2005. Its mission is to bring existing labour rights of undocumented migrants into practice. The activities they employ to attain their aims are informational and educational work, personal advice and assistance, advocacy and networking. Together with other social organisations and most importantly trade unions they promote and assert the rights of undocumented migrant workers.

She went on to outline the legal situation for undocumented workers in Belgium. All regulations protecting workers apply to any worker, irrespective of his/her residence status. According to those legal regulations, only the employer can be sanctioned for undeclared work. Undocumented migrants also have access to the same procedures as any other worker in Belgium. If undocumented migrants want to make a complaint about their rights being disrespected, inspection services are not obliged to ask for their legal status. The main routes to enforce labour rights for undocumented migrants are via inspections, through the courts, by declaring a work accident and via procedures of human trafficking.

The actual situation, however, Ms. Craenen explained, drastically differs from these legal provisions: virtually none of the rights of undocumented migrant workers is being respected. The most common abuses are the denial of the minimum wage; irregular, incomplete or no payment at all; firing without notice and for reasons not consistent with the regulations; no respect for working hours; no insurance for work accidents; threats; employers obliging workers to comply with a fake work status and to use (and pay for) false documents, etc.

In this context, the calling in of labour inspection is an ambivalent matter, Ms. Craenen pointed out, because labour inspection has the legal duty to report undocumented migrants they encounter during controls on the workforce to the Foreigners' Office, which can result in their deportation. This means that undocumented employees are effectively being punished, Ms. Craenen clarified, even though the authorities claim to only be punishing the employers.

What is hindering the enforcement of undocumented migrants' labour rights is that nobody - neither the undocumented workers themselves, nor social workers, nor so-called experts like lawyers, or trade unionists - seems to have any knowledge of the existence of these rights, Sabine Craenen explained. There is also no active policy to promote the use of the possibilities provided for by the law. Also, undocumented migrant workers often set divergent priorities. Their economical reality makes bargaining difficult for the worker who would rather have a bad job than no job at all, she added. Furthermore, the fear of immigration control and of possible deportation, as well as the fear of the reaction of their employers, deters people from voicing their claims for fairer working conditions. Another hindrance is the complex network of employment typical for undocumented workers: personal tie-ups are intertwined with professional relationships.

The official procedures also pose a great obstacle for the enforcement of undocumented migrants' labour rights, Ms. Craenen added. It is often difficult for an

undocumented migrant to provide sufficient evidence for his/her case. Another obstacle is the cost of such procedures, and their length. A court case having as its objective the assertion of labour rights can sometimes last for several years. It is not foreseeable if the claimant will still be in the country at that time. The entanglement of immigration and labour control is the source of more obstacles to the enforcement of undocumented migrants' labour rights. Often evidence gets lost because of the expulsion of a potential claimant. Also, undocumented migrants are often not telling the full story in order to protect other workers.

Sabine Craenen presented some solutions for the enforcement of rights. She believes, she said, that it is crucial to inform people. OR.C.A. has published a guide entitled "Undocumented Workers: A Guide to Rights" for this purpose. They are also holding workshops, training sessions, and pursue their networking activities, and are working in the area of prevention of the violation of undocumented migrants' labour rights by showing people how to avoid abuses and prepare themselves for trouble to come. Sometimes informal solutions can be found and mediation between the employer and employee is successful. There is also the possibility of active enforcement of rights.

Sabine Craenen closed her presentation by pointing out that if one wants more than just damage control, long term solutions must be found that are addressing the root causes of abuse. Such solutions would address the economic position of the workers. By aiding development in the home countries of migrant workers, the dependency on bad work could be eased. There should also be more legal possibilities for labour migration provided for by states. Furthermore, economical chain analyses have to be made and appropriate action taken. Additionally it is important to address the legal vulnerability of undocumented workers. It is vital to unlink labour and migration control. Also, issues of proof, procedure, cost, chain responsibility for employers, fraudulent self-employment, etc. have to be addressed.

Part III - First workshop session: Experiences of discrimination

After having heard reports on the human rights situation of undocumented migrants on four continents, the discrimination of undocumented migrants was discussed in depth in three simultaneous workshops. The workshop sessions were moderated by: George Joseph of Caritas Sweden and PICUM board member, Torsten Moritz of Churches' Commission for Migrants in Europe (CCME) and Kris Pollet, Amnesty International EU Office.

In the first workshop session, participants were asked to share their experience and expertise on how undocumented migrants are discriminated when it concerning their human rights, including:

- the right to adequate housing

- the right to health care
- the right to education and training
- the right to family life
- the right to a minimum subsistence
- the right not to be arbitrarily arrested
- rights during detention or imprisonment
- the right of equality with nationals before the courts
- the right to due process
- the prohibition of collective expulsion
- and the right to fair working conditions, embodied by the right to a minimum wage, the right to workers' compensation in cases of workplace accidents, injury or death, the right to equality before the law (e.g. in employment-related cases), and the right to organize.

Specific attention was to be given to the particularities of human rights violations concerning undocumented women and children.



General Observations Concerning Discrimination of Undocumented Migrants

- The great difference between laws and their practical application was identified as one major factor that contributes to undocumented migrants' fear of being detected when they make use of their rights.

- Also, laws and applications can differ widely in different countries, as do the specifications concerning the fact that regular residence status is required in order to be granted access to social security or some labour rights.
- There are some countries, for example Sweden, in which the very notion of undocumented migrants until very recently did not exist at all. As there had been no laws mentioning undocumented migrants they were treated as though they did not exist. Even though there are a considerable number of undocumented migrants living in Sweden and other Scandinavian countries, undocumented migrants did not have any explicit rights. Some legal provisions have recently been made, for example, regulating access to schooling for undocumented children in Sweden. Health care services are also attainable but must be paid for in cash.
- It is not commensurable that the lack of a legal residence status has such a big impact on all levels of rights and all levels of life. For instance, if someone commits a crime against humanity this person does not lose the right to health. On the contrary, migration law comprises legal provisions to this effect.
- It is necessary to address the rights of undocumented migrants as existing rights and a point must be made that undocumented migrants should be put in a position in which they can make use of the rights they formally have. Equal access to rights is a demand that must be voiced.
- In the light of the lack of peace, security and ways to make a living in many parts of the world, and in the absence of the right to asylum granted to people coming from such regions, a general right to mobility should be implemented.
- Some participants pointed out that practices exist in some countries in Europe to arrest people from a certain nationality, meaning that mass deportations to one country or region are planned. In order to fill the planes, undocumented migrants of the appropriate nationalities are specially targeted by police forces.
- Another significant development - one that has taken place in Switzerland - was the passing of a law in September 2006 penalising with a fine of up to 300,000 € all those who are collaborating with undocumented migrants. The exact legislation differs from canton to canton.

Right to Fair Working Conditions and Labour Inspection

- An unequal use of terminology and diverse immigration legislation make international comparisons difficult. In the UK, for example, people who cannot be deported are nevertheless banned from taking up legal employment. Furthermore, in some countries people do not even have the right to work while their claim to asylum is still pending. If they are caught working, they are

deported regardless of the state of their asylum procedures and their chances in this procedure.

- In France undocumented migrants are not permitted to be working. Undocumented work is not subject to the laws on minimum wage because it is deemed illegal work. However, legislation changes with every change of government. At the moment it seems as though the government's strategy of tightening legislation would be working out.
- Quite contrary to the situation in these two countries is in Spain, where undocumented migrants do have the same labour rights as everybody else if they can prove that they have been working. They have a right to the minimum wage, are protected from unfair dismissal, and are granted wage security. If a person can prove that he/she has been working for one employer for one year, he/she can get a residence permit. The reason for this is that the Spanish authorities want to get hold of the employers. This regulation is a positive development, which apparently is showing the desired effects.
- Labour relations concerning undocumented workers are generally changing in a way that makes it more difficult to go to court with labour-related problems. In the Netherlands, for example, a tendency can be noticed that employers are resorting to subcontracting, while undocumented migrants are increasingly working under a false identity. Several measures have been taken in order to hamper undocumented work, which leads to nothing but an increased vulnerability of the workers affected by such legislation. Also in the Netherlands, a judge in a recent court case held that an hourly wage of 1,50 Euros is not unlawful because, as opposed to forced labour, the claimant, an undocumented migrant, had chosen this work.
- In Geneva, Switzerland, two undocumented migrants are currently claiming fair wages for work they have been doing over the past seven years. For the duration of the court case the undocumented migrants are permitted to stay in the country. This is a case of good practice, however, the situation is not the same in the rest of the country because all of the 26 Swiss cantons each have executive powers on this issue.
- Sometimes undocumented workers are denounced to the immigration authorities by their own employers. In this way the employers avoid having to pay the workers' wages.
- Labour inspection has an ambivalent role. It is meant to examine the legal status of workers and to secure labour rights at the same time. In the Netherlands, the labour inspectorate claims to be intent on enforcing labour rights but while doing this it feels obliged to work in collaboration with the immigration office, to which they report undocumented workers.

- PICUM's publication *Ten Ways to Protect Undocumented Migrant Workers* was highlighted as an example for good strategies for the protection of undocumented workers' rights.

The Role of Trade Unions

- It is necessary that big and powerful organisations like the trade unions step in and speak out for undocumented migrants. Even if trade unions do not explicitly take up the cause of undocumented migrants, they often do not ask for the status of a person coming to them for support or they try and help in informal ways. Many trade unions, for example in Belgium, are now increasingly organising undocumented domestic workers. But still undocumented migrants are often afraid to contact trade unions.
- There are **legal obstacles to trade union membership**. Spain explicitly bans undocumented migrants from joining trade unions, however, unions are organising undocumented migrants regardless of this ban. In Sweden it is not legally possible for undocumented migrants to join a trade union. There are no provisions for undocumented migrants to defend themselves against injustices at their working place, neither are there places an undocumented migrant might turn to in the case of an accident at work. Also, Swedish trade unions are generally opposed to undocumented migrants because they are seen as bringing down the price of labour. Only one small anarchist trade union speaks out in favour of undocumented migrants.
- One participant stressed that in the Netherlands, undocumented domestic workers effectively do not have any rights. Even if there are some rights laid down in legal provisions there is no possibility of upholding them. An organisation that is organising undocumented domestic workers in the Netherlands has been advocating their case with trade unions but the agenda of the trade unions was not compatible with the agenda of the migrants concerned. Only very recently has there been a breakthrough in these negotiations.
- In the United Kingdom, the Transport and General Workers Union has recently been organising **a campaign called "no work can be illegal"**.
- In Geneva, Switzerland, the trade unions provide a system of protection for undocumented migrants that helps to prevent them from being deported and also helps their integration.
- The politics of trade unions regarding undocumented migrants differ widely: while no German trade union, for example, has ever made provisions to make it possible for undocumented migrants to become a member, a South Korean trade union has placed undocumented migrants at management level in its organisational structure.

Right to Housing

- The difficulty for undocumented migrants to find adequate housing is clearly bound up with their status and also with economic difficulties.
- With an example from Belgium the problem is typified that **undocumented migrants' housing is often linked up with their work**. Thus, even though such housing might be very bad, it is often the only way to access housing at all.
- A participant working with undocumented Brazilian migrants in Belgium said that it is very difficult for these undocumented migrants to find **hygienic housing**. Also, unfair high rent is demanded, and because of their insecure legal situation, they cannot take legal action against their landlords and additionally face threats and abuses. The right to housing only exists on paper. A case was brought up of a Brazilian teenager in Brussels who suffered lead poisoning and fell into a coma due to her bad housing conditions. It is important to address the issue of how people's right to health can be upheld under such conditions.
- Social workers in St. Gilles, a neighbourhood in Brussels, keep a list of housing that has proven problematic in the past and advise migrants not to go there. Furthermore, if they have knowledge of the presence of undocumented migrants in a house, they do not denounce them.
- Undocumented migrants' problems with unsafe or unhygienic housing occur mostly in the **private market where discrimination is hard to prove**. One of the prerequisites for being able to rent an apartment is the capacity of a long-term commitment to paying the rent, which is not discriminatory but poses a real problem for undocumented migrants.
- The human right to housing is extremely violated in Greece. From the point of view of the Greek state, undocumented migrants do not even exist, accordingly they do not have any rights. Another big problem in Greece is that NGOs are reluctant to work with undocumented migrants. Undocumented migrants are **excluded from the legal private housing market** due to the fact that according to the law, you must have a residence permit in order to close a regular contract.
- Sub-Saharan African immigrants frequently **sleep rough** in Spain. For them, gaining access to housing via the private market poses big problems. A further problem is that since they often work in the agricultural sector and live in the countryside, it is often difficult for NGOs to reach them.
- In many countries, undocumented migrants do not have access to **social housing**. This makes it necessary for them to find housing on the informal market where they usually pay double the normal rent or even more. In the UK, undocumented migrants are excluded from social housing as are all persons with a temporary resident permit.

- In Spain, especially in the Canary Islands, newcomer undocumented migrants get public shelter for three months. After this period they have to find their own housing or become homeless.
- For fear of having their data entered into the system undocumented migrants tend not to accept state housing. This is another example of the incongruence between rights and their accessibility.
- In Rome, in recent years, due to the almost complete absence of any social housing scheme for asylum seekers and undocumented migrants, undocumented migrants have increasingly taken to occupying abandoned buildings assisted by Italian NGOs like Attack Italia.
- There is also the issue of access to **emergency housing**, not only for undocumented migrants but for all. In Switzerland, thanks to a constitutional ruling three years ago, today everybody has the right to shelter and food during the winter months. The local governments now have set up support centres to which everyone has access. The possibility of an enforcement of this ruling on cantonal level is, however, estimated to be difficult. One would need to take the case to the European Court of Human Rights which would be very expensive.
- The accessibility of emergency shelters is closely linked to the spirit of the immigration law of each country. In Argentina, a legal residence status is a prerequisite for gaining access to many kinds of state benefits for housing. However, undocumented migrants can also claim these benefits if they have children, because children in Argentina have the right to social housing. In this way, the legal obstacles to housing benefits can be bypassed.
- In Belgium, the state provides for housing in **refugee reception centres** for undocumented migrants if a family with children is concerned. However, these refugee centres are ambivalent because the staff there tries to convince undocumented migrants to enter voluntary return programs. The fact that people who make use of this kind of social housing have to register with the authorities deters many from making use of this offer. The right for undocumented migrants to live in reception centres for asylum seekers originates in international human rights law: Art. 27 of the Convention on the Rights of the Child grants the right to housing for children for the duration of their education.
- In Norway, rejected asylum seekers, who make up the majority of undocumented migrants, cannot stay in reception centres for asylum seekers. The idea of the government was that this measure would force undocumented migrants to return to their home country. What really happened was that the people in question remained in the country and went into hiding. For this reason the government has now presented a new law reversing the old legislation.

Right to Health Care

- PICUM is currently conducting a project entitled “Access to Health Care for Undocumented Migrants”. One of the findings of this project is that in Europe, the best health care system for undocumented migrants is probably in Spain, where undocumented migrants have access to health care almost on an equal footing with Spanish citizens. In order to gain access to this system, undocumented migrants need to register with the city councils where they get a health card. However, they need some identification for this. Recently Spanish police tried to get access to the files of the city councils and there are currently big discussions taking place on this matter between the different levels of administration.
- In France, health care is still attainable for undocumented migrants but a contribution to the cost of treatment has to be paid by the person seeking health care. Even though the legislation is quite good, undocumented migrants are frequently uninformed and general practitioners often refuse to treat them. There is as **big a gap between legal provisions and reality**.
- In Belgium, people without a residence permit can get access to health insurance. This is judged to be a relatively good practice.
- In Switzerland, everyone, including undocumented migrants, has to have health insurance. However, 90% of undocumented migrants cannot pay this insurance. So, even though undocumented migrants have access to health insurance, they can effectively not use this right for lack of money. They are excluded from health care other than emergency services. The canton of Geneva has a hospital fund to allow undocumented migrants to pay for their health insurance.
- In Germany, the **duty to denounce** represents an insurmountable barrier for undocumented migrants’ access to public health care.
- In addition to the practical barriers faced by undocumented migrants in accessing health care services in some EU countries, there are also **legal obstacles to accessing health care**. The examples most notable are: Sweden, Austria, and Germany.
- A difficulty for comparing European health care systems is the different definitions of emergency care in EU member states. The need for a common definition to be used throughout the EU is stated. However, there is a danger in focussing primarily on emergency care for undocumented migrants because by doing so other important issues are being excluded, like, for example, reproductive health care. In Spain this is a topic discussed widely because there has been a sharp increase in the number of abortion among undocumented women.

- Cultural, social and gender issues also come into play concerning health care for undocumented migrants. Again, one thing is the existence of rights, the other is their implementation.
- Sometimes, **severely ill people are being deported**. These deportations are often contested and there have already been some rulings against them, based on human rights.

Right to Education

- In France, all children are obliged to attend school, no matter what their residence status might be. As Interior Minister in 2006, Nicolas Sarkozy announced his plans to deport all undocumented families. Civil society resistance then formed against Mr. Sarkozy's plans. This protest movement also formulated further demands and was partially successful. Another event that sparked civil society protest was Mr. Sarkozy's ploy to announce a regularisation of undocumented migrants under certain prerequisites and then planning the deportation of the persons whose application was rejected and who would, if not for this chance of regularisation of their status, never have given their data to the authorities.

Undocumented Women

- In the Netherlands, undocumented women do not have **access to battered women's shelters**. The situation is the same in Belgium. This also means that there is no access to this very vulnerable group for organisations dealing with the issue of violence against women. It is being anticipated that the situation will worsen after the Belgian general elections because the funding for organisations working in this field will be cut.
- In Spain, women can receive a residence permit if they have been abused. Gender specific persecution is also a reason for which asylum is granted.

Racial Discrimination of Undocumented Migrants

- Racial discrimination is another issue that must be addressed in the context of undocumented migrants' access to rights. This is especially important in the area of domestic work.
- Racist discrimination and a lack of secure status reinforce each other.
- One participant mentioned that in Korea there are many undocumented English teachers but there are no raids carried out against them. They are called experts, not criminals.
- Such discrimination is also taking place within and through NGOs.

Part IV - Second workshop session: Arguments and strategies for defending rights

After this exchange of information on the legal and social situation of undocumented migrants in many different countries in the simultaneous workshops and after having heard reports from the other workshops, the second workshop session focused on arguments and strategies employed by the workshop participants in order to defend undocumented migrants' rights. In the same three simultaneous workshops participants were requested to once again share their experiences and expertise. They were asked to evaluate the effectiveness of the measures they took, and report on some of the arguments that they used to justify that undocumented migrants are not "illegal" and have rights.

The second workshop sessions were an opportunity to discuss some of the following questions:

- How is it possible to raise awareness about rights among both undocumented migrants and amongst those providing them assistance (e.g. NGOs, unions, local authorities, professionals, etc.)?
- What are experiences in using the media in order to influence public opinion and policy makers?
- What are the particularities of carrying out advocacy on different levels (e.g. local, national, European, international, etc.) or with defending cases in the courts?
- Are there any other, newly developed ways to defend undocumented migrants' rights?



Awareness-Raising

- The current situation is not favourable for documented workers, and is even less so for undocumented migrant workers. For this reason, labour relations in general have to be addressed. It is thereby important to **show that disrespecting undocumented migrants' rights is not harming only the migrants concerned but also the entire society**. A policy of denying undocumented migrants their rights is supposed to deter people from migrating to European countries. However, this strategy does not work.
- It should be possible to start campaigning in several different countries with the aim of making clear that the protection of a person from violence, abuse and injustice has to be of much greater importance than his/her legal status.
- It is important to **invest in public education**, with the aim of having people see migration not as a problem but as a phenomenon, of pointing out the contributions migrants make to the "receiving societies". By doing so the different residential statuses that exist and the rights that are bound up with these statuses have to be kept apart in order to work against the criminalisation of migrants. However, it is important to not make a distinction between "good" and "bad" migrants when differentiating between the different residence statuses.

- Mass regularisations work in some countries, smaller campaigns work in others. However, it is difficult to gain influence on the political mechanisms. For this reason, it is necessary to turn the case in favour of undocumented migrants, and **point out the ways in which they contribute to societies**. In Korea there is a campaign for the regularisation of undocumented migrants in which their contribution to the local economy is being highlighted.
- In the Netherlands the focus on undocumented children has had an echo within the Christian party. However, their current policy exclusively aims at families.
- Examples were given of strategies in other social movements that highlighted that certain vulnerable groups “were human too,” such as activists against the death penalty in the United States, activists of the AIDS movement and sex workers in the USA and Canada. A similar approach could be chosen for advocacy for undocumented migrants.
- Awareness-raising has to start in the **educational system and at universities**. A lawyer mentioned the importance of NGOs working with legal clinics where law students can gain firsthand practical experience in working on cases in which they defend undocumented migrants’ rights.
- One participant mentioned the example of hairdressers in New York who were recruited as educators about rights of undocumented migrants.
- Awareness-raising is a long process. Reality clashes with the legal framework. Sometimes undocumented migrants do not see themselves as people with rights because they have never enjoyed any. For them few rights seem like a lot of rights.

Media Strategies

- It is controversial if featuring individual cases and “sentimental stories” is a media strategy that should be used. On the one hand, singling out special cases removes attention from the general concern. On the other hand focusing on extreme cases can be a strategic approach to draw attention to the general problem. Also, there is a necessity for both short term and long term strategies.
- When dealing with the media in advocacy campaigns, the approach of choice should not be a victimization of migrants but a pro-active campaign that shows the success of past campaigns for upholding the rights of undocumented migrants.
- In Canada, a radio programme was broadcasted in which small children spoke out in support of undocumented migrants and citizens could share their points of view.

- During the Dutch campaign for regularisation activists tried to “give people a face”, and politicians were invited to provide migrants with a shelter for one night.
- Generally, the press has two different approaches on undocumented migrants: the tabloids are more sensationalist and have generally a negative approach to the topic while the “quality” press recognises the complexity of the situation.
- In Norway the press had a sympathising approach during the ‘90s but now the public is getting used to these stories and does not pay particular attention anymore.
- The BBC website features “the human side of migration”. There are also some good TV documentaries on undocumented migrants.

Terminology

- In Spain the term “irregular migrant” is preferred over the term “undocumented migrant”. Generally there is not enough collaboration with the media, but it is the media that is decisive for the future use of terminology. Terminology can criminalize.
- The term “illegal migrants / illegal migration” is part of a criminalisation strategy and should not be used by civil society actors.
- Racial discrimination is also reflected in the terminology used: depending on who we are talking about we are either speaking of migrant workers, expats, or people working abroad. One participant stressed that the practice of calling people “3rd generation migrants” is simply absurd.

Cooperation

- It is important that NGOs network with one another as well as with other actors on specific objectives. In Andalusia, Spain, there has been cooperation amongst NGOs in order to reach undocumented migrants working in agriculture in the countryside.
- In Argentina, a coalition of NGOs, churches, trade unions and others came together thereby building a new coalition in order to achieve their aim of supporting undocumented migrants.
- In the Netherlands, different groups supporting undocumented migrants do this for very different reasons and with different aims. A rights based approach could be a common strategy under which to unite these different groups, proposed one participant.

- The International Trade Union Congress (ITUC) has long since adopted a rights based approach concerning undocumented workers' rights. ITUC member organisations have not openly protested against such a strategy but because ITUC is a mass organisation, the support for such a strategy on the local level cannot be assured.
- In the field of health care for undocumented migrants is important for NGOs to link up with health care providers and local authorities to gain the interest of the administration.
- Current NGO policies are far from those of migrant organisations and undocumented migrants. Different migrant communities have different outlooks and approaches, and it is difficult for NGOs to reach out to these communities.

Undocumented Migrants' Organisation

- It is necessary that undocumented migrants are pulled out of anonymity.
- In Belgium UDEP (Union pour la Défense des Sans-Papiers) is currently fighting for a regularisation campaign. The recent occupation of churches started off public debate in Belgium. The activists are linking their actions to a new law on migration in Belgium. Their demands are, amongst others, clear criteria for regularisation.
- In the Netherlands, undocumented migrants are focussing exclusively on a regularisation campaign.
- In France, recently a public campaign for regularisation had been carried through on behalf of families of school-age children. During this campaign the media had provided the link to civil society.
- It is important to be working side by side with undocumented migrants themselves and to inform them about their rights. The example of OR.C.A. presented in the plenary session was highlighted as good practice.
- Informing migrants about their rights is an important but in order to be really effective one has to contact lawyers, trade unions, etc, to provide substantive support. It is important to not only provide undocumented migrants with information on their rights but also with the necessary tools to defend these rights.

Targeting National Governments

- It is incorrect to say that the rights of undocumented migrants are being violated. In fact they are being denied completely. For this reason it is vital to address the governments directly.
- When targeting national governments, the regularisation of undocumented migrants or the creation of more legal opportunities for migration can be demanded.
- Even though it is important to campaign for the access of every person to a legal residence status, it is just as important to acknowledge that there will always be people who will be excluded from such regulations. Fundamental human rights do already exist. They are laid down in state constitutions. They “only” have to be put into practice.
- In the past, right-wing politicians in Switzerland argued for expulsions claiming that the people concerned were not integrated. NGOs could turn the argument around and start a campaign for the integration of people in the educational and health care system. There is a coalition of ten cantons in favour of this proposal.
- The international campaign advocating for the ratification of the Migrants Rights Convention must be strengthened. One idea in this context would be to address regional parliaments and ask them to symbolically ratify the convention. This has happened for example in Barcelona. However, it is important to note that the Migrants Rights Convention also makes a distinction between undocumented migrants and documented migrants.

Targeting International Institutions and Events

- The Global Forum on Migration and Development will be hosted by the Belgian government, and will take place in Brussels in July 2007. The High-Level Dialogue on International Migration and Development was taken out of the UN and taken over by governments. Some of these governments are very anti-migrants and try to push out civil society organisations from the dialogue. Some participants expected that human rights and gender issues would not be discussed in the 2007 Global Forum but would be deferred to the next Global Forum on Migration and Development to be held in Manila, Philippines, in 2008.
- NGOs have been marginalized in this process. It was thought vital to get as many civil society actors into the national delegations as possible. The April 10, 2007, deadline for applications for the Civil Society Day to the Global Forum on Migration and Development with the King Baudouin Foundation was mentioned.
- One of the issues that might come up during the Global Forum on Migration and Development is the ratification of the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Going to Court

- Today it is both more sensible and easier to do advocacy work at the European level than at national level. There has been a legal case in the Netherlands where a lawyer employed international human rights law in order to assure basic social rights for an undocumented child.
- Case law and strategic litigation are important but at the same time one has to be aware that for example some countries, such as in the UK, courts are always afraid of ruling in these matters because they know that a rule in favour of undocumented migrants' rights can become an important precedent.

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