

PICUM Submission UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW)

Half Day General Discussion on “*Workplace Exploitation and Workplace Protection*” 7 April 2014

The Platform for International Cooperation on Undocumented Migrants (PICUM) was founded in 2001 as an initiative of grassroots organisations. Now representing a network of more than 160 organisations and 160 individual advocates working with undocumented migrants in 38 countries, primarily in Europe as well as in other world regions, PICUM has built a comprehensive evidence base regarding the gap between international human rights law and the policies and practices existing at national level. With over ten years of evidence, experience and expertise on undocumented migrants, PICUM promotes recognition of their fundamental rights, providing an essential link between local realities and the debates at policy level.

I. INTRODUCTION

This submission highlights PICUM's main concerns regarding workplace exploitation of migrant workers, with particular attention to the challenges faced by undocumented migrant workers and their families and the impacts on poverty, human rights and migrant workers' economic empowerment and ability to access justice and redress mechanisms. A number of specific country examples are provided by way of further illustration and an annex is provided to indicate good practices and positive responses to empower migrant workers. Several recommendations to improve the protection of undocumented migrant workers are also elaborated.

PICUM is particularly concerned that the lack of adequate labour law standards addressed at ensuring equal protection for undocumented migrants further exposes them to exploitation, discrimination and abuse, and presents a barrier to migrants' equality and empowerment.

II. PICUM'S MAIN CONCERNS

1. Lack of adequate regular channels for migration and secure labour conditions

Although migrant workers currently make an important social and economic contribution to European societies, insufficient regular migration channels to properly address labour demand contribute to further push undocumented migrant workers to the margins of society, augmenting their exposure to discrimination and violence by limiting their autonomy and independence. Inflexible labour migration frameworks enable exploitative employers to deliberately undermine migrant workers' residence status as a means of controlling and preventing them from reporting abuses to the police or labour authorities. Inflexible and restrictive visa regimes force migrants to choose between staying in exploitative situations or losing their residence status.¹

The lack of formal recognition of migrants' contributions and work is particularly reflected in a lack of regular migration channels to meet labour market demands. In many European Union countries, work permits for low-wage sectors are highly restricted. Where they are available, they are usually tied to one employer, creating a power imbalance and dependency on the employer. This relationship exposes migrant workers to exploitation and abuse, including under-payment and non-payment of wages, and can easily result in migrants losing their right to work and reside in the destination country, if the employer does not renew their employee's permit or ends the employment relationship. Under such conditions, access to redress and justice for violations of worker's rights are highly limited.

No Right to Change Employer for Domestic Workers: Labour Migration Policies in Cyprus

Like in many other countries in the European Union, Cypriot labour migration policy ties migrant domestic workers' visas and residence status to a specific employer. A dependent status and denial of recourse in cases where the employer fails to register a domestic worker as an employee, are compounded by a recruitment mechanism which disadvantages migrant workers even before arrival. Mandatory fees to private agents and registration charges mean that migrants amass debts of up to €5,000 in order to travel to and work in Cyprus.

Until 2008, the minimum monthly wage for migrant domestic workers was fixed at €256, and is now approximately €350. The rate is significantly lower than national minimum wage as the government allows deduction of food and accommodation expenses. However, even this low wage is not observed by all employers. While other migrant workers' contracts are drafted and regulated by the Ministry of Labour and Social Insurance, the contracts of domestic workers are still under the auspices of the Ministry of Interior. The final decision about any labour disputes facing migrant domestic workers is taken by the Director of the Registry and Migration Department of the Ministry of Interior.²

2. Labour rights violations and exploitation

The principle of safeguarding decent and fair working conditions, including fair remuneration, compensation for work accidents and rest periods for all workers, including domestic workers and undocumented workers, is well-established in international law instruments.³ However, although guarantees of fair working conditions may be provided for in national law, their applicability to undocumented migrant workers is often not expressly ensured within national legal frameworks. As a result, migrant workers with insecure or irregular residence status frequently experience violations of labour rights, including under-payment and non-payment of wages, long working hours without choice or compensation, very limited rest periods, degrading and poor working and living conditions, confiscation of identity documents and psychological, physical threats and violence.

The EU Employers' Sanctions Directive: Overview

The Directive 2009/52/EC on "*providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals*" aims at reducing irregular migration in the European Union by introducing measures that criminalise irregular migration and impose sanctions on individuals employing undocumented migrants.⁴ EU Member States had to transpose the directive by 20 July 2011 and the European Commission is currently assessing the implementation of the directive at national levels. The European Commission will publish a report assessing the implementation of the Directive within EU Member States by 20 July 2014.

As part of the monitoring process, the European Commission should consider whether national policies transposing EU measures at national levels ensure that the ultimate aim of the directive is achieved, in other words, whether introducing sanctions against employers of undocumented migrants has in effect led to an overall decrease of irregular migration in the EU. In assessing the impact of the measures introduced by the directive, it is crucial that specific concerns faced by undocumented migrant workers are taken into account. In particular, the enhancement of migration control that has to follow the introduction of sanctions against employers who hire undocumented workers, has the unintended counter-effect of preventing undocumented migrant workers who may face exploitation to approach labour authorities and might encourage stigmatisation of the employment of third-country nationals. The monitoring process of the implementation of the Employers' Sanctions Directive should also serve the purpose of collecting more accurate information on the levels of exploitation and violation of undocumented workers' labour rights at national levels. In order to effectively strengthen the protection of undocumented migrant workers facing exploitation and abuse, accurate indicators for the monitoring process of the directive's implementation have to be developed.

Employers' Sanctions in the United States

In the United States, a legal framework sanctioning employers employing undocumented migrants has existed since the 1986 Immigration Reform and Control Act (IRCA) made it illegal for an employer to hire an undocumented worker. One of the unintended effects of the employers' sanctions regime in the United States has been an increase in discrimination of all workers, including those with regular status: both the U.S. General Accounting Office and the U.S. Commission on Civil Rights have found that "*employer sanctions contribute to discrimination against citizens and legal residents who look or sound 'foreign'*", with the Commission on Civil Rights stating that "*IRCA has caused at least 'a pattern of discrimination,' if not widespread discrimination*".⁵ Trade unions, who at first called for the introduction of the sanctions, now call for their abolition. They claim that "*although employer sanctions did not create the problems of exploitation and discrimination, they have contributed significantly to the inability of immigrant workers to enjoy and enforce the most basic labour and workplace rights*".⁶

3. Lack of access to justice and protections for victims of labour exploitation

In line with the international obligations set out in the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families⁷, national governments shall take measures to ensure the effective promotion and protection of the human rights of all migrant workers, irrespective of their migration status. The Convention also acknowledges that migrant workers are in a vulnerable situation and provides standards for domestic policies and laws that take their particular situation into account and promotes fair working and living conditions for migrant workers.

Clearly, respect and protection of human rights as provided in international legislation can only be guaranteed with the availability of effective domestic remedies against labour exploitation, as legal rights are only meaningful if and when they can be asserted and enforced. However, in EU member states, despite their increased exposure to ill-treatment, undocumented migrants are at significant risk of arrest and deportation if they seek assistance from the police and labour authorities, as their irregular status frequently supersedes their need for protection. Their irregular status also serves as a serious barrier when trying to access the justice system, be it for labour rights violations or criminal justice for acts of violence.

Undocumented migrant workers are also denied the right to free legal aid and often prevented from being party to labour law proceedings as they are deported to their countries of origin before legal action has got under way. The structural barriers that prevent vulnerable migrant workers from pursuing legal remedies and bringing their perpetrators to justice contribute to a worrying culture of impunity for exploitation of undocumented migrants in the European Union.

Often, the prohibition for migrants in an irregular situation to work appears to have priority over claims resulting from labour law, such as the right to compensation for withheld wages or compensation for work accidents.⁸ Indeed, in some EU member states, there are explicit legal provisions that prevent migrant workers from seeking redress in labour courts if they are undocumented.⁹ In others, without such legislation, the reality is much the same in practice. As undocumented migrants are limited to the informal sector, they often work without an employment contract meaning they have significant difficulties to prove labour-relations in a court of law. Even when a contract has been signed, it is often considered invalid, due to the irregular status of worker, and thus unenforceable. These factors increase undocumented workers' dependency on employers and diminish the likelihood that they will denounce incidents of violence, abuse or other labour or criminal law violations. In practice, the main obstacles to obtaining unpaid wages are the difficulty in proving a work relationship and working conditions, and having the work relationship recognised in law despite the irregular status of the employee.

Hussein v The Labour Court and Anor

A ruling by the Irish High Court on 31 August 2012 has left undocumented migrant workers in Ireland without any protection from exploitation under current labour laws. In its case “Hussein v The Labour Court & Anor [2012] IEHC 364”, the Irish High Court ruled that Section 2 of the Employment Permits Act 2003 prevents an undocumented worker from seeking redress under labour law as the employment contract has to be considered void “*in the absence of the appropriate employment permit*”. Justice Hogan quashed an award of €92,000 to Pakistani chef Mohammad Younis, who worked 77 hours per week for a number of years at EUR 55 cent per hour. His employer had failed to renew Mohammad Younis’ work permit which rendered him undocumented.

A lack of knowledge about labour rights, immigration rules and the overall legal system hinders undocumented migrants’ dealings with the legal system and often leads to less favourable outcomes. For example, due to a consistent lack of reliable information and prompt referral to legal aid and social services, undocumented migrants might be unaware of favourable legal provisions that would allow them to seek legal redress. Migrants’ understanding and expectations of their legal rights can also depend upon effective and available translation services and access to legal aid, as migrants’ lack of knowledge about their rights may be compounded by a lack of accessible information in their own language and low socio-economic status that prevents them from seeking private legal assistance.

4. Violence

The lack of workplace and labour rights protection and access to justice for undocumented migrant workers, alongside the dependent visa scheme, place them in a position of vulnerability to psychological and physical violence. In many countries undocumented migrant workers may face arrest, detention and deportation if they make contact with the police to report violence or abuse. The barriers facing undocumented workers to access redress for abuses in the workplace increase their experiences of violence.

This situation coincides, especially in some EU member states, with increasingly worrying xenophobic public and political sentiment, which can in turn fuel violence by employers and discrimination by service providers, police and labour authorities.

Violence Against Migrant Workers: the Case of Strawberry Pickers in Manolada, Greece

One day after Nils Muižnieks, Council of Europe Commissioner for Human Rights, called for better mechanisms to sanction individuals and organisations which incite or promote intolerance and hate in Greece¹⁰, 155 Bangladeshi migrant workers were shot at, resulting in 35 who were wounded during a pay dispute on a strawberry plantation in Manolada, Greece on 17 April 2013. The incident is yet another example of an increasing number of reported acts of racist violence against migrants in Greece.¹¹ To date, one of the victims was deported whereas the 35 injured victims have been granted a temporary residence status and have been recognised as victims of trafficking for labour exploitation. The remaining 119 migrants have not yet been granted access to justice and victim protection and are still waiting for a decision from the national courts.

5. Lack of access to social rights, poverty and disempowerment

In Europe, the increased linkage between migration control mechanisms and access to basic services means that undocumented migrants experience numerous barriers to accessing their fundamental rights. Despite their unprotected status and heightened exposure to ill-treatment and exploitation, numerous legal, administrative, financial and practical barriers prevent undocumented workers from accessing basic social rights, such as healthcare or housing.

This policy-driven exclusion and removal of social protection serves as a significant barrier to undocumented migrants' meaningful participation in society. Such policies risk compounding inequalities existing in our society and further marginalising migrant workers. Being denied access to social services and facing exploitative working conditions, undocumented migrant workers and their families face higher risks of poverty and social exclusion. The poor and exploitative working conditions they are often forced to accept can lead to disempowerment and impoverishment of undocumented migrant workers and their families.

Access to Healthcare for Undocumented Migrant Workers: The Complementary Role of Civil Society Organisations and Local and Regional Authorities

To provide health care services for undocumented migrant workers who are employed in the Italian Region of Puglia within the agricultural sector, the Italian NGO Emergency, in cooperation with the regional government, set up mobile clinics in 2012 named "Polibus". These mobile units were in use for definite periods in areas where undocumented migrant workers face specific barriers in accessing health care services, such as agricultural areas and agricultural fields, usually located far from cities and hospitals where they could access medical care. Emergency's Polibus operated in the Region of Puglia from June to November 2012. During that period, the mobile clinic received a total of 1,709 patients. Only four patients had to be referred to a hospital in order to receive emergency treatment and three were hospitalized.¹² Emergency, in cooperation with the regional government is still continuing to provide assistance to undocumented agricultural workers in the region of Puglia through two mobile clinics as part of the project "Minivan".¹³

III. CONCLUSION AND RECOMMENDATIONS

PICUM calls for the UN Committee on Migrant Workers to take into account and to give careful consideration to the following recommendations:

1. Ratify the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and apply international labour law standards to ensure protection to all migrant workers.

National governments should ratify the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.¹⁴ This is a crucial step towards the adequate protection of migrant workers' fundamental and labour rights as countries ratifying the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families are required to take measures to ensure fair and decent working conditions for all workers and to prevent workplace abuse, exploitation and violence. They must ensure equal treatment between all workers and other workers as regards compensation and benefits, for example in the case of maternity.¹⁵

A comparative analysis requested by the European Parliament concerning the implementation of the Migrant Workers' Convention in the EU found that the ratification of this convention would impose few additional obligations on States compared existing obligations under the EU Charter and EU legislation in the area of labour immigration. The study stresses that: "these obligations touch mainly upon areas which would most likely not be considered as problematic by Member States or on areas (such as the one of family reunification) which leave States Parties a broad margin of discretion. One particular area that might be considered as sensitive is the right to social security that the Convention grants to all migrants. However, it should be noted that States have already committed to recognise this right to everyone by ratifying the ICESCR (Article 9).¹⁶

2. Promote regular channels for migration and regularisation of undocumented migrant workers.

National governments should develop, and make accessible, avenues for migrants to work in low-wage sectors, with an independent residence status and right to change employer. The UN Special rapporteur on the human rights of migrants, François Crépeau, in his report on management of the external borders of the European Union and its impact on the human rights of migrants presented to the UN Human Rights Council on 27 May 2013, called on the European Union to promote more regular channels for low-skilled workers: *“Within EU institutional and policy structures, migration and border control have been increasingly integrated into security frameworks that emphasize policing, defence and criminality over a rights-based approach. [...] Opening up more regular migration channels, including for low-skilled workers, thus reflecting the real labour needs of the EU, would lead to fewer irregular border crossings and less smuggling of migrants”*.¹⁷

Promoting ways for undocumented workers to regularize their administrative status is one of the options that policy makers can take to address the situation of irregular migrants and also increase protection of their rights. Obtaining a work and residence permit gives undocumented workers a better opportunity to defend their rights. REGINE, a research project on regularisation practices in the European Union funded by the European Commission, concluded that between 5 and 6 million migrants were regularized in the EU from 1996-2007.¹⁸ The significance of this figure indicates the importance of regularisation policies for the European Union.

3. Build a firewall between service provision and immigration enforcement.

A firewall between public service provision and justice and immigration control should be erected, in law and in practice, in line with the guidelines provided by the Fundamental Rights Agency of the European Union in relation to detection and apprehension of irregular migrants.¹⁹ The sharing of personal data between service providers and immigration authorities should be prohibited, including in the context of access to justice and redress.

4. Ensure access to protection and redress for migrant workers who have suffered exploitation and violence, regardless of migration status.

National governments must remove all legal, administrative and practical obstacles for undocumented migrant workers to report abuse and seek protection and redress for violations of rights. Steps must be taken to ensure that justice is made safe, effective and accessible; protecting migrants when they report abuse, and facilitating prosecution of perpetrators regardless of the status of their victim. Relevant measures to be taken should include: prioritizing police and labour authorities roles in upholding rights and justice over immigration enforcement; recognising the validity of work relationships and violations regardless of the status of the employee; guaranteeing the suspension of any expulsion proceeding or removal directions when seeking access to labour or criminal justice courts; and guaranteeing access to support services, such as secure accommodation and psychological and social support for domestic workers who have suffered abuse and exploitation.

5. Reform national law, policy and practice to ensure equal access to social rights regardless of migration status.

International law guarantees equal access to rights such as health care services and homeless shelters regardless of migration status. National governments must review and reform law and policy that restricts access to basic rights and services on the basis of migration or residence status, and proactively address practical, administrative and financial obstacles to such access.

IV. ANNEX: GOOD PRACTICES²⁰

1. Engaging public support through media and public campaigns

Several key methods may be undertaken by civil society organizations for engaging public support for undocumented migrants. One way is to restrain from using discriminative terminology and to instead use words which are respectful of the dignity and human rights of migrants. Another way is to give a face to undocumented migrants and bring attention to their precarious living conditions to increase compassion and public action against injustices. The media plays an influential role in the popular representation of irregular migrants. Its potential as a means to sensitise the public in general as well as decision makers to the plight of irregular migrants is considerable and there have been instances in which television, newspapers and other outlets have made a positive contribution.

Promoting the Use of Correct Terminology: PICUM's Terminology Leaflet²¹

Terminology referring to irregular migrants as "illegal" can lead to discriminatory behaviour, hinder public acceptance of migrants, and exacerbate social exclusion. The need to fight broad generalizations and stereotyping that contribute to the dehumanization of irregular migrants in public consciousness and threatens their human rights have been increasingly addressed by international organizations. PICUM has developed a leaflet which explains the reasons why the term "*illegal migrant*" should be avoided and includes a timeline listing stakeholders and institutions who have made a commitment to using accurate terminology as well as a lexicon providing alternative terms for 'undocumented migrant' and/or 'irregular migrant' in all EU languages. The terminology leaflet is a result of the work PICUM started in previous years to educate various audiences about accurate terminology and the impact the use of language has on the of realities undocumented migrants. The leaflet targets a variety of audiences who are all actors in shaping the use of language around irregular migration such as government representatives, journalists and translators and interpreters as well as it targets audiences who had no previous exposure to the debate. The leaflet will also form the basis for PICUM's continuous work on educating about terminology use.

Changing Public Perception Through Terminology and Engaging with the Media: "Drop the I-Word Campaign"

Drop the I-Word is a public education campaign powered by immigrants and diverse communities across the United States that value human dignity and are working to eradicate the dehumanizing term "illegals" from everyday use and public discourse.²² The Applied Research Center (ARC) and its daily news site, Colorlines.com, decided to launch the Drop The I-Word campaign and called on media outlets and elected officials to uphold reason, due process and responsible speech by dropping the i-word. The campaign is complemented by a set of tools that can be used to support this initiative: Journalists resources²³ include an Immigration Stylebook, FAQs and information for outlets that want to drop the i-word; a Campaign toolkit²⁴ contains key information, activities and actions for individuals to take and to use with groups (i.e. possibility to send an organization pledge and endorsement; sample to write a resolution; sample letters to address editors; a discussion guide supported by a video about the campaign; and images and graphics that can back general activities); the Action Guide²⁵ is a very handy "step-by-step" manual that gives suggestion on how to take action according to available resources and desired degree of involvement.

2. Providing evidence base to better inform policy making

Improving research and data collection can have a double impact on the life of undocumented migrants: first, by bringing attention to the realities experienced by those with irregular migration status. Developing a solid evidence base and re-humanising these lived experiences helps identifying problematic policies and generate the support, alliances, and momentum to change them. In addition, data collection can help organisations improve

their service provision to undocumented migrants and identify emerging or under-addressed trends to address in their future work.²⁶

Although reliable statistical data is crucial for policy makers in developing migration policies, in most countries, quantitative and qualitative statistics on irregular migration are generally incomplete, out of date or unreliable²⁷. Easy access to well-documented and structured information is a necessary first step for creating more transparency concerning the size of irregular migration. In the absence of consistent statistics, policy decisions and public opinions may be based on erroneous information possibly provided by biased sources. Furthermore, when research is conducted in a participatory manner, and is based within migrant communities, it can have a direct impact on the target group participating.

Collecting Reliable Data on Migration: The Clandestino Project: “Undocumented migration: Counting the Uncountable – Data and Trends across Europe”

The Clandestino Project, funded by DG Research, European Commission, was developed from 2007 to 2009 with the aim of collecting reliable data on trends in irregular movement across Europe.²⁸ The project aimed at providing an inventory of data on migration stocks and flows in selected EU countries and at analysing the comparative data collected. The project also aimed at developing a methodology for the use of data in the context of the formulation of migration policies and at discussing the ethical issues involved in the collection of data and in their use. The project took into account and analysed policy-related factors that drive migrants into irregularity.

In 2009, the Clandestino project produced minimum and maximum estimates of the size of the irregular migrant population for 2008. The aggregate estimate presented by the Clandestino Project for the 27 EU Member States ranged from 1.9 to 3.8 million undocumented migrants. Prior to the completion of this project, estimates ranged from 4.5 million to 8 million undocumented migrants and were quoted in policy documents of the European Union. According to the findings of the “Clandestino Project”, previous estimates quoted by the European Commission were the result of a long quotation chain, initially relying on an old newspaper article that was quoted and re-quoted until it was called a “recent estimate”. As a result of the project, a database on irregular migration in Europe has been created.²⁹

3. Informing irregular migrants about their rights

Advocates for undocumented migrants use a variety of ways to communicate essential information about their rights and the different possibilities they have for dealing with exploitation and abuse. A valuable way of informing undocumented migrants about their rights is to develop printed material that they can refer to (e.g. leaflets and booklets, information on an organization’s website, comic books, etc.). Some organizations inform undocumented migrants about their rights by offering advice by phone or at the organization’s office. The direct contact between migrants and advocates is essential not only for addressing a particular problem but also for raising general awareness about their rights.

Creative Solutions to Reach Migrant Domestic Workers in Isolation

Ban Ying (House of Women) in Berlin, Germany designed an innovative campaign to reach out to migrant women working in private homes. Often very isolated and with little knowledge of their rights, those experiencing the most serious exploitation have little freedom of movement and all contact goes via their employer. Ban Ying created billboards with writing in Tagalog or Chinese which appeared to advertise soap, but in fact displayed information about domestic workers’ rights. Motorbikes drove around areas where live-in migrant domestic workers resided and delivered bars of soap to the houses, inside each bar of soap was a card with telephone numbers in eight languages.³⁰

Orienting and Supporting Irregular Migrant Workers through Help Desks and Practical Guides

One of the aims of the Organisatie voor clandestine arbeidsmigranten (OR.C.A.) is to develop a help desk specialized in defending the rights of undocumented workers. To support this work, OR.C.A. published a practical guide on the basic labor rights of undocumented workers in Belgium, with information about where workers can go if they have a work-related problem.³¹ In 2013 the third edition will be published. OR.C.A. has also published a guide for frontline workers to inform them about the labor rights of their clients, as well as a publication on work related accidents of undocumented workers.

4. Building capacities of migrants

A key way to empower undocumented migrants is to build their capacities so that they can become involved in the decision-making process concerning issues affecting their daily lives. Building the capacities of undocumented migrants involves developing their skills and counteracting a system of dependency. This type of approach is grounded in a principle of “powers in numbers” that recognises the strength of working together rather than standing alone.

Participating in Decision-Making Processes: Community Work as Tool for Change

Migrants Rights Centre in Ireland (MRCI) is a non-governmental organization working in Ireland to support undocumented migrants’ rights. Since it began its work in 2001, MRCI received many requests for support from migrant domestic workers. Mostly female and undocumented, these workers were particularly isolated and their work was unregulated as their place of work was often their place of residence. Employers had unilateral control of work permits and so workers had few options if subject to violence or exploitation. Despite the high rates of exploitation, the Irish government was failing to address these issues occurring in private homes.

Rather than continuing to work on a case-by-case basis, MRCI developed a participatory-based strategy so that undocumented migrant domestic workers could effectuate social and policy change. These women initially came together to participate in a “support group”. To enable undocumented women to participate in decisions and structures that affect their lives, MRCI linked into existing social networks. To enable maximum participation, meetings were held on Sunday. A safe space was created so that the immediate needs of domestic workers could be shared and the group developed according to these needs³².

MRCI has shown the impact that a community work model can have in advancing the rights of undocumented migrants. MRCI has developed “Tools for Social Change,” a resource guide for community work containing lessons learnt and good practices arising from its direct experience.

5. Unionizing Undocumented Migrant Workers

Although there are many barriers that prevent trade unions from supporting undocumented workers, there are numerous examples of unions that have overcome these obstacles and have incorporated undocumented workers in their membership. Many unions that include undocumented workers in their membership base do so because their mission is to reach out to all workers. These unions try to build solidarity amongst workers by raising awareness about the reasons why unions should reach out to native, documented and undocumented workers³³. Unions may face challenges in organizing in sectors that are increasingly being filled by undocumented workers such as those that have traditionally not had a strong union presence, sectors where workers are hard to reach because they are in isolated places or where it is not straightforward to locate the employer. Yet in some cases the first obstacle to overcome is the legal framework itself, if the right to organize is not recognized for all workers, regardless of their migration status.

Challenging Legislation Prohibiting the Right to Organise and Join Unions: Right to Organize for all Workers³⁴

The Spanish *Ley de Extranjería* (Foreigners' Law) of August 2000 forbids undocumented migrants from the right to assemble, demonstrate, associate, join a union and go on strike. In January 2001, three major trade unions in Spain – the *Union General de Trabajadores* (UGT), *Comisiones Obreras* (CCOO) and the *Confederación General de Trabajo* (CGT) – made a public announcement stating that the law is unconstitutional, that they would not follow it, and that they would allow undocumented migrants to be members of their trade unions.

Another Spanish union, the *Sindicato de Obreros del Campo* (SOC), also went against this law by making undocumented workers union members. “We don’t even consider the article in foreigners’ law that prohibits these rights for undocumented workers, because we feel that a worker is above all a worker, regardless of the color of their skin, their race, their sex, their religion or anything else. It doesn’t make any difference to us if a worker has legal status or not. That’s why we make everyone members,” said Abdelkader Chacha of the SOC.

Building Strength through Coalitions with Multiple Actors: ODT – Migrant Workers

In May 2012, for the first time during the May 1st celebrations in Rabat, a group of more than 160 migrants, documented and undocumented, the majority living and working in Morocco for several years, marched together with the Moroccan Trade Union ODT (Organisation Démocratique du Travail) under the slogan “We are all workers”. While asking for decent and fair working conditions for all, these migrants took the opportunity and spoke about the abuses and human rights violations characterizing their life in Morocco and highlighted the absence of support and protection available to them.

The first Congress launching a trade union for migrant workers in Morocco was held a few months later, on 1 July 2012, under the umbrella of the ODT. By circulating press releases and reports, participating in public conferences and appearing in the written press, broadcast and social media, ODT-Migrant Workers quickly gained visibility and public support, and succeeded in establishing fruitful partnerships with several NGOs and government institutions.

On the occasion of International Migrants Day on 18 December 2012, ODT - Migrant Workers, in collaboration with the Moroccan National Council for Human Rights, held a conference entitled “Migrants and the New Moroccan Constitution” that explored possible strategies to improve the rights of irregular migrants within the existing legal framework. The event launched also a campaign for regularization that is one of the upcoming goals of ODT - Migrant Workers’ mandate.

A regularisation campaign in Morocco was launched on 2 January 2014, following a decision by King Mohammed VI in September 2013 to launch this new program. Undocumented migrants will be allowed to apply for regularization under the new scheme until 31 December 2014. Organisations welcome this initiative but note that the criteria are strict. For instance, applicants should have been residing in Morocco for at least five years, have been employed for the past two years or should be able prove at least two years of living with their spouse. Overall, the campaign should reach 25,000 to 30,000 undocumented migrants.³⁵

6. Preventing Exploitation by Advocating for Fair Labour Standards and Holding Employers Accountable for Migrants’ Rights

Putting the emphasis on the degradation of working conditions rather than on irregularity facilitates links between migrant workers and native workers. Advocating for fair working conditions can be the first step towards a strategy aiming at recognizing undocumented migrants’ rights more in general. Several organizations and unions work with employers to enhance communication between employers and workers and to stress to employers that they should respect minimum standards of employment.

Many organizations specialize in providing assistance to workers who wish to seek redress if they have serious workplace problems. Complaining against an employer almost inevitably entails the risk of being fired, and might

also entail the risk of being reported to the authorities due to the worker’s irregular status. Undocumented workers all too often only make a complaint when they are seriously abused or exploited.³⁶ Mediation is a valuable way of addressing a workplace problem involving an undocumented worker. By mediating with an employer, advocates in many cases find solutions to labor disputes without having to resort to further actions.³⁷

Challenging Large Corporations in the Agricultural Sector: The Coalition of Immokalee Workers

The Coalition of Immokalee Workers (CIW) is a community-based organization in Southwest Florida, United States, in the heart of the state’s agricultural production.³⁸ The Coalition, made up of more than 2,500 immigrant workers from Mexico, Guatemala and Haiti, is targeting consumers and involving the public at large to challenge growers and large corporations in the agricultural sector to uphold fair working conditions and to pay workers decently. The Coalition for Immokalee Workers (CIW) encourages consumers to boycott large fast-food chains that purchase tomatoes picked by workers who toil in exploitative conditions. The Coalition was formed in 1996 to promote reforms in Florida’s fields. Workers originally started to come together because they realized that there were problems that were common in all of their communities: low wages, violence and wage theft from crew leaders, and bad housing conditions. Following commitment by several fast food retailers, including McDonald’s, Taco Bell, Subway and Burger King to join the CIW Fair Food Programme, Wal-Mart Stores Inc., the largest retailer in the United States, joined the Fair Food Program in January 2014 and thus committed to increase farmworker pay and protect workers from forced labor and sexual assault.³⁹

7. Working with Governmental Agencies to Promote Undocumented Migrants’ Rights

Organizations work in different ways with governmental agencies to promote awareness amongst these institutions about undocumented migrants’ rights and to effectively improve their legal protection. Organizations can refer to agencies responsible for labour inspection and occupational safety, especially in cases of labour exploitation, as well as health and social policies and the police department. National human rights institutions also represent a strong and valuable ally.

European Union Fundamental Rights Agency (FRA): Establishing Clear Safeguards in Detecting and Apprehending Undocumented Migrants

The European Union Fundamental Rights Agency (FRA) issued, in October 2012, a set of operational guidelines establishing clear safeguards within the process of detection and apprehension of undocumented migrants.⁴⁰ In line with the guidelines, apprehension of migrants in an irregular situation should not entail a violation of undocumented migrants’ fundamental rights. As highlighted by the EU Fundamental Rights Agency, “*return policy objectives can be met effectively, without having to resort to apprehension measures which may disproportionately affect fundamental rights*” of undocumented migrants. Public officials and service providers should not be required to report undocumented migrants to immigration authorities. Service providers should eliminate information sharing with immigration authorities; immigration enforcement action should not be conducted in or near service provision. Detection procedures of the immigration authorities should not be conducted in such a way as to disproportionately discourage undocumented migrant families from accessing essential services.

City of Amsterdam Ensures Undocumented Victims Can Report Crimes Without Fear of Deportation

Despite the pending proposed legislation to criminalise irregularity, the State Secretary for Security and Justice has agreed to a pilot project in Amsterdam which would mean that irregular migrants would be able to report crimes without facing imprisonment. The project was agreed upon by the city council of Amsterdam in December 2011 but it has taken over one and a half years to see its implementation. Currently, many irregular migrants will not report when they have become a victim of human trafficking, abuse or violence, because they fear being imprisoned and/or deported.

The Amsterdam police have laid the groundwork for safe reporting of crimes for all regardless of status in the city. The Diversity Department of the Amsterdam Police promotes trust through organising dialogue meetings with migrant communities and upholding the principle of “Free in, Free out”, in order to build a safe city where victims of crime know that they can report a crime without fearing arrest, or deportation because of their irregular status. The Diversity Department provides “a safe haven” for undocumented migrants to have access to justice.

8. Advocating for Regular Status of Undocumented Workers

Regular status is a means for undocumented workers to have increased protection. Regularization is not a long-term solution, since it only affects those migrants without regular residence who are in a particular country at a given time. Beyond these initial considerations, over forty formal regularisation programmes have been implemented in the EU and United States over the last twenty-five years⁴¹, illustrating that it is not a one-off policy instrument, but a well-used and necessary mechanism in modern-day migration management.

Permanent regularisation programmes are beneficial for the sustainable protection of undocumented migrants' access to rights. However, migrants' rights advocates also advocate for increased channels of regular migration to address irregular migration and create a sound and safe system of labour migration. Family reunification, work and residence permits not tied to a single employer, and independent status for women are all preferable solutions to avoiding discrimination and obstacles in accessing rights because of the vulnerability linked to the migration status.

A 10-Year-Long Campaign for Regularization of Undocumented Workers in Belgium⁴²

In Belgium the campaign for regularization started in 1999, when the first law organizing the regularization of 2000-2001 was enacted. When the movement started to become organized in 1998, the main claim was having clear criteria for regularization. In order to make their voices heard, undocumented migrants started to march and occupied churches as a way to raise awareness. The result of this first phase was the decision to create a Commission for regularization, in charge of overseeing the process and assessing all applications. The idea was to have an independent structure, not linked to political powers, composed mainly by a secretariat and several chambers where judges, lawyers and NGOs representatives would sit. The secretariat sent the chambers applications that were posing more doubts and were not easy to address. The Commission was only responsible for making recommendations to submit to the Ministry of Interior, who was finally responsible to grant or deny regularization.

After this first wave of regularization was completed, demonstrations continued, as the government measures appeared not to have fully responded to the problem. Occupations and hunger strikes became a commonly used tool by the undocumented, and in some cases they succeeded in obtaining regularization for the protesters.

In 2004, the movement started to increase coordination among its members and structured its advocacy in a more formal way. The Asylum and Migration Forum, a platform regrouping 120 organizations, obtained from the government the immediate application of some measures that were announced in 2003 but never enacted.⁴³ Discretion and lack of transparency were still the main characteristics of the procedure, and no legislation was promulgated officially, resulting once again in an ad-hoc solution leaving the same problems unaddressed.

The strength of the movement relied for many years on broad participation that included not only migrant organizations and migrants' advocates, but many unions, universities, doctors, lawyers and several supporters that contributed for example in including the debate in the media⁴⁴. However, in recent years the movement suffered from increasing tensions and divisions where the common concerns of the undocumented workers representing a unified voice left the place to ethnic discourses. New organizations were launched without bringing strength to the movement, rather undermining its long-time fight.

END NOTES

¹ In March 2001, a 20 year old Russian dancer employed as an artiste fell five floors to her death. Oxana Rantseva had met Cypriot police some days before, but they handed her back to her employer. Her family lodged a successful complaint against Cyprus under Article 4 of the European Convention on Human Rights which prohibits slavery, servitude and forced labour. See: *Rantsev v Cyprus and Russia* [2010] ECHR 25965/04 (7 January 2010).

² For more details on these and other cases see KISA, "Latest News", available at: <http://www.kisa.org.cy/EN/news/index.html>. See also: PICUM, "Strategies to End Double Violence Against Undocumented Women. Protecting Rights and Ensuring Justice", March 2012, available at: <http://picum.org/picum.org/uploads/publication/Double%20Violence%20Against%20Undocumented%20Women%20%20Protecting%20Rights%20and%20Ensuring%20Justice.pdf>.

³ See for example: International Covenant on Economic, Social and Cultural Rights (ICESCR), International Convention for the Protection of the Rights of All Migrant Workers (ICMW), ILO-Convention No.143.

⁴ Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 on "providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals", available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:168:0024:0032:EN:PDF>.

⁵ See: The Immigration Reform and Control Act: Assessing the Evaluation Process (1989), available at: <http://www.law.umaryland.edu/marshall/usccr/documents/cr12r25z.pdf>. The United States General Accounting Office found that 10% of employers in its survey had engaged in unlawful discrimination, and that "widespread discrimination" had occurred. See: Charles A. Bowscher, Comptroller General of the United States, IMMIGRATION REFORM: Employer Sanctions and the Question of Discrimination, Testimony, Committee on the Judiciary, United States Senate, (March 1990), <http://www.gao.gov/assets/150/148824.pdf>.

⁶ See TUC comment on the United Kingdom proposal for a law introducing employer sanctions. Text issued in July 2007 and available at: <http://www.tuc.org.uk/international/tuc-13568-f0.cfm>. See also: PICUM, "Ten Ways to Protect Undocumented Migrant Workers", 2005, available at: http://picum.org/picum.org/uploads/file/PICUM_Ten_Ways_to_Protect_Undocumented_Migrant_Workers.pdf; Mehta, Theodore, Hincapié, "Social Security's No-Match Letter program: Implications for Immigration Enforcement and Workers' Rights", 2003, available at: http://www.nilc.org/immseplymnt/SSA_no-match_survey_final_report_11-20-03.pdf; National Immigration Law Center, "State and Local Proposals that Punish Employers for Hiring Undocumented Workers Are Unenforceable, Unnecessary, and Bad Public Policy", 2007, available at: www.nilc.org.

⁷ See Article 2, Convention on the Elimination of All Forms of Discrimination Against Women, available at: <http://www.un.org/womenwatch/daw/cedaw/>.

⁸ European Union Agency for Fundamental Rights (FRA), "Fundamental rights of migrants in an irregular situation in the European Union", November 2011, p. 50

⁹ The Czech Republic, Estonia, Lithuania and Slovakia do not recognise the right to compensation for withheld wages. See: European Union Agency for Fundamental Rights (FRA), "Fundamental rights of migrants in an irregular situation in the European Union", November 2011, p. 50.

¹⁰ See: Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights Following his visit to Greece, from 28 January to 1 February 2013, Strasbourg, 16 April 2013, CommDH(2013)6, available at: <https://wcd.coe.int/ViewDoc.jsp?id=2053611>.

¹¹ For more information see: PICUM, "Recommendations to the European Union to Urgently Address Criminalisation and Violence Against Migrants in Greece", March 2014, available at: http://picum.org/picum.org/uploads/publication/Recommendations%20to%20address%20criminalisation%20and%20violence%20against%20migrants%20in%20Greece_March%202014.pdf. See also: Racist Violence Recording Network at: <http://www.unhcr.gr/1againstracism/en/category/racist-violence-recording-network/>.

¹² See: PICUM, "Guaranteeing Access to Health Care for Undocumented Migrants in Europe: What Role Can Local and Regional Authorities Play?", August 2013, available at: http://picum.org/picum.org/uploads/publication/CoR%20Report%20Access%20to%20Healthcare%20EN_FR_IT_ES%202013.pdf.

¹³ For more information on the current project "Minivan" see: <http://www.emergency.it/italia/polibus.html>.

¹⁴ ILO Convention concerning decent work for domestic workers, C189 - Domestic Workers Convention, 2011 (No. 189), available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID:2551460. See also: UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Adopted by General Assembly resolution 45/158 of 18 December 1990, available at: <http://www2.ohchr.org/english/bodies/cmw/cmw.htm>.

¹⁵ This has also been recognised by the Regional Office for Europe of the UN High Commissioner for Human Rights (OHCHR), together with the International Labour Office (ILO) and International Organization for Migration (IOM) in a study on "Rights of Migrant Workers in Europe", aimed at identifying and analysing the challenges and opportunities for ratification by European Union countries of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. For more information see: United Nations Human rights Office of the High Commissioner, "Rights of Migrant Workers in Europe", available at: http://europe.ohchr.org/Documents/Publications/Migrant_Workers.pdf.

¹⁶ For more information see: European Parliament, Directorate General for External Policies, Policy Department, "Current challenges to implementation of the International Convention on the protection of the rights of all migrant workers and their families (ICRMW)", EXPO/B/DROI/2013/05, July 2013, pp. 25 et seq., available at: http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/433715/EXPO-DROI_ET%282013%29433715_EN.pdf.

¹⁷ UN, Report of the Special Rapporteur on the human rights of migrants, François Crépeau, "Regional study: management of the external borders of the European Union and its impact on the human rights of migrants", p. 20, para. 84, available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.46_en.pdf.

¹⁸ For more information see: International Centre for Migration Policy Development (ICMPD), "REGINE. Regularisations in Europe", Ref. JLS/B4/2007/05, §3.1 et seq, available at: http://ec.europa.eu/home-affairs/doc_centre/immigration/docs/studies/regine_report_january_2009_en.pdf.

¹⁹ European Union Agency for Fundamental Rights (FRA), "Apprehension of migrants in an irregular situation – fundamental rights considerations", available at: http://fra.europa.eu/sites/default/files/fra-2013-apprehension-migrants-irregular-situation_en.pdf.

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- ²⁰ Good practices identified as part of Annex I have been detailed by PICUM in its report: “*Au-delà de l’irrégularité. Guide à l’intention des organisations de la société civile du Maroc défendant les droits des migrants sans-papiers*”, available in French at: http://picum.org/picum.org/uploads/publication/PCUM%20Beyond%20Irregularity%20Guide_MOROCCO.pdf.
- ²¹ PICUM’s Terminology Leaflet will be available as from April 2014 on PICUM’s website at: www.picum.org.
- ²² For more information on the campaign see: <http://colorlines.com/droptheiword/>.
- ²³ Journalist resources are available at: <http://colorlines.com/droptheiword/resources/en/journalists.html#more>.
- ²⁴ The Campaign toolkit is available at: <http://colorlines.com/droptheiword/resources/en/toolkit.html>.
- ²⁵ The Action Guide is available at: <http://colorlines.com/droptheiword/resources/en/toolkit.html?tab=actiontab>.
- ²⁶ PICUM, “*Strategies to End Double-Violence Against Undocumented Women. Protecting Rights and Ensuring Justice*”, PICUM 2012, available at: <http://picum.org/picum.org/uploads/publication/Double%20Violence%20Against%20Undocumented%20Women%20-%20Protecting%20Rights%20and%20Ensuring%20Justice.pdf>.
- ²⁷ PICUM, Submission to the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, Day of General Discussion on the Role of Migration Statistics for Treaty Reporting and Migration Policies, 22 April 2013, Geneva, available at: http://www2.ohchr.org/english/bodies/cmw/docs/DGD/2013/DGDMigrationData_PICUM_2013.pdf.
- ²⁸ More information on the Clandestino project is available at: <http://clandestino.eliamep.gr/>.
- ²⁹ For more information see: <http://irregular-migration.net/>.
- ³⁰ For more information see: PICUM, “*Strategies to End Double-Violence Against Undocumented Women. Protecting Rights and Ensuring Justice*”, PICUM 2012, available at: <http://picum.org/picum.org/uploads/publication/Double%20Violence%20Against%20Undocumented%20Women%20-%20Protecting%20Rights%20and%20Ensuring%20Justice.pdf>.
- ³¹ The practical guide is available at: <http://www.travailleurssanspapiers.be/publications.php>.
- ³² PICUM, “*Strategies to End Double Violence Against Undocumented Women. Protecting Rights and Ensuring Justice*”, PICUM 2012, available at: <http://picum.org/picum.org/uploads/publication/Double%20Violence%20Against%20Undocumented%20Women%20-%20Protecting%20Rights%20and%20Ensuring%20Justice.pdf>.
- ³³ PICUM, “*Ten Ways to Protect Undocumented Migrant Workers*”, 2005, available at: http://picum.org/picum.org/uploads/file_/PICUM_Ten_Ways_to_Protect_Undocumented_Migrant_Workers.pdf.
- ³⁴ Ibid.
- ³⁵ For more information see: Hein de Haas, “*Morocco: Setting the Stage for Becoming a Migration Transition Country?*”, Migration Policy Institute, Migration Information Source, 19 March 2014, available at: <http://www.migrationpolicy.org/article/morocco-setting-stage-becoming-migration-transition-country>.
- ³⁶ PICUM, “*Ten Ways to Protect Undocumented Migrant Workers*”, 2005, available at: http://picum.org/picum.org/uploads/file_/PICUM_Ten_Ways_to_Protect_Undocumented_Migrant_Workers.pdf.
- ³⁷ Ibid.
- ³⁸ For more information on the Coalition of Immokalee Workers (CIW), see: <http://ciw-online.org/>.
- ³⁹ A full list of companies joining the Fair Food Program of the Coalition of Immokalee Workers is available at: <http://ciw-online.org/campaign-for-fair-food/#agreements>.
- ⁴⁰ FRA guidelines: Apprehension of migrants in an irregular situation – fundamental rights considerations http://fra.europa.eu/sites/default/files/fra-2013-apprehension-migrants-irregular-situation_en.pdf.
- ⁴¹ Albert Kraler, “*REGINE- Regularisations in Europe: Study on Practices in the Area of Regularisation of Illegally Staying Third-Country Nationals in the Member States of the EU - Appendix A: Country Studies*”, International Centre for Migration Policy Development 2009.
- ⁴² This historical overview of the regularization campaign movement in Belgium is taken from the article “1999-2009. Brève Histoire de la “Régul” by Francois Corbiau included in “*Sans- Papiers: le Bout du Tunnel?*”, published in Migrations Magazine, No. 1 2009-2010.
- ⁴³ For more information on the Asylum and Migration Forum see: <http://www.f-a-m.be/fra/>.
- ⁴⁴ To have an overview of some of the actors involved in this campaign and their present work, please visit [CIRE](http://www.foyer.be/index.php?l=2&lang=nl), [UDEP](http://www.foyer.be/index.php?l=2&lang=nl), [Plate-forme Mineurs en Exil](http://www.foyer.be/index.php?l=2&lang=nl), [Protestant Sociaal Centrum](http://www.foyer.be/index.php?l=2&lang=nl), [aCAW Artevelde Transithuis](http://www.foyer.be/index.php?l=2&lang=nl), [De Loodsen v.z.w.](http://www.foyer.be/index.php?l=2&lang=nl), <http://www.foyer.be/index.php?l=2&lang=nl>.