

UNDOCUMENTED MIGRANT WORKERS IN EUROPE



It is often said that migrant labour fills the “three-D” jobs: dirty, degrading and dangerous. Patrick Taran, International Labour Office

PICUM, the Platform for International Cooperation on Undocumented Migrants, held a conference on “Undocumented Migrant Workers” on May 26, 2003, at the European Parliament in Brussels. Nearly 200 participants came together from 20 countries in Europe, including undocumented workers, researchers, European and local policymakers, activists, representatives of trade unions, employers’ organizations and migrant worker organizations, as well as social inspectors. The conference aimed to provide opportunities to exchange expertise and information; to stimulate networking; to address the situation of undocumented migrant workers in various sectors of the economy; and to look for solutions with all actors involved.

The conference corresponded to one of PICUM’s main objectives as a non-

governmental organization, to promote respect for the human rights of undocumented migrants in Europe. PICUM seeks to achieve this aim by gathering information on law and practice regarding social rights, detention and deportation of undocumented migrants and the possibilities of regularization of their residence; by providing its members and other interested parties with expertise, advice and support; by strengthening networking amongst organisations dealing with undocumented migrants in Europe; and by formulating recommendations for improving the legal and social position of these immigrants, in accordance with the national constitutions and international treaties.

It is a taken for granted assumption that migrant workers in irregular situations are excluded from all social and legal protection. Undocumented migrant workers themselves assume that they are not entitled to claim their rights due to their lack of regular residence status and work permit. Norbert Cyrus, Polish Social Council

● STRIVING FOR PROTECTION OF UNDOCUMENTED MIGRANT WORKERS

Undocumented migrant workers throughout the European Union represent a cheap, readily available workforce that is increasingly sought out by employers. By denying them fair working conditions, employers are

international treaties and conventions, with particular focus on standards for fair working conditions; and comparing the current situation of undocumented migrant workers in Europe to international standards. Speakers

Many employers hire live in workers because they require “flexibility”, that is they want somebody available outside working hours, particularly for caring work. This must be seen within the context of the kinds of demands, long hours and weekends, that working life currently places on people. Bridget Anderson, Institute of Social and Cultural Anthropology, University of Oxford

at the conference addressed these issues and proposed solutions for the problem of the general degrading of workers' rights.

The conference report (*Undocumented Migrant Workers in Europe*) contains the articles presented by

able to make more profits, pretend to be more competitive, and respond to the growing demands of consumers to have inexpensive goods and services available at any time. Policy makers become involved in this phenomenon in contradictory ways. On the one hand, they take a hard stance against undocumented migrants by developing action plans for border control and return policies. On the other hand, they unofficially seem to tolerate their presence, well aware of the economic benefits brought by undocumented labor to their economies. At the same time the presently developed migration policies weaken the position of undocumented migrants to an even greater extent. Although the right to fair working conditions is upheld in several international conventions and treaties, indeed, not all EU Member States have policies that protect undocumented migrant workers, leading to a situation in which a growing part of the population is denied its basic social rights.

the conference speakers, and highlights the role played by social inspectors, trade unions and NGOs in ensuring protection of undocumented migrant workers. It is jointly published by PICUM and HIVA (Hoger Instituut voor de Arbeid, K U Leuven).

SPEAKERS AT THE CONFERENCE:

Bridget Anderson, *Institute of Social and Cultural Anthropology, University of Oxford*

Nicholas Bell, *European Civic Forum*

Claudia Cortés Diaz – *Groupe d'information et de soutien des immigrés (Gisti)*

Norbert Cyrus, *Polish Social Council*

Anna Marie Gallagher, *University of Deusto*

Bernd Honsberg, *Industriegewerkschaft Bauen-Agrar-Umwelt (IG BAU)*

Alain Morice, *CNRS – Laboratoire Urmis – Unité de recherches Migrations et société, Université Paris 7*

Roger Plant, *Special Action Programme*

to Combat Forced Labour, International Labour Office

Ghassan Saliba, *CITE-CCOO*

Patrick A. Taran, *International Labour Office*

Didier Verbeke, *Labour Inspector*

Wahid, *Undocumented Migrant*

● PICUM'S ACTION PLAN ON PROTECTION OF UNDOCUMENTED WORKERS

The international conference and subsequent report constituted the preparatory phase of a two-year action plan. PICUM's main aim is to gather substantial data and find appropriate ways to protect undocumented workers.

The first phase of the action plan will run from November 2003 until November 2004 and has a dual focus on research and protection. PICUM will gather more information on the theme of undocumented migrant workers and will focus on protection by highlighting good practices in this field. The concrete result of Phase I will be a report on good practices, which will contain an overview of existing tools that can be used to protect undocumented workers in

selected EU Member States. The final report is foreseen for December 2004.

The exchange and analysis of information that was carried out in the first phase of the action plan will be used to build strategies to work in depth on the issue in the second phase, which will run from November 2004–November 2005. The following activities are envisaged for the final phase of the action plan: development of methodologies to enhance the protection of undocumented workers; publication of informative brochures on these methodologies; and organization of regional workshops to disseminate and use the information gathered in the informative brochures.

For more information about the action plan: www.picum.org

The local president of the Rural Coordination, a farmers union, explained that "We want competent, efficient and readily available workers". "Available" means that they have no family on the spot, are lodged badly at the farm, and are ready to work ten hours a day and at weekends without ever demanding overtime payments. "Efficient" means that they will obey every order for fear of being sent back home.

Nicholas Bell, European Civic Forum

RECOMMENDATIONS

Acknowledging that **all** workers have the right to fair working conditions and decent living conditions;

Recalling the solid international basis for extending workers' rights to the informal economy;

Aware of the negative effect that the situation of vulnerable and exploited migrant workers has on standards for **all** workers;

The following recommendations are formulated to ensure protection of undocumented migrant workers:

1. National governments of European states are urged to ratify the International Convention for Protection of the Rights of All Migrant Workers and Members of Their Families (1990)¹, which guarantees various basic social rights to undocumented migrant workers.

2. National and European governments should openly recognise that several economic sectors in Europe depend on a cheap and voiceless workforce and that this dependence is unlikely to change. On the other hand, migration to Europe will continue to occur. The firm recognition of these two facts should serve as the basis for developing further policies in the fields of migration, employment and social affairs.

3. National and European governments should undertake the following measures to ensure that undocumented migrants can effectively fulfill their basic social rights as outlined in the International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families:

a. Appropriate and effective labour legislation with the necessary links to social security legislation should be developed. Informal workers are generally covered by existing labour legislation, although most are unaware of this and do not fulfill their rights. Social security legislation is usually inapplicable to undocumented migrant workers since the law excludes those that do not have formal employment. But it should be noted that in reality, the problem extends beyond situations in which the

employment is clearly informal. There have been many changes in the labour market and in forms of work organization in the recent decade. Labour legislation has failed to keep up with the increasing flexibilisation and externalisation. It is important to adapt labour legislation without lowering core labour standards.

b. Since the repressive approach in dealing with undocumented migrant appears to have failed, governments should undertake a supportive approach. Such an approach could entail stimulating the legal assertiveness of informal workers and empowering them in their ability to deal with conflicts. Incentives for hiring this 'easily exploitable' workforce would then be reduced.

c. Legislation and policies should be formulated with special focus on the needs of undocumented women and children, who are particularly vulnerable.

4. National and European governments should take appropriate measures to reconcile flexibility with equity (as emphasized by the ILO), to protect workers and uphold their rights throughout the process of increasing productivity in the European economy. The Guidelines for the Employment Policies of EU Member States (as presented by the Council on 22 July 2003) are designed to help in reaching the Lisbon goals - the EU should become the world's most dynamic and competitive economy. Issues such as safety at work and quality of jobs are merely addressed in the name of enhancing productivity. It is, however, important that the European Union does not lose sight of its goals of social inclusion and solidarity. Indeed, striving for a competitive economy in Europe puts pressure on labour relations on the global level. This is why it is important for employment policies to ensure that measures taken to enhance production are never made at the expense of the worker.

5. To develop a sound policy on this issue, national and European governments should prioritize collecting and exchanging data.

a. Research on undeclared work and the employment of undocumented migrants should have a global approach. Very little research has been done on the issue, but two



¹This convention entered into force on 1 July 2003. As of 31 October 2003, Bosnia & Herzegovina is the only European state that has ratified the convention. For a full text of the convention and signatories, see: <http://www.december18.net/UNconvention.htm>.

► studies that have been launched by the EC on undeclared work since its 1998 communication on this subject (reporting on the effectiveness of the different policies to combat undeclared work, and focusing on the measurement of undeclared work, the situation in the accession countries, the gender dimension and good practice) have a rather narrow approach and do not take into account all of the relevant factors described in this report. A study on undeclared work should investigate both supply and demand of informal work, the role of all of the traditional partners and consumers, and should make the link to migration and migration policies.

b. For the collection of data, a formal (governmental) or informal (NGO) ombudsman should be appointed to gather information on abuse, exploitation, and violations of rights.

6. It is important to rely on existing tools to protect undocumented migrant workers. Traditional actors in the field of labour are challenged to reconsider or reinforce their role.

a. Trade unions have a great potential in protecting undocumented migrant workers. The present situation of exploitation of workers and lack of protection in labour legislation is the same phenomenon that occurred more than a century ago when unions were beginning to be established. If trade unions refuse to include undocumented migrant workers in their ranks, their power base will become smaller, and their opinions will no longer be seen as representative of all workers. Unions will end up defending a diminishing group of privileged, mostly male workers with permanent jobs in traditional industries, who feel threatened by the growing number of unprotected workers². The charter that is currently being drafted by the International Union of Farm Workers on the rights for documented and undocumented migrant workers in agriculture could serve as an example³.

b. Instead of only talking about migrants in terms of a needed workforce to enhance productivity, employers'

organisations should stimulate their members to debate relevant ethical issues. Employers' organisations should take a clear stand against exploitation of the workforce for the benefit of increasing profit.

c. Labour inspectors also play an important role in protecting undocumented migrant workers, as their mission is to protect all employees. Labour inspectors are urged to consider undeclared workers as victims, and to minimize the negative consequences that an apprehension might have for them.

d. Unions cannot meet the challenges of the informalization of the labour market alone. This is especially true where unions are still learning about how the process of informalization is occurring, or where they have difficulties in reaching and organising informal economy workers. Therefore, co-operation and alliances with researchers and with NGOs working in the field of labour are very important.⁴ It is also imperative that individuals and NGOs that provide humanitarian support to undocumented migrant workers should in no way be penalized or criminalized.

7. Consumers can also play a role in combating the exploitation of undocumented migrant workers. Consumers seek the lowest price and are usually unaware of the social and environmental conditions in which the production of the goods they consume takes place. Through campaigns (e.g. the Clean Clothes Campaign⁵), they can be made aware of their responsibilities and the choice they have not to purchase certain products.

8. In addition to adapting labour and social security legislation to guarantee undocumented migrant workers' fulfillment of their basic social rights, national and European governments should elaborate and implement anti-racism and anti-discrimination legislation, as racism and discrimination often contribute to the exploitation of undocumented migrant workers.



PLATFORM FOR INTERNATIONAL COOPERATION
ON UNDOCUMENTED MIGRANTS

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²FNV. *From Marginal Work to Core Business. European Trade Unions Organising in the Informal Economy.* Amsterdam: FNV, 2003.

³International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUFA). "A Charter of Rights for Migrant Workers in Agriculture." 14 July 2003. <http://www.iufa.org> [29 October 2003].

⁴FNV. *Ibid.*

⁵Clean Clothes Campaign. <http://www.cleanclothes.org> [29 October 2003].

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