

**OSCE Seminar
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1. Engaging Public Support - Awareness-Raising Campaigns and Actions

- Campaigns targeting consumers
- Coalition of Immokalee Workers – USA
 - “Campaign for Fair Food”, 4-year campaign focused on consumers of Taco Bell: demand fast food giant to show corporate responsibility for unfair labor conditions and human rights abuses taking place in fields where tomatoes produced
 - In 2005: deal with Taco Bell establishing several precedents in farm labor reform; agreements with other corporate actors (Mc Donalds, Burger King, Subway, Whole Foods)
 - Involvement of student groups, religious organizations – broad sectors of the population
- Raising awareness amongst the general public – proper terminology
 - UN GA Resolution 1975 – irregular or undocumented migrants
 - Many regional bodies (e.g. European Parliament, European Commission, Council of Europe – recommendations on terminology)
 - MEDIA – need to use correct terminology, avoid stigmatization

2. Collecting Data

- Data seldom available or lack quality and relevance, resulting in uncertainty about the numbers of migrants as well as the human rights situation of migrant workers and their families.
- EU-funded research concerning presence of UDM and paths into irregularity:
 - Clandestino (2009):
 - “Despite the political intention of preventing and reducing irregular migration various legislations in the EU instead contribute to its emergence. Thus, a considerable discrepancy can be identified between policy goals and policy outcome.”
 - Undoc. Workers in Transition: 200 testimonies of UDM and expert interviews
 - “Workers without papers have been driven into the most marginal

and dangerous jobs, but that the imperative for them to seek work makes even these difficult conditions 'acceptable'."

- FRA's reports:
 - Specific case study on irregular migrant domestic workers; specific recommendations concerning undocumented workers' entitlements to access to justice, workers' compensation
- UN Migrant Workers Committee:
 - DGD on "the role of migration statistics for treaty reporting and migration policies" – 22 April 2013
 - Aim: close gaps in methodologies, quality and practices as well as the solutions that are being adopted to gain information on the protection of rights and that data on habitually "hidden" populations - including irregular migrants, migrant domestic workers, migrants in administrative detention, children of migrants

3. Informing Undocumented Migrants About Their Rights

- Do UDM have rights?
 - Non-discrimination clause that affords protection of rights to non-citizens as well
 - Any differences in treatment given to migrants must conform to int'l law and must not breach migrants' internationally recognized HR
- UN Migrant Workers' Convention: ratified by Algeria, Egypt, Morocco
 - General Comment No. 2 - will outline Part III of the convention, which specifies the rights of UDM and their families
 - Protection against violence
 - Protection against forced and compulsory labor and child labor
 - Equal treatment as nationals in terms of conditions of work and terms of employment
- Innovative, creative ways of reaching out and informing UDM about rights:
 - Info centers - CITEs in Spain and Italian unions
 - Telephone assistance
 - Printed materials (pamphlets, brochures, comic books, guides, etc.)
 - Group sessions
 - Popular education (animation, short films on Internet, radio campaigns)

4. Empowerment

- UDM from “collectif” in Switzerland:
 - “As undocumented workers we do have rights, the trade unions and everyone else tell us that we do, but the problem is exercising them. It’s like having a Porsche without knowing how to drive.”
- A key way to empower UDM: organize them so that they can collectively examine possibilities for challenging unfair employers.
- Migrant domestic workers:
 - DWAG (Domestic Workers Action Group) – MRCI: moving from charity to rights-based approach
 - The group initiated dialogue with the Irish Congress of Trade Unions (ICTU) and the Services, Industrial, Professional and Technical Union (SIPTU) to develop a Code of Practice for domestic workers in Ireland. This code was negotiated with and agreed by the ICTU in Ireland’s National Partnership Agreement.
 - RESPECT: Empowers and facilitates engagement of migrant domestic workers in policies which relate to them; has worked with Dutch union AVKABO to unionize migrant domestic workers
 - ILO Convention 189 (June 2011) on domestic workers - many migrant domestic workers were present in civil society delegations participating in ILC to influence discussions concerning possible convention
 - Uruguay and Philippines first two signatories; convention should come into force in Sept. 2013
- DREAMERS movement in the United States
 - Undocumented youth mobilizing to gain access to higher education and paths to citizenship
 - Activism led to Obama issuing “Deferred Action for Childhood Arrivals” on June 15, 2012

5. Unionizing UDM

- “A worker is a worker is a worker!”
- In 2009, CSC/ACV union conducted outreach programmes to the churches, universities and other buildings in Brussels which were being occupied by undocumented migrants seeking regularisation.

- By going out and speaking to the women that were present in these occupations, Ana Rodriguez of CSC realised that not only were the women uninformed about their rights, but that their needs and demands were not being addressed by the often male-dominated occupation committees which had been established.
- CSC/ACV trade union in Brussels started a group with documented and undocumented women in 2010 based on personal story telling and discussion about their working conditions. In addition to developing demands about recurring issues, the group's work fed into the broader work of the union, enabling them to take part in concrete actions to defend their rights.
- German Ver.di – have started small initiatives dedicated to protection of undocumented workers
- Swedish trade unions – “Right to Health Initiative” – over 62 organizations included, major trade unions of professionals (representing more than 1 million workers)
- Morocco - First congress launching a trade union for migrant workers in Morocco, called held on 1 July 2012, in Rabat, under the umbrella of the Organisation Démocratique du Travail (ODT).
 - Migrant workers, most of whom were undocumented and originally from Sub-Saharan countries, had marched along the streets of the Moroccan capital during the 1 May celebration, calling for decent and fair working conditions and asking for the regularisation of their status.
 - The first task of the union will be to conduct a study in order to count migrants working in Morocco, regularly or not, describe their working and living conditions and also to gather information regarding their families (access to health care, education, housing).
 - December 2012 conference: “Pour une politique de regularization des sans papiers dans le contexte de la reforme contitutionnelle au Maroc”

6. Working with Employers to Prevent Exploitation and Holding them Accountable for Abuse

- Following 2004 tragedy in which 23 Chinese cockle pickers drowned, T&G union led “Legislation, not exploitation” campaign in UK, calling for system of licensing and registering gangmasters
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- Gangmasters' Licensing Act passed in 2004 and Authority created in 2006 to investigate complaints and abuses
- Employers' sanctions directive
 - Will be crucial to ensuring that the various protective measures have intended effect of ensuring that employers, not migrants, pay the price of exploitation.
 - PICUM currently conducting review of this directive with members to determine if UDM can claim back wages, can safely file complaint with labor inspectors, etc.
 - Experience from PICUM members so far in Eastern Europe has shown that directive is not properly applied and protections not granted
 - In Belgium, however, some six NGOs working specifically with UDM are now recognized by government

7. Mediation and collective actions

- Nearly 80% of cases of exploitation of day laborers resolved through direct mediation/negotiation with employer
- Aim is to resolve situation before having to take further measures
- Resort to collective actions to draw attention of broader public and other actors who can offer support
 - Picketing in front of restaurants of abusive employers in NYC
 - Strike of undoc. workers in France and subsequent, though small-scale, regularization of workers

8. Using Legal Channels

- Lengthy and drawn-out process:
 - Case of Moldovan undocumented worker in Belgium, fell off scaffolding, abandoned by his employer, in a coma for one year, and finally, six years later, has been allowed to stay and given medical treatment
- Examples:
 - Supreme court decisions in Spain and Greece upholding labor rights of undocumented workers;
 - Workers' compensation cases in NL, FR, Belgium
 - Irish cases of back wages totaling more than 50,000 Euros for three separate situations of undocumented workers

- European Social Charter – two cases on undoc. children
- European Court of Justice – case on unemployment benefits (Zambrano) – children
- Worrying developments:
 - Irish Supreme Court ruling on 31 August 2012
 - Justice Hogan found that the Employment Permits Act 2003 prevents an undocumented worker from seeking redress under labour law as the employment contract cannot be recognised.
 - For many years, Mohammed Younis was subjected to modern day slavery. He was paid 55 cent per hour. He worked extremely long hours with no day off. The employer failed to renew Muhammad's work permit which rendered him undocumented.
 - Case concerned Amjad Hussein, trading as Poppadom Restaurant, challenging a decision of the Labour Court with respect to Muhammad Younis, who was awarded €92,000 for breaches of employment law.

9. Working with Governmental Agencies to Promote UDMs' Rights

- Many organizations identify the need to build relationships with governmental agencies required to support workers, to help them provide effective protection
- Many times governmental agencies can and want to intervene to protect workers, but are limited because they cannot effectively reach the most exploited workers.
- FRA guidelines: Apprehension of migrants in an irregular situation – fundamental rights considerations http://fra.europa.eu/sites/default/files/document-on-apprehensions_1.pdf
 - Access to justice, to enable undocumented migrants to report crime without being apprehended. Good practices indicated:
 - introducing possibilities for anonymous, or semi-anonymous or other effective reporting facilities;
 - offering victims and witnesses of serious crimes the possibility to turn to the police via third parties (such as a migrants ombudsman, specially designated officials; or entities providing humanitarian and legal assistance);
 - defining conditions under which victims or witnesses of crime, including domestic violence, could be granted residence permits building upon standards included in Directive 2004/81/EC and Directive 2009/52/EC1;
 - considering the need for delinking the immigration status of victims of violence from the main permit holder, who is at the same time the perpetrator;
 - developing leaflets in cooperation with labour inspectorates or other relevant entities to systematically and objectively inform migrants apprehended at

their work places of existing possibilities to lodge complaints against their employers, building upon Directive 2009/52/EC, and in this context taking steps to safeguard relevant evidence.

- Worrying developments: criminalization of irregular migration and supporters
 - The Dutch government has said that persons without documentation can receive a fine of up to EUR 3,900 if found in the Netherlands. The deputy minister for Security and Justice stipulated the police will not target undocumented migrants, but if apprehended the person will be eligible for a fine and will be placed in detention until the conclusion of the return procedure. If stopped for a second time he or she will be prohibited from travelling to the Netherlands (or any other EU country) and those who refuse to leave will be eligible for detention. However, the deputy minister has also said that unlike some other EU Member States, the Netherlands will not make it a crime to help undocumented migrants.
Source: [NRC](#), 14 December 2012
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 - A new legislative proposal limiting police custody of undocumented migrants to a maximum of 16 hours detention in police stations is being examined by the Council of Ministers and the Senate before a final vote in November 2012. With the Court of Appeal's decision of 5 July 2011 forbidding using police custody for undocumented migrants, they would be placed under control of the judicial authority in order to consider a possible deportation. Moreover, the draft law would cancel the 'solidarity offence', which was until now punishable by a 5-year prison sentence and a €30,000 fine.
Source: [France Info](#), 27 September 2012

10. Regularization and regular channels for migration UDM

- The International Labor Recruitment Working Group - labor rights, migrant rights and anti-trafficking organizations in the U.S. – issued report this week on immigrant worker abuse (The American Dream Up for Sale: A Blueprint for Ending International Labor Recruitment Abuse)
 - Report identified the shortcomings and gaps in the current regulatory and enforcement framework governing international worker programs, while providing important recommendations for reform.
- EU Seasonal Workers' Directive: (NGO Call to Action):
 - apply to third-country nationals residing outside the EU and to third-country nationals already residing in an EU Member State but not having access to the labour market,
 - define the notion of seasonal work so as to prevent social dumping between national and third-country workers in the EU by:

- - clearly distinguishing it from temporary work and
 - limiting it to agriculture, horticulture and tourism while regulating the possibility of extension to other sectors,
- establish the necessary conditions for effective access of seasonal workers to the full respect of equal treatment, decent working and housing conditions and comprehensive social protection measures by:
 - reinforcing the conditions laid out in work contracts,
 - making all collective agreements applicable,
 - extending the scope of equal treatment,
 - providing for effective monitoring and complaint mechanisms and
 - defining minimum standards on accommodation,
- determine or oblige the Member States to determine the conditions under which seasonal workers may apply for a longer-term residence permit.
- More regular channels of migration should be developed:
 - Family reunification (children travelling alone can also be trafficked while trying to reach parents or other family members in countries of destination)
 - Work and residence permits not tied to single employer
 - Independent status for women
- Regularization schemes should be promoted