



# Ten Ways to Protect Undocumented Migrant Workers



PLATFORM FOR INTERNATIONAL COOPERATION ON UNDOCUMENTED MIGRANTS

This report was made possible with the generous support of the German Marshall Fund of the United States and the following foundations through the NEF (Network of European Foundations): King Baudouin Foundation, Compagnia di San Paolo, and the Fundação Luso-Americana.

**G | M | F** The German Marshall Fund  
of the United States  
**STRENGTHENING TRANSATLANTIC COOPERATION**



ISBN number: 90-807813-7-1

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## Acknowledgments

PICUM would like to thank the following members of the Steering Committee for sharing their knowledge, insight and experiences throughout the project: Bridget Anderson (Kalayaan/COMPAS, University of Oxford), Nicholas Bell (European Civic Forum), Josh Bernstein (NILC), Marijke Bijl (OKIA), Reyes Castillo (Asociación Comisión Católica Española de Migración), Norbert Cyrus (Polish Social Council), Anna Gallagher (University of Deusto), Antoine Math (GISTI), Catelene Passchier (ETUC), Yongmi Schibel (Migration Policy Group), Paul Schoukens (European Institute for Social Security, KU Leuven), Didier Vanderslycke (OR.C.A.), and Johan Wets (HIVA, KU Leuven).

PICUM is very grateful to all of those who contributed to the final editing process of this report: María Helena Bedoya (CITE-CCOO), Gustavo Behr (Casa do Brasil de Lisboa), Gary Brisley (T&G Union), Henry Cardona (CTSSL), Sabine Craenen (OR.C.A.), Alejandra Domenzain (Sweatshop Watch), Pauline Doyle (T&G Union), Lisa Gagni (CESTIM), Marielena Hincapié (NILC), Lotta Holmberg (SAC), Anabela Magalhães (CGTP-IN), Stefan Malomgré (Federal Public Service of Employment, Belgium), Rachel Micah-Jones (CDM), José Miguel Morales (Andalucía Acoge), Victor Narro (UCLA Labor Center), Julia Perkins (CIW), Ai-jen Poo (DWU), Elsa Ramos (Samahan), Laura Santa-Maria (Unite for Dignity), Cinzia Sechi (ETUC), Rebecca Smith (NELP) and Yasmine Arango Torres (USL/CGTP-IN). We would especially like to thank Dirk Kloosterboer (Dunya Advies) and Nanna Sofie Gram for their extensive assistance in making final revisions to the report.

PICUM thanks Charles Buchanan, Piero Gastaldo, Raymond Georis, Mario Gioannini, Corinna Horst, Hywel Ceri Jones, Alexandre Kirchberger, Françoise Pissart, Thierry Timmermans and Andrea Witt from all of the foundations that sponsored the project. We are also grateful to the Network of European Foundations for providing facilities for the Steering Committee to convene in Brussels.

We would like to thank the many individuals who transcribed the interviews that were an important basis for this report: Ilke Adam, Gabriela Barrera, Bart Bauwens, Tom van Brussel, Vanessa Cappalonga, Alessandra Fontana, Bram Goris, Michael Laird, Thomas Lau, Jeronimo Lemos de Freitas Filho, Inge Parys, Brita Pohl, Fernando Scheller, Cristina Serverius, Daniel Sorrosal, Gudrun van Bell and Juan Velasco. Special thanks also to Brita Pohl, Antoon Stessels and Angela Gegg for providing administrative support throughout the project.

Finally, we would like to thank all of the undocumented workers and the representatives from NGOs, trade unions, governmental institutions and other entities that shared their time and insights to help in the creation of this report.

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## PICUM and Promoting Fair Working Conditions for All Workers

Ahmad comes from Algeria\*, and has been living and working in Brussels as an undocumented worker for eight years. Three years ago, he started to work in a pub in the center of the city. Ahmad was paid less than minimum wage, had to work sixteen hours a day, and had accommodation in a small room above the bar.

One night while working, he fell through a glass door and injured his hand, and had to go to the emergency room in the local hospital. His employer made him understand in very clear language that he'd better not mention his employment situation in the hospital, which Ahmad didn't.

When he came back to work the next day, he found out that his job had been given to someone else, and his room was taken by the new employee.

*\*not his real name and country of origin*

PICUM, the Platform for International Cooperation on Undocumented Migrants, is a network of organizations providing assistance to undocumented migrants residing in Europe. PICUM's main aim is to promote respect for the human rights of undocumented migrants.

In recent years, PICUM's members have increasingly indicated the importance of working on the issue of the protection of undocumented workers. Stories such as the one described above are very familiar to almost all organizations providing support to undocumented migrants in the European Union.

Several actors have indicated the urgent need to find a solution to this distorted situation, in which undocumented migrants are criminalized and chased on the one hand, and desired and exploited on the other hand. PICUM has made this report for three main reasons: we are committed to upholding the human rights of undocumented migrants; the protection of undocumented workers is important for society at large; and because in the end, this issue affects all workers.

We hope that this report will bring support and inspiration to all of those who support undocumented workers, to policy makers concerned about finding solutions that are beneficial for all, and to all the Ahmads living and working in the EU, because nothing works without them.

**PICUM**, October 2005

# Executive Summary

This report aims to contribute to the development of a just and pragmatic policy towards undocumented migrant workers. There is an urgent need to find a solution to the ongoing exploitation and abuse of these workers. PICUM has made this report because it is committed to upholding the human rights of undocumented migrants and the labor conditions of *all* workers, including native workers. PICUM also recognizes that in order to safeguard social cohesion, this critical issue must be addressed.

This report presents a wide range of examples of the numerous ways in which NGOs, trade unions and other actors uphold the rights of undocumented workers in Europe and in the United States. PICUM aims for this report to bring support and inspiration to all of those who advocate for undocumented workers. The ten ways to protect undocumented migrant workers are briefly introduced below. For policy makers concerned about finding adequate solutions that are beneficial for all, PICUM has concluded this report with ten recommendations, which are summarized in the right column below.

## Engaging public support through events and consumer campaigns

Undocumented workers are too often thought of as taking advantage of public benefits and causing native workers to become unemployed. Changing the unfavorable image of undocumented workers and gaining public support is paramount in protecting their rights.

Without public support, undocumented workers stand little chance of fighting exploitation and abuse, a reality that many endure on a daily basis. Numerous organizations engage in awareness-raising initiatives to dispel the negative images of undocumented workers by highlighting that these workers are human beings and that they contribute considerably to our economies.

*Acknowledge the social and economic presence of undocumented migrants*

## Collecting data

Policies in the fields of migration, employment, and social inclusion are often developed in the absence of concrete data about undocumented workers. As a result, many of these policies lose their effectiveness. Collecting both qualitative and quantitative data on undocumented workers is thus of utmost importance.

NGOs play a crucial role in setting a relevant research agenda and in overcoming the many difficulties of gathering essential information about undocumented workers, who tend to live in the shadows.

*Prioritize data collection*

*Involve (local) NGOs in conducting research and making policies*

## Informing undocumented workers about their rights

Undocumented workers do have rights, but many are unaware of this. As a consequence, countless undocumented workers do not challenge their employers if the latter exploit or abuse them. Informing undocumented workers about their rights is at the core of this report, since it is the first step towards ending the silent suffering of hundreds of thousands of undocumented workers.

*Ratify the Migrant Workers Convention*



## Building capacities through empowerment

In order to prevent and stop exploitation and abuse, undocumented workers must be able to effectively exercise their rights. Empowering and developing undocumented workers' leadership capacities counteracts a system of dependency. Instead, workers are able to defend themselves and even engage in and influence the decision-making affecting their lives. These capacities are essential if workers are to become agents of their own rights.

## Unionizing undocumented workers

For an undocumented worker acting alone, asserting one's rights remains a major challenge. Unionizing undocumented workers is therefore very important, since it puts a worker in a much stronger position.

*Safeguard the right to organize*

There are, however, several obstacles preventing undocumented workers from joining unions, and not all traditional union structures and working methods are directly applicable to undocumented workers. Many trade unions in Europe and the United States have managed to overcome these difficulties, leading to an enhanced level of protection of undocumented workers.

## Working with employers to prevent exploitation and advocating for laws to hold them accountable to fair labor standards

One way to prevent violations of undocumented workers' workplace rights is to work with employers. There are several successful examples of organizations that invite – and sometimes pressure – employers to respect well-defined minimum standards of employment.

*Invest in workplace inspection*

But there is also a need for legal measures holding employers accountable if they exploit or abuse their undocumented employees. Such measures are indispensable to attain effective protection of undocumented workers' rights.

## Challenging exploitation and abuse through mediation and collective actions

Other ways of asserting undocumented workers' rights are by engaging in mediation and collective actions.

*Open up the debate on the future of the low wage sector*

*"Nobody wants a bunch of angry workers on their doorstep or circling their car, making it hard for them to do their work. ... (After repeatedly putting pressure on abusive employers as a group), now essentially all it takes is a call from our organization to the employer, telling him that so-and-so worked for him for x number of days, that he owes him x amount, and when can he get a check over to our office?"* said Julia Perkins of the Coalition of Immokalee Workers.

As an alternative to filing an official complaint through a governmental entity, collective actions and mediation have often proven to be very useful ways of upholding undocumented workers' rights.

### **Asserting undocumented workers' rights in the legal system**

When other means of protecting undocumented workers' rights turn out to be unsuccessful in resolving labor disputes, undocumented workers can resort to filing an official claim through legal channels. This can be a difficult and challenging task, as there are numerous obstacles involved in making a claim: the fear of being deported, high legal fees, and the need to prove the employment relation. Such barriers deter many undocumented workers from using the legal system.

However, the law offers protection, and there have been numerous legal rulings in Europe and in the United States in favor of undocumented workers.

*Safeguard the right to equality before the law*

### **Working with governmental agencies to promote undocumented workers' rights**

Undocumented workers tend to be reluctant to approach governmental agencies. Nevertheless, many governmental agencies, including the entity responsible for labor inspection, do not let a worker's irregular legal status impede their main task, namely to uphold fair working conditions and to sanction exploitative and abusive employers.

Liaising with governmental agencies can therefore be helpful in improving the protection of undocumented workers, since these agencies can and will intervene in many instances to protect these workers.

*Mainstream undocumented migrants in integration policies and in the Social Inclusion Strategy*

### **Advocating for legal status of undocumented workers**

A final way of preventing abuse and exploitation is to legalize the status of undocumented workers.

There are many arguments for regularizing undocumented workers. Regularization leads to increased visibility of this particular social group, and thus to increased protection. It is a proven fact that not only undocumented workers, but society at large benefit from legalization procedures. Regularizing undocumented workers is a way to combat the informal economy and to stop the deterioration of general working conditions, which in the end affects *all* workers.

*Regularize undocumented migrants*

# Why Invest In the Labor Rights of Undocumented Workers?

## A Commitment to Human Rights

The first study ever done on the deaths of Mexican workers in the United States - an Associated Press investigation released in March 2004 - revealed that Mexicans are 80% more likely than native-born workers to die due to workplace accidents. Moreover the study indicated that the deaths are almost always preventable.<sup>1</sup>

There is no evidence that this is any different in Europe, rather the contrary. Undocumented workers are exploited in all of the countries that make up the European Union. This exploitation and abuse can take harsh forms: undocumented workers often toil in dangerous and/or unhygienic conditions; many do not receive their wages or receive less than agreed upon and are fired without being given due notice; if an industrial accident occurs, the lack of official proof of employment renders it complicated and often impossible to have any health care refunded; if an undocumented worker is apprehended for being engaged in illegal work, s/he will most of the time be deported without being able to claim his/her wages.

For many people, this situation is hard to believe, as it reminds us of times long before a labor movement existed. The term "slavery" is often used to describe this situation. As an organization rooted in civil society, PICUM is committed to upholding the human rights of all people living in Europe. The necessity to denounce this large-scale violation of human rights is the principal reason for writing this report. We are committed to engaging in actions to bring about change concerning this situation.

## An Essential Element of Social Cohesion

Irregular migration constitutes a large share of all migration into Europe. Due to the difficulties in legally entering the European Union, many migrants either enter illegally, or enter legally and become undocumented after their visa/residence permit

### DO UNDOCUMENTED MIGRANTS HAVE RIGHTS?

Yes! Just like all human beings, undocumented migrants have rights. The following section highlights some of these rights and the international conventions wherein these rights are mentioned. An exhaustive overview of international human rights legislation in relation to undocumented migrants can be found at: [www.picum.org](http://www.picum.org).

#### • The right to health care

International Covenant on Economic, Social and Cultural Rights, Article 12.1: "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the *highest attainable standard* of physical and mental health."

#### • The right to organize

International Covenant on Civil and Political Rights, Article 22.1: "*Everyone* shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests."

#### • The right to fair labor conditions

International Covenant on Civil and Political Rights, Article 7: "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure in particular: remuneration which provides all workers, as a minimum, with: (1) fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work. (b) safe and healthy working conditions; (...) (d) rest, leisure and reasonable limitation of working hours and periodic holidays with pay as well as remuneration for public holidays."

<sup>1</sup> See Justin Pritchard, The Associated Press, "Mexican Worker Deaths Rise Sharply Even as Overall U.S. Job Safety Improves," March 14, 2004, available online at: [http://fmmac2.mm.ap.org/polk\\_awards\\_dying\\_to\\_work\\_html/DyingtoWork.html](http://fmmac2.mm.ap.org/polk_awards_dying_to_work_html/DyingtoWork.html), accessed on September 1, 2005.

expires. Even though systems for legal (labor) migration are being developed, it is improbable that the number of undocumented migrants residing in Europe will decrease in the near future. This has also been indicated in a recent study made by the European Commission on the links between legal and illegal migration (COM(2004) 412 final).

Regardless of whether migration should be seen as something positive and desirable or as a negative, perverse effect of globalization, migrants - both documented and undocumented - are part of our societies. Hence all efforts to enhance social cohesion should take into account the situation of both documented and undocumented migrants.

So far the debates on integration in the EU have been centered on legal migrants. Nonetheless, supportive policies are urgently needed for undocumented migrants as well. Regardless of whether one is for or against open borders or undocumented migration, it is essential to recognize that there are many undocumented migrants living in the EU. Undocumented migrants, like all other people living in Europe, have certain needs, and not responding to these needs damages social cohesion.

But the threat to social cohesion also comes from another angle. Health care staff, teachers, lawyers, social workers, local administrations and activists increasingly state that they are being left to resolve the problems related to undocumented migrants themselves. "What can be done?" is increasingly being asked by citizens, legal migrants, professional groups, and trade unions. Professional groups experience clashes between what their professional ethics tell them to do and the incriminatory discourse regarding undocumented migrants. They may have to break the law, which could result in the loss of their job, or face serious ethical dilemmas. There is therefore a need for clarity and openness.

## The Importance for All Workers

It is relatively easy for an undocumented migrant worker to find employment in almost any EU Member State. This is not at all a new phenomenon. In one of PICUM's previous publications, which presents an overview of the situation of undocumented migrant workers in Europe, it is underlined that the main reasons for the

### DO UNDOCUMENTED MIGRANTS HAVE RIGHTS?

#### • The right to education and training

Convention on the Rights of the Child, Article 28.1: "States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall in particular: Make Primary education compulsory and available free to all; Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need."

#### • The right to shelter

International Covenant on Economic, Social and Cultural Rights, Article 11.1: "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and *housing*, and to the continuous improvement of living conditions."

#### • The right to family life

European Convention on Human Rights, Article 8.1: "Everyone has the right to respect for his private and family life, his home and his correspondence."

#### • The right to moral and physical integrity

EU Charter of Fundamental Rights, Article 3.1: "Everyone has the right to respect for his or her physical and mental integrity."

European Convention on Human Rights, Article 4.1 and 4.2: "No one shall be held in slavery or servitude" and "No one shall be required to perform forced or compulsory labor."

#### • The right to equality before the law

EU Charter of Fundamental Rights, Article 20: "Everyone is equal before the law."

attractiveness of these workers is due to their flexibility, availability, and because they are cheap to employ.<sup>2</sup>

By denying fair working conditions to undocumented workers, employers are able to respond to consumers' growing demands to have inexpensive goods and services accessible at any given time. To ensure a good profit margin, companies often resort to cutting costs by lowering the standards of working conditions. Native workers are often unwilling to accept work at such low wages and bad conditions. These jobs are often filled by undocumented workers, who are forced to accept substandard working conditions.

There is a serious risk inherent in tolerating a situation in which a certain group of workers is denied their rights. Legal and undocumented migrant workers have often been the experimental ground for the profound restructuring of the economic fabric and work models in Europe. In our previous report,<sup>3</sup> it was stated that the new orientation of capital-work relations can be described in two words: flexibility and externalization. All of the present trends of temporary work, precarious contracts, subcontracting, mobile schedules, dependency of employees and undeclared employees have all been tried out first on foreign workers. "Have work but not the worker" will be the core of the whole future labor policy, if it is not stopped in its present stage.

<sup>2</sup> See Michele LeVoy, Nele Verbruggen and Johan Wets, eds., *Undocumented Migrant Workers in Europe* (Leuven: PICUM and HIVA, 2004).

<sup>3</sup> Ibid.

# Aim of This Report

## Undocumented Workers

This report aims to make the problems faced by undocumented workers visible. PICUM aims to prevent and stop undocumented workers from being severely exploited and/or abused and unable to defend themselves.

This report encompasses a broad variety of methods being used in Europe and the United States to improve the situation of undocumented migrant workers. Its descriptive nature leads it to be more of a guide, rather than a concrete tool to be used by individual undocumented workers who want to enforce their human rights.

## NGOs, Unions and Activists

In recent years, civil society has reacted to the increasing presence of undocumented migrants in Europe and in the United States by offering support in different ways. New organizations have been formed, and established organizations have included the fight for undocumented migrants' rights in their work.

The issue is rather new for Europe, though, and the climate in which many of these activists operate is at times quite repressive and discouraging. The organizations in PICUM's network have clearly indicated a need for support and clear suggestions. This report is a response to that demand.

Labor unions are a crucial player among these activists. This report elaborates on their role in protecting undocumented workers. For now, suffice it to say, unions have heard the call for support and inspiration. As stated by Catelene Passchier, Confederal Secretary of the European Trade Union Confederation: "It's easy to agree on nice principles, but it's difficult to find concrete ways of acting."

## Policy Makers

We aim to provide relevant information for policy makers. Undocumented migrants are currently the focus of diverse policies, many of which are framed

### GEOGRAPHICAL SCOPE OF THIS REPORT

This report is primarily targeted at actors in the European Union. It should be noted, however, that we did not strictly stick to EU borders for the collection of good practices.

Many good practices have been identified in the European Union, but we also examined initiatives in Switzerland. And most of all, we extensively drew from expertise in the United States. Undocumented workers in the United States have been in the spotlight for many years, and civil society has developed interesting and inspiring ways to deal with the issue. Therefore, many of the examples included in this report are from the United States.

In doing research in the United States, we noticed that many organizations, unions and activists found inspiration in the examples from Europe. This report hopes to foster the process of transatlantic learning in this field.

in the fight against illegal migration, the main aim being to discourage migrants from illegally coming to Europe.

Through this report, we would like to demonstrate that there are more issues at stake. We highlight the human rights dimension, and the risk for social cohesion if the presence of undocumented migrants is not dealt with in an appropriate and realistic way.

The last chapter presents suggestions for a way forward, in the form of recommendations for policy makers. It should be noted that our use of the term "policy makers" does not refer exclusively to national or European lawmakers. Many more institutions and bodies contribute to the development of policies in the field of migration, and more explicitly in the area of undocumented migration. In a broad sense, policy makers include unions and schools, as well as local authorities. All of these actors formulate and implement policies that affect PICUM's target group and the public at large.

## About the Structure of This Report

### Focusing on Actions

This report contains examples of methods used by NGOs, unions, and activists in Europe and in the United States to strengthen the position of undocumented workers. We have grouped all of the different methods we have come across during our research into ten major actions. We are aware that these ten actions do not do justice to the richness of methodologies being developed on this important issue, but we hope to have captured the bulk and to have presented them in a user-friendly way.

There are many ways to group the information gathered. One way could be by the different problems experienced by undocumented workers, such as wage concerns, working hours, accidents/safety at work, harassment, etc. Another way of arranging the material could be according to the different actors involved in this issue, such as the undocumented workers themselves, community organizations, unions, employers, labor courts, governmental agencies, etc.

We have chosen to group the information by presenting ten types of actions that can be taken to protect undocumented workers. We felt that this was the most appropriate way to capture all of the different facets of the problem, to represent the variety of actors involved and the interactions between them, and to make this publication accessible to both specialists and to a wider audience.

### From General to Specific

The different types of actions are presented ranging from those of a more general nature to those of a more specific nature. We start off by describing techniques such as raising awareness amongst the various actors involved, and move on to more specific actions such as empowering and unionizing workers, carrying out negotiations with employers, and fighting legal cases.

The last chapter contains suggestions for a way to move forward. These recommendations are based on the conclusions of the individual chapters, and are meant to provide some key ideas for policy makers to move forward towards a genuine protection of undocumented migrant workers.

### Index of Organizations

To facilitate the reading of this report, we have included an index of organizations at the end of the report. When an organization is mentioned in the report, general information about its scope of actions is not always included. The reader can refer to the index of organizations to get more explanation about the mission of the organization and a translation of its name, as well as its geographical location and contact information.

# 1. Engaging Public Support Through Events and Consumer

*“The government has always waged a populist campaign against undocumented migrants, as if we were the cause of unemployment, delinquency and criminalization. In fact, it’s important to make native workers aware that they’ll never earn a decent salary as long as we undocumented workers work for less in these conditions.”*

- Henry Cardona, President of the Collectif des travailleurs et des travailleuses sans statut légal - Genève (CTSSL)

Nothing works without us.

- Title of a Swiss campaign highlighting the many different ways that immigrant workers contribute to the economy

The average citizen most likely comes into contact with undocumented workers in a variety of places in daily life, but wouldn’t necessarily think of these workers as being “undocumented.” Part of the strategy used by NGOs and trade unions in protecting undocumented workers involves raising awareness amongst the public at large about these workers’ contributions to our societies and the common interests they share with native workers. Many of the labor issues that impact undocumented workers, such as insecure employment and the increased tendency to work in a flexible economy, also have implications for

documented and native workers. Awareness raising initiatives mainly aim to dispel the tendency to blame undocumented workers for many of societies’ ills.

This chapter focuses on several key methods for engaging public support for undocumented workers. One way is to hold large events that build momentum and give a face to undocumented workers. Another way is to bring attention to the precarious living conditions of these workers to increase compassion and public action against injustices. A further, more specific approach is to inform consumers in Europe and

## NEGATIVE EFFECT OF AWARENESS-RAISING INITIATIVES: INCREASED ATTENTION FROM ANTI-IMMIGRANT GROUPS

In considering examples of initiatives that raise consciousness and build public support for undocumented workers, it is important to highlight a contradictory effect of such actions. While awareness-raising initiatives are meant to be beneficial in reinforcing a positive image of undocumented workers in society at large, they can also have a perverse effect of attracting more attention from groups that are strictly anti-immigrant.

Nadia Marin-Molina, Executive Director of the Workplace Project, a U.S. organization, said that this has been the case in regard to the good publicity that her organization has received for its work:

“When our organization started, you could say that Latino immigrant workers were invisible to some degree. I think it’s really hard to say that now. But at the same time, there have been anti-immigrant groups that have started to pressure legislators and government officials, so at the same time that there is more visibility, there is also more of an attack in some ways.”

Even though awareness-raising initiatives may make organizations more susceptible to attack, there is an overriding concern to inform the public about the existence and the problems faced by undocumented workers, and this concern is the force that drives their public consciousness work.



in the United States that undocumented workers are indispensable to maintain our general standard of living. Specific examples of consumer campaigns denouncing the substandard labor conditions of undocumented workers in the agricultural sector and the garment industry are highlighted.

## Organizing Public Events

To challenge general opinions about immigrants and promote a positive image by emphasizing diversity and respect for differences, several NGOs and unions hold public events. Such events mainly aim to create a momentum by increasing solidarity with migrants. They are an opportunity to demonstrate to migrants that they are not alone in their struggles and that a large part of society supports them.

Following the racially motivated killing of a Cape Verdean youth in 1994 near the offices of the **União dos Sindicatos de Lisboa (USL)** in the Bairro Alto neighborhood of Lisbon, Portugal, the USL decided to hold an event to raise public awareness and take a stand against discrimination based on race, sex, color, nationality, etc. Since 1994, the Run for Tolerance – Run Against Racism has become an annual event organized by the USL through the Inter-Jovem Lisboa (the youth division of the trade union) and endorsed by the President of Portugal, local municipalities, the High Commissioner for Immigration and Ethnic Minorities (ACIME), and public figures in culture and sports.

An equally important aspect of public events is their ability to give a face to undocumented workers who often remain unseen but are a real presence in our societies. Participating in public events allows undocumented workers to come into the spotlight and express issues of importance to them.

Undocumented workers in the *Collectif des travailleurs et des travailleuses sans statut légal - Genève (CTSSL)* seize whatever occasion they can to participate in public events and draw attention to their concerns. “Even if only one of us can attend an event

and hold up our organization’s banner, we still participate. In the beginning when people were talking about undocumented workers, people were very negative and didn’t want to know anything about us. But now people are starting to have another view of the problems,” explained Henry Cardona of the CTSSL.

An interesting example of how a public event succeeded in raising awareness amongst many different actors is the Freedom Ride, a nationwide event held in the United States in 2003. The Freedom Ride was very successful in bringing immigrant workers into favorable light, and served as an opportunity for the labor movement to work with new allies in the immigrants’ rights community. The Freedom Ride was the culmination of a long process of change within the American Federation of Labor – Congress of Industrial Organizations (AFL-CIO) towards a pro-immigrant policy (see Chapter Five).

### Immigrant Workers Freedom Ride

From 20 September – 4 October 2003, nearly 1,000 documented and undocumented workers and their supporters traveled across the United States to spotlight the need for immigration reform. Workers of dozens of nationalities boarded buses in ten different locations and traveled on different routes, covering a total of 103 cities along the way. The event was sponsored by the American Federation of Labor – Congress of Industrial Organizations (AFL-CIO) and led by the Hotel Employees & Restaurant Employees (HERE). The Immigrant Workers Freedom Ride was modeled after the 1961 Freedom Rides of the U.S. civil rights movement, in which student activists from across the U.S. rode buses to challenge racial segregation in the South.

The new Freedom Ride was a good way to dialogue with the labor movement, the African American community, and immigrants rights’ groups and get them involved in local events along the way where the buses stopped. The Freedom Riders converged in Washington, D.C. and New York to meet lawmakers to push for changes in laws to allow immigrant workers to reunite with their fami-

lies and protect immigrants' civil rights, liberties and workplace rights.

The organizers took extreme care to elaborate a plan to protect the immigrants, because many were undocumented and there were no guarantees that by exposing themselves in public they wouldn't be deported. A solidarity plan was devised to protect everyone, which meant that if anybody was stopped, they would all act in unison so the government officials couldn't single anyone out.

The Immigrant Workers Freedom Ride generated an enormous amount of media coverage, with more than 800 printed articles in English and more than 600 stories on television and radio, all extremely positive.

After the Freedom Ride took place, several of the organizers wanted to build on its success and developed the "New American Freedom Summer"<sup>4</sup> for young people. In the summer of 2004, approximately 100 young people from a variety of universities and Freedom Ride coalitions went to Arizona and Florida to register immigrant voters for the November 2004 presidential elections and to become more active in political debates that directly affect immigrants' rights. The Freedom Summer provided transforming experiences for young leaders to return to their own communities with renewed energy and commitment to immigrant rights.

In addition to raising public consciousness about particular issues faced by immigrants, public events are also beneficial in strengthening groups of undocumented workers themselves.

In the city of Los Angeles, California, the Multi-Ethnic Immigrant Worker Organizing Network (MIWON) started a May 1<sup>st</sup> march in 2000 to support workers who had been in a month-long struggle against an abusive employer. Nearly 5,000 people participated, including many undocumented workers who for the first time marched through the city streets to demand respect for their rights. In recent years the march changed to a "Caravan for Justice", where vans transported workers and supporters to

governmental offices in Los Angeles and in front of a business where workers were engaged in a labor struggle.

## Publicly Denouncing Harmful Living Conditions

In addition to enduring exploitative conditions in the workplace, undocumented workers are confronted with additional problems due to the precarious housing they live in. Two organizations that work with undocumented workers in agriculture have sought to raise public consciousness and build societal support by denouncing the extremely degrading housing conditions these workers are forced to live in.

## Mass Exploitation in the Greenhouse Region in Spain

The Sindicato de Obreros del Campo (SOC) is extremely concerned about the appalling working and living conditions of the immigrant workers in the biggest concentration of greenhouses in the world near Almeria, Spain. The SOC holds conferences and seminars, participates in demonstrations and tries to get media coverage to inform the public about the mass exploitation of the immigrant workers. The scale of the problem is enormous, with an estimated workforce of nearly 80,000 immigrants mainly from North and sub-Saharan Africa, Latin America and Eastern Europe, half of which are undocumented, according to the European Civic Forum. Workers are forced to live in unbelievably bad housing, in huts made out of bits of wood and plastic, and in buildings that are nearly falling down.

The situation is particularly serious in the agricultural town of El Ejido, which was the scene of racist riots in February 2000. After three days of violent riots against the mainly sub-Saharan African and Moroccan workers, many of the workers' dwellings were destroyed. A week later, the immigrant workers, the employers' associations and the unions signed an agreement listing eleven points to improve the situation, one being a program to construct proper housing. Gabriel M'Binki Ataya of the SOC said that "housing remains a very serious problem and there haven't been any efforts made by any of the lev-

<sup>4</sup> See [http://www.cirnow.org/content/en/special\\_projects\\_nafs.htm](http://www.cirnow.org/content/en/special_projects_nafs.htm), accessed on September 2, 2005.

els of government to even begin thinking about finding a solution. It's very difficult because there is silence; no one wants to talk about immigration in Almeria and especially not about undocumented workers. It takes an incredible amount of effort to raise awareness amongst the population here."

### **Illegal Practices of Employers of Seasonal Workers in France**

The Collectif de défense des travailleurs étrangers dans l'agriculture provençale (CODETRAS) continuously tries to raise public consciousness about the illegal practices that are used by some employers of seasonal migrant farmworkers in the Bouches du Rhône region in the south of France.

Many of these workers are employed under short-term work contracts (commonly referred to as "OMI contracts") issued by the French International Migration Office. Although they have legal work contracts, their employers exploit them in the same way they exploit undocumented workers, hence it is "legal" exploitation, explained Denis Natanelic of CODETRAS. The workers are usually too afraid to complain about conditions due to their desperation to have work, and also because by having a proper work contract, they can enter France legally and do not have to risk their lives by making the treacherous crossing from North Africa to Europe on a *patara* (small boat). They also fear that their employer won't hire them again in the next season.

In the beginning of 2004, CODETRAS became aware of the situation of approximately 60 agricultural workers who were living in housing similar to what workers in Almeria, Spain, live in, with no infrastructure or running water. CODETRAS brought some well-known humanitarian organizations in France to provide humanitarian assistance and also to denounce the situation. The farmers reacted by calling the police and threatening to destroy the slum area. The network of CODETRAS is quite unique in that it includes a broad alliance of NGOs and trade unions, which intervened quickly by bringing two national and several local TV stations to do coverage and denounce the fact that not only were the workers forced to live in squalid conditions, but they would be

forced out of the only place they had to live in, and in the meantime the employers' actions were not even investigated. CODETRAS managed to prevent the shacks from being torn down, and negotiated with the local government to try to find solutions to house the workers.

### **Undocumented Workers and Our Standard of Living**

The labor performed by undocumented workers in several economic sectors in Europe and in the United States has gradually become an integral characteristic of these sectors. Undocumented workers are present in many areas of daily life, including taking care of children and the elderly, cleaning houses, maintaining gardens, preparing and serving food in restaurants, cleaning hotels, and constructing houses and buildings, just to name a few. Their work may often go unseen, especially if it entails part of the production of a good, for example making sure that fruit, vegetables and other foods arrive in our supermarkets and shops, or producing clothing.

Undocumented workers make up a substantial part of the workforce which increasingly relies on immigrants, and if all of these foreign workers were one day to stop working, the economy might even come to a halt.

This point is emphasized by nearly 75 organizations in Switzerland that started a campaign in 2003 entitled "Sans nous rien ne va plus" ("Nothing works without us").<sup>5</sup> The campaign highlights the many different ways that immigrant workers contribute to the economy. The organizations have called for a migrants' strike to make it clear to the Swiss population what would happen if the migrants just stopped being there: the trams would never run, the restaurants would close down, the roads would no longer be built, the farms and vineyards wouldn't function, etc.

The same theme was also the focus of the 2004 film "A Day Without a Mexican,"<sup>6</sup> in which Californians wake up one day to find that one third of the population of their state has disappeared, garbage is piled up in the streets and their economy is collapsing due to the lack of the largely immigrant workforce.

<sup>5</sup> See [www.sansnous.ch](http://www.sansnous.ch), accessed on May 10, 2005.

<sup>6</sup> See <http://www.adaywithoutamexican.com>, accessed on May 10, 2005.

## “Organic Products Produced by Slaves”

Several organizations that work very closely with undocumented farmworkers target consumers by informing them about the fruits and vegetables that they eat and the conditions in which this food is produced.

Very little is known about this sector of the economy which operates in the countryside far from the eyes of the vast majority of the population, far from city-based immigrant communities, human rights and anti-discrimination organizations. But this issue has to be seen within the context of the development of a highly intensified, industrial and ferociously competitive form of agriculture producing poor quality food for consumers seeking the lowest prices and unaware of the social and environmental conditions in which the production takes place.<sup>7</sup>

From 2000-2003, the **European Civic Forum (ECF)** carried out an extensive study on the exploitation of migrants in European agriculture.

When racial riots erupted in 2000 in El Ejido, a small town in the greenhouse area near Almeria, Spain, the ECF organized an international mission to monitor the human rights conditions of the migrant workers there. The delegation's visit was an eye-opener to the scope of the problem of severe exploitation of undocumented workers, and the ECF wrote a report entitled *The Bitter Taste of Our Fruits and Vegetables: The Exploitation of Migrants in Intensive Agriculture in Europe*. The book was written in French, German and Spanish, and widely distributed, especially in Switzerland, where the ECF launched a big campaign targeted at two big supermarket chains, Migros and Coop. The supermarkets received about 5,000 letters each demanding the chains to look into the social working conditions of the fruits and vegetables they were selling.

“Everyone talks about the health side, e.g. the use of pesticides, but nobody talks about the working conditions. You can have organic products which are produced by slaves. There is nothing in the organic label which says that it shouldn't be exploiting people,” said Nicholas Bell of the ECF. The ECF organized a second delegation to El Ejido in December 2003, and received a lot of mainstream media coverage in Switzerland.

The organic label is indeed not a guarantee of fair working conditions, said Bridget Anderson of the Center on Migration, Policy and Society (COMPAS), University of Oxford. “It is important to be aware of the danger of ‘corporate accountability’ in regard to undocumented workers. Large corporations can take pride in being ethical companies, because they allegedly don't employ sub-contractors that hire undocumented workers. These companies can hide behind the idea of corporate responsibility by saying that they only hire sub-contractors that hire documented or native workers. The problem with the notion of corporate responsibility is linked to the conditions that the documented or native workers are forced to work in. The sub-contractors hire legal workers but offer bad working conditions that are no different from those experienced by undocumented workers,” she said.

Putting the emphasis on the degradation of working conditions rather than on illegality facilitates the links between undocumented workers and native and documented workers. An important element of organizations' awareness raising work is to demonstrate how substandard working conditions affect all workers: undocumented, documented, and native workers.

## Consumer Campaigns Targeting Powerful Corporations

Not only do organizations challenge supermarkets' practices of selling fruits and vegetables that are produced in unfair working conditions, but also the

<sup>7</sup> See Nicholas Bell, “The Exploitation of Migrants in European Agriculture,” in Michele LeVoy, Nele Verbruggen, and Johan Wets, eds., *Undocumented Workers in Europe* (Leuven: PICUM and HIVA, 2004).

whole supermarket model and the enormous profits that are made while exploitation occurs in the fields where produce is picked.

Supermarkets are able to make enormous profits through a multi-level system: they purchase their produce from middlemen, who purchase from growers, who hire crew leaders, who hire the workers. By controlling the industry, supermarkets are able to dictate the prices to those on the distribution chain below them. If producers start to be paid less for their products, then they respond by reducing costs in the only area they still have control over: the workforce, which is increasingly made up of undocumented workers.

### **Challenging Large Corporations in the Agricultural Sector**

Over the past twenty years in the United States, large grocery chains and the fast food industry have grown exuberantly. There has been a higher demand for tomatoes and other agricultural products, while at the same time a decline of the family farmer.

In the State of Florida, the growers are now big corporations who own large tracks of land and the whole concept of agro-business is the predominant model of production. There has been a consolidation of the agricultural industry, with the replacement of small farmers by one or two large companies who are able to make substantial profits because they have a monopoly over the sector. Whereas tomato growers used to get a 41% profit for the sale of their produce, now they get only about 20% of that, with the rest of it going to multi-national grocery chains and the fast-food industry, said Julia Perkins of the Coalition of Immokalee Workers (CIW).

A community-based organization in Southwest Florida, in the heart of the state's agricultural production, 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) encouraged consumers to boycott a fast-food chain that purchases tomatoes picked by workers who toil in exploitative conditions.

The **Coalition of Immokalee Workers (CIW)** is made up of more than 2,500 immigrant workers from Mexico, Guatemala and Haiti. It 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. The conditions of the thousands of migrant farmworkers in Florida have changed little over the past thirty years. Tomato pickers earn less than \$8,000 a year, far below poverty level, and the piece rate they are charged per bucket is the same as it was in 1978.

After failed attempts to pressure growers to increase the piece rate, the CIW decided to go all the way to the top and pressure one of the large corporations that was purchasing tomatoes picked by the workers. It learned that Taco Bell, which is part of Yum! Brands (an enormous fast food company that owns Kentucky Fried Chicken, Pizza Hut, Long John Silver's and A&W Family Restaurants) was a major purchaser of tomatoes grown in Florida. In 2001, the CIW tried to convince Taco Bell to accept a deal to improve the lives of farmworkers. The CIW reasoned that if Taco Bell paid one penny more per pound of tomatoes, the workers would have an increase in wages and earn a livable wage. Taco Bell refused the deal, so the CIW started to work with student groups, unions, religious organizations and community groups nationwide to "Boot the Bell" by boycotting Taco Bell and blocking or removing its restaurants and products from university campuses. The campaign grew tremendously, and the CIW received an enormous amount of support for the boycott. Workers participated in several hunger strikes and attracted media attention to try to get Taco Bell to improve the wages of farmworkers, but all of these efforts were not enough to persuade the fast food company to make the necessary changes.

Then, on March 8th, 2005, after a four-year struggle, Taco Bell finally agreed to give tomato pickers an additional penny per pound of tomatoes – an increase that will double their wages. It has also installed measures to ensure that it will only purchase tomatoes from growers who pay the extra penny per pound and carry out good labor practices. For Lucas Benitez, CIW Co-Director, Taco Bell's historical decision was like "going to the moon," because the workers never thought that it would be possible: "It's the first time that a corporation has agreed to all of the complaints made by the workers, and it opens doors for all workers to express injustices that they're facing through the supply chain." Now that the campaign against Taco Bell is officially over, the CIW has begun targeting other fast food corporations, including McDonald's, Burger King and Subway, asking them to follow Taco Bell's lead and work towards social responsibility and end human rights abuses in the supply chain.

### Corporate Accountability in the Garment Industry

The garment industry is another sector in which the vast majority of workers are undocumented, and where NGOs and worker organizations may have some power in trying to convince consumers that they can play a role in thwarting exploitation.

Since 1995, Sweatshop Watch has been active in waging corporate accountability campaigns by targeting large clothing retailers who maintain a powerful grip in an industry rife with exploitation.

In September 2001, after numerous workers in Los Angeles who made clothes bearing the "Forever 21" label (a trendy women's clothing retailer) had claimed that they were mistreated in the workplace, the Garment Worker Center and the workers launched a national boycott and campaign against the retailer. The garment workers said that they were denied their lawful wages and exposed to dangerous and filthy working conditions. Sweatshop Watch supported the boycott and did public education campaigns to educate high school and college students

and the public in general about sweatshops. Its public education materials include information about sweatshops in the U.S. and around the world, and an analysis of how retailers are able to wield so much power in the industry.

The workers who were sewing clothing for Forever 21 also decided to file a lawsuit against the retailer, with the support of the Garment Worker Center, Sweatshop Watch and the Asian American Legal Center, whose attorneys represented the workers. In December 2004, the three-year campaign was ended when all parties reached an agreement to resolve all litigation and to take steps to promote greater worker protection in the local garment industry.

Almudena Carracedo, a documentary filmmaker, is currently working with the Garment Worker Center and Sweatshop Watch on "Made in L.A.,"<sup>8</sup> an upcoming film that tells the story of three Latina immigrants working in garment sweatshops in Los Angeles. The film portrays their campaign and lawsuit against Forever 21 and shows the impact of this struggle on their personal lives. "Made in L.A." traces the history of the garment industry from abuses during the industrial revolution until today's trends of globalization.

### GENERAL FINDINGS

- This chapter stresses the need to generate increased societal support and understanding of the issues faced by undocumented workers and highlights several key methods as to how this can be achieved.
- Holding large events gives a face to undocumented workers and increases the momentum by engaging the public at large.
- Informing the public about precarious living conditions of undocumented workers increases compassion and contributes to changing negative perceptions that these workers are somehow taking advantage of public benefits in our societies.
- Targeting consumers is also a very effective way of raising awareness and generating solidarity. All consumers are affected by the presence of undocumented workers in economic sectors, even

<sup>8</sup> See [www.madeinla.com](http://www.madeinla.com), accessed on May 10, 2005.

though the labor of undocumented workers often goes unseen. Raising awareness about the need for undocumented workers illustrates the demand for inexpensive goods and services and steers the debate away from notions that these workers are asking for charity.

- Consumers are not only informed that the food they eat and other items they buy are produced by undocumented workers, but that these workers often work in slave-like conditions.
- Finally, engaging consumers is also a way to directly impact exploitative employers, as their business is hurt through boycotts and other forms of consumer dissatisfaction.

## 2. Collecting Data

*“The development of policies on irregular migration is currently taking place in an evidence-free zone.”*

• Steven Vertovec, Director of The Center on Migration, Policy and Society (COMPAS) at the University of Oxford

Policy makers are confronted with a lack of data concerning undocumented workers. While such information is essential to develop policies, the reality is such that policies are often elaborated in the absence of concrete data about this important social group. At the same time, undocumented workers are easy scapegoats for many ills in society and the focus of increasingly restrictive policies. There is an urgent need to reveal the realities faced by these workers, since restrictive policies do not seem to lead anywhere, but rather tend to increase tensions in society.

Many organizations indicate the need for more data on undocumented migrant workers. Such data contributes to the general interest of having genuine and effective policies. Organizations’ efforts to raise consciousness about undocumented workers also have an increased impact when they refer to statistics and research findings. Collecting and analyzing data about undocumented workers can be useful in influencing public opinion and policy makers about the non-negligible role played by undocumented workers in our economies. The need for research is particularly acute in Europe, where there are very few studies on the different sectors that rely on undocumented labor, the percentage of undocumented workers in the workforce in different industries, how many undocumented workers have faced abuse or injury on the job, their living conditions, etc.

This chapter highlights a number of studies that have been carried out or are presently being conducted by NGOs and research institutes on undocumented workers. These studies include research on undocumented workers in the restaurant industry in New York City, in various sectors of the economy in California, and in the agricultural sector in The Hague,

Netherlands. The data collected sheds light on important issues facing workers in these industries.

### FRUITFUL RESULTS THROUGH COLLABORATION OF NGOS AND RESEARCHERS

To collect information on undocumented workers, it is important to have a relation based on trust, as many undocumented workers are generally reluctant to speak about their situation. NGOs and other advocates that have gained their trust can play an important role by facilitating access to the target group. They also usually have good knowledge of the daily realities faced by undocumented workers.

NGOs often work with researchers and/or academic institutions to capitalize on the effects of a study on undocumented workers. Such collaboration can lead to fruitful results. Researchers can provide a framework for analysis to better understand the many different factors at stake concerning the reality of undocumented workers in a particular sector and/or geographical area, while NGOs ensure communication with and access to the workers. Collaboration between these actors is therefore essential in order to attain the highest standard of data covering as many facets of the issues at stake as possible.

### Undocumented Workers in the Restaurant Industry

A recent study on restaurant workers in New York City is a good example of a joint effort made by an NGO representing undocumented workers and a broad coalition of actors.



The study was made by the Restaurant Opportunities Center of New York (ROC-NY), an organization that was formed immediately after the terrorist attacks on the World Trade Center in New York City on September 11<sup>th</sup>, 2001. One of the places destroyed in the World Trade Center was the Windows on the World restaurant, which boasted a large international staff, including many undocumented workers. “There were a lot of undocumented workers impacted by September 11<sup>th</sup>, and they couldn’t get federal help and also couldn’t get unemployment benefits. So ROC-NY was started to provide information about all the different non-profit organizations that were helping everybody, including undocumented workers,” said Sekou Siby, ROC-NY Outreach Coordinator. The organization’s immediate efforts were to help the co-workers who were impacted by September 11<sup>th</sup> attacks.

Early in 2002, ROC-NY shifted its focus to organizing restaurant workers throughout New York City, to empower them to fight for better working conditions in an industry where bad working conditions appeared to be commonplace.

The Restaurant Opportunities Center of New York (ROC-NY) released a study<sup>9</sup> in January 2005 that was conceived and designed by the New York City Restaurant Industry Coalition, which brings together academics, community economic development organizations, policy analysts and policy makers, immigrant advocates, worker organizers, unions, and restaurant industry employers.

The study found that at least 36% of restaurant workers in New York City are undocumented and that 59% of workers surveyed reported overtime violations. The study was based on surveys of 530 restaurant workers and in-depth interviews with 35 restaurant executives and 45 workers.

## Immigrant Workers’ Role in the Californian Economy

### UCLA Labor Center Reports

The UCLA Labor Center has a unique role in that it is part of the University of California system, and can link academic researchers and graduate student researchers with unions, community groups and other groups that work on specific areas.

The role played by immigrant workers in the economy is especially important in California. The researchers at the Labor Center make available the best current research on both the contributions and costs of immigrant labor, as well as on the important role immigrant workers have had in transforming labor unions in the region. The objective research prepared by the Labor Center and other university researchers is a valuable source for unions and others in developing strategies and policy positions.

In addition, Labor Center reports have drawn attention to important public issues, particularly the exploitation of low-income immigrant workers (many of whom are undocumented). Labor Center reports have made a major impact on public officials by pointing out weaknesses in the labor system that contribute to the exploitation of workers. Their work has sometimes drawn opposition from some employer groups, who have pressured the state to eliminate funding for this kind of research, said Victor Narro of the UCLA Labor Center.

The UCLA Labor Center is collaborating with other research institutions on a forthcoming study on the different workers’ centers that have emerged throughout the United States in the last decade, which represents a new phenomenon in labor organizing.<sup>10</sup>

<sup>9</sup> See Restaurant Opportunities Center of New York (ROC-NY) and the New York City Restaurant Industry Coalition, “Beyond the Kitchen Door: Pervasive Inequality in New York City’s Thriving Restaurant Industry,” January 25, 2005, available online at: [http://www.rocny.org/documents/RocNY\\_final\\_compiled.pdf](http://www.rocny.org/documents/RocNY_final_compiled.pdf), accessed on March 10, 2005.

<sup>10</sup> The concept of workers’ centers as an alternative way of organizing workers is elaborated on in detail in Chapter Four. For more information about the above-mentioned study on workers’ centers, see Janice Fine, *National Immigrant Workers Center Study*, to be published in Fall 2005 by Cornell University Press and the Economic Policy Institute, [jfine@neaction.org](mailto:jfine@neaction.org).

## Door-to-Door Surveys of Immigrant Worker Communities

Sweatshop Watch is collaborating with a research organization and a number of community groups<sup>11</sup> to conduct a statistically sound study involving 1,200 door-to-door surveys of Los Angeles immigrant worker communities in different areas of the metropolitan area.

The aim of the research is to bridge the gap between immigrant communities and local policymakers in order to identify and address the range of health, employment, and other socio-economic needs of low-wage immigrants in the “invisible” workforce. The surveys will be done in Korean, Chinese, Tagalog and Spanish to cover the different immigrant groups.

This ground breaking project – which has currently not begun, as the organizers are trying to mobilize funding - will serve as a catalyst for Chinese garment workers, Korean restaurant workers, Filipino health care workers, Latino construction workers, and other low-wage immigrant workers to define and advance a collective, multi-racial agenda that is focused on their health, employment and economic needs. Armed with the survey tool and research findings, low-wage immigrant workers will be able to define the priorities for their community, cultivate leadership within their community, and educate policymakers about their community – from the ground up.

## Undocumented Workers in Dutch Agriculture

The OndersteuningsKomitee Illegale Arbeiders (OKIA) has a long history of working with undocumented migrant workers in The Hague, Netherlands.

OKIA developed expertise by working with and developing privileged relationships with these workers. This proved to be a good basis for conducting research on their working and living conditions.

OKIA was formed in 1992 at the request of undocumented Moroccan and Turkish Kurdish workers who were organized in committees. The workers wanted help from natives and legal residents in bringing their cases out in the open and organizing societal support for better living and working conditions and legal status. The majority of these workers were employed in greenhouses and wanted to have access to lawyers to inquire about possibilities for legal status, and to doctors due to health concerns. Although these workers were undocumented, they could obtain a social security number (SOFI number), which they used for employment and to pay taxes. If they paid premiums for a certain number of years, they could apply for regularization by “building up” their rights. This system was abolished with the Linking Act (Koppelingswet) in 1998.<sup>12</sup>

From the beginning, OKIA developed a network of professionals to provide social support to the workers and inform the public and policy makers about their living and working conditions. OKIA backed the workers when they went on hunger strike in 1998 to demand legal status. When the government announced a regularization campaign in 1999, OKIA was active in helping the workers to apply for legal status.

After more than ten years of providing direct support to the workers, OKIA wanted to stimulate debate on migrant labor. It focused on agriculture, a sector with many undocumented workers in The Hague, and decided to collect data on undocumented workers’ contributions to the sector.

<sup>11</sup> The organizations involved in the study are: Sweatshop Watch, Garment Worker Center, Pilipino Workers’ Center (PWC), East LA Community Corporation, Maintenance Cooperation Trust Fund, Korean Immigrant Workers Advocate (KIWA), Institute of Popular Education of Southern California (IDEPSCA), Metropolitan Alliance and the Asian Pacific American Legal Center. The research institute is the Economic Roundtable.

<sup>12</sup> “Before 1998, social security was available to irregular migrants on the grounds that denying such access would only lead to an increase in migrants’ exploitation by their employers. After 1998, however, the social security system was used to control immigration to make the country less attractive for migrants (although irregular migrant workers are also excluded from the payment of taxes and social security contributions).” See Ryszard Cholewinski, “Report, Ad-Hoc Working Group on Irregular Migrants,” Council of Europe, MG-AD (2003), 3, 12/3/2004.

In 2004, the **OndersteuningsKomitee Illegale Arbeiders (OKIA)** published a book<sup>13</sup> on the social and working conditions of undocumented workers employed in greenhouses in The Hague during the time periods from 1990-1991 and 2001-2002. The core of the research is interviews with approximately 100 undocumented workers who had worked in one of the two time periods.

Two key developments in the 1990s were increased pressure on farmers to produce for lower costs, and changes in labor and immigration legislation. The Linking Act, which was passed in 1998, stopped undocumented workers' access to formal working relations. Until then, employers paid taxes and premiums for undocumented workers (see above). The passing of the law meant that although these workers were still employed, they were no longer registered and ceased to have formal working relations, since their employers no longer paid taxes and premiums.

Also as of 1998, temporary employment agencies were no longer required to have a license, making it possible for anyone to start one. Thousands of temp agencies were opened, and competition amongst sub-contractors offering the cheapest and fastest workers led to an increase in work tempo and a pressure on wages. The weakened position of undocumented workers made them even more attractive for fitting into such a system.

Whereas workers in the early '90s were mainly hired directly by the farmers, nowadays they work for temp agencies, said Marijke Bijl of OKIA, one of the authors of the report. A worker used to be hired by a farmer and would work anywhere from a year to a number of years with him/her. But farmers presently hire sub-contractors, who only hire workers who are readily available and quick,

and can easily be fired because there is always someone else to take their place. The work tempo has also increased, leading workers to be more likely to suffer from health complications due to the increased physical efforts.

Related to this general downgrade of working conditions is a change in workers' willingness to defend themselves against exploitation. The research illustrates that in the early '90s, although they were undocumented, workers were inclined to go to labor courts and were sometimes able to organize informal protests in the workplace. This is no longer the case. This development can be partly explained by the fact that undocumented workers no longer have social security numbers, which makes it very difficult to have proof of employment, and also because they can be more easily replaced. This can be perceived as a perverse effect of the policy changes, which were aimed at combating informal work but have mainly increased the precariousness of undocumented workers and forced them into more marginalization by taking away their means for protection.

In conducting this study, OKIA emphasized from the beginning that the workers should have a central focus. It was argued that information obtained from the workers themselves would be the most representative.

To obtain this kind of information, OKIA interviewed over one hundred undocumented workers. Although OKIA had built a solid reputation in working with and advocating for undocumented workers, it was very difficult to find a sufficient number of respondents meeting the necessary criteria of having worked in the agricultural sector during the above mentioned time periods.

<sup>13</sup> See Ahmed Benseddik and Marijke Bijl, *Onzichtbaar achter glas: Onderzoek naar de bijdrage van illegalen in de glastuinbouw van het Westland* (Den Haag: Stek – voor stad en kerk and OKIA, 2004). For more information about the publication, please see [www.steknet.nl](http://www.steknet.nl).

OKIA was finally able to gather 103 respondents through its own network as well as through contacts with other social workers, migrants' organizations, community centers, the Salvation Army and health care staff. One of the researchers was formerly an undocumented worker in the agricultural sector, and both researchers paid regular visits to Turkish and Moroccan associations and coffee houses to get in touch with respondents in these communities.

But gaining access to a representative group of undocumented workers was not always easy. Cooperation with e.g. undocumented Bulgarian workers - who were numerous in The Hague - was hard to obtain. There had been big police raids against these workers and many thought that the publicity generated by a previous study on undocumented Bulgarian workers (see Chapter Four) had played a role in this. These difficulties illustrate some of the challenges faced by organizations in working with undocumented respondents within the framework of a qualitative research project.

## GENERAL FINDINGS

- This chapter highlights some of the recent studies that have been conducted on workplace problems faced by undocumented workers and exemplifies how data has been collected in these instances. Furthermore, this chapter highlights the importance of collecting new data.
- In order to develop genuine policy strategies in the fields of migration and employment, it is necessary to have an understanding of the labor conditions of undocumented workers. More research should therefore be conducted, especially in Europe, where there is a real lack of data on undocumented workers.
- New information about undocumented workers is also needed because it draws attention to important social issues such as the exploitation and abuse of this particular group of workers. Collecting and analyzing new data about undocumented workers can therefore be useful in influ-

encing public opinion and policy makers about the non-negligible role played by undocumented workers in our economies.

- To collect information on undocumented workers, it is important to have a relation based on trust, as many undocumented workers are reluctant to speak about their situation. NGOs and other organizations who have gained their trust can therefore facilitate access to the target group while researchers can provide a framework of analysis.
- Collaboration between these actors is essential in order to attain the highest standard of data covering as many facets of the issues at stake as possible.

### 3. Informing Undocumented Workers About Their Rights

*“Labor laws are self-enforcing. You don’t need a thousand inspectors to enforce them; all it takes is workers who refuse to work for less than is agreed upon in these laws.”*

• Philip Martin, Professor in the Department of Agricultural and Resource Economics, University of California, Davis

The above-mentioned observation about the enforcement of labor laws is at the core of this report. One of the central elements of a strategy to protect undocumented workers entails developing their capacities to know what rights they have and how to exercise them.

Advocates for undocumented workers use a variety of ways to communicate essential information about these workers’ rights and the different possibilities they have for dealing with exploitation and abuse. This chapter provides an overview of some of the most commonly used methods.

A valuable way of informing undocumented workers about their rights is to develop printed material that they can refer to. Reference is made to resources such as leaflets and booklets, articles in ethnic media, information on an organization’s website, and comic books.

Some organizations provide essential information to workers about their workplace rights through help desks. Through one-on-one contact, workers learn firsthand about their rights and gain assistance in addressing a particular workplace problem. Examples are provided of some of the different types of help desks run by organizations.

An additional method is to provide information to workers in a group setting. Meetings, information sessions, workshops and other communal settings

can be beneficial in promoting a sense of awareness amongst undocumented workers that the exploitation and abuse they endure is often shared by many others. Increased consciousness is beneficial in preventing other situations of abuse from occurring. The role of popular education as a tool in communicating with a diverse group of workers is also discussed.

#### Printed Materials

##### Leaflets and Booklets

The Paris-based organization Groupe d’information et de soutien des immigrés (GISTI) publishes a variety of resources on different aspects of foreigners’ law in France.<sup>14</sup> Some of its publications focus specifically on the rights of undocumented workers. A practical guide on the rights of undocumented migrants in France provides detailed information on undocumented workers’ rights to accident insurance in the case of a workplace accident or injury and other rights involving wages (e.g. the right to be paid for work done and the right to be paid for overtime).<sup>15</sup> This publication includes summaries of the laws and how they apply to undocumented migrants, how to practically go about exercising these rights, and obstacles undocumented migrants might encounter in doing so. Contact information of relevant organizations and trade unions in the Paris metropolitan area is included. This particular publication is part of a

<sup>14</sup> GISTI’s publications include: *Guides*, which explain some of the main themes of foreigners’ law for those with no legal training; the quarterly journal *Plein Droit*, that is geared towards a wide public and offers a multidisciplinary analysis of the situation of immigrants in France and in Europe; and resources that are targeted primarily at lawyers, such as the *Notes d’actualité* (recently released legal texts such as laws, decrees, circulars, jurisprudence, etc.) and the *Cahiers juridiques* (a grouping of all relevant texts on a particular aspect of foreigners’ law).

<sup>15</sup> See GISTI, *Sans-papiers mais pas sans droits*, 3<sup>ème</sup> édition (Paris: GISTI, 2004), available online at: <http://www.gisti.org/doc/publications/2004/sans-papiers/sommaire.html>.

collection of GISTI's *Notes Pratiques*, easy-to-use resources that are written for immigrants and their advocates.

The National Employment Law Project (NELP) has developed extensive resources for undocumented workers and organizers in the United States. For more than thirty years, NELP has provided legal services to campaigners, workers' centers, unions and organizations that work with low-income workers. Its focus has always been on upholding workers' rights, such as making sure workers receive the minimum wage, that they are safe and healthy on the job, that they have access to workers' compensation, etc. Although NELP had been working on these issues for many years, it wasn't until around 1999 that it officially designated an immigrant worker program within the organization to focus on ending the abusive and discriminatory treatment of low-wage immigrant workers.

The Immigrant Worker Advocacy Project at the **National Employment Law Project (NELP)** has four components: workplace rights, initiatives in special industries, access to government services and legislative and policy reforms. In each component, NELP has developed resources that can be used by organizers as well as undocumented workers themselves. One such resource is fact sheets for workers, which are available in English and Spanish and use language that is easy to understand. The first line of a fact sheet discussing immigration status and workers' rights goes straight to the point: "If I am undocumented, do I have any rights? Yes!" and lists five workplace rights that are applicable to all workers, regardless of status.<sup>16</sup>

In the wake of the Supreme Court decision in *Hoffman Plastic Compounds v. NLRB* (see Chapter Eight), NELP had an upsurge in phone

calls from groups across the country, who were identifying specific problems faced by undocumented workers and were asking for assistance. Many of these situations involved employers who had received information from the government questioning a worker's social security number or immigration status. These employers took immediate action by firing or retaliating against the worker in some other way, but in many of these cases, the employer's actions were wrong. NELP responded by developing resources to educate workers and organizers about employer work authorization verification and relevant social security issues.<sup>17</sup>

NELP works primarily with groups or organizers, unions, and community organizations, and it thus has different levels of communication for these different target groups, said Cathy Ruckelshaus, NELP Litigation Director. Many of NELP's publications are targeted at the groups who will disseminate information to the undocumented workers they work with. NELP also produces policy updates for policy makers or organizations that are trying to change policies, as well as more detailed materials that lawyers can use in defending undocumented workers.

## Websites

Many organizations use their websites as one of several means of informing workers about their rights. A website can provide information in an easy-to-read format and is a place to store resources such as booklets, leaflets or other materials that can be downloaded by workers and their advocates.

The NGO Andolan Organizing South Asian Workers primarily works with South Asian domestic service workers and restaurant and retail store workers in

<sup>16</sup> See NELP, "Immigration Status and Your Rights as a Worker," available online at: <http://www.nelp.org/docUploads/pub146%2Epdf>. For other fact sheets for immigrant workers see: <http://www.nelp.org/workers/benefits/index.cfm>, accessed on June 10, 2005.

<sup>17</sup> See Chapter Nine for an overview of how the "no-match" letters sent out by the Social Security Administration are impacting relations between employers and undocumented workers. For resources to educate workers and organizers about these issues, see NELP, "Social Security No-Match Letters: Questions and Answers for Workers," July 2002, available online at: <http://www.nelp.org/docUploads/pub155%2Epdf>; NELP, "Employer Work Authorization Verification and Reverification," July 2005, available online at: <http://www.nelp.org/docUploads/employment%20authorization%20verification%20and%20reverification%2Epdf>.

the New York City area, and uses its homepage to list several rights that all workers have in New York. These rights are applicable to all workers regardless of immigration status, and include: the right to be paid minimum wage and overtime, the right to be paid in U.S. dollars every two weeks, the right to work free of abusive behavior, the right to adequate mealtime breaks, the right to one full day off each week, paid holidays, vacation every year, personal and sick days, and the right to organize for better work conditions. Andolan also emphasizes that workers cannot be denied emergency medical services at a public hospital.

### Articles in Ethnic Media

The ethnic media essentially comprises newspaper articles and radio and television stations that are addressed at a particular immigrant group. It is a fast growing presence in the United States, where in several cities immigrants can find ethnic media in every language imaginable. Some organizations, like the Multi-Ethnic Immigrant Worker Organizing Network (MIWON) in Los Angeles, use the ethnic media to get the message across to undocumented workers that they have rights. “A lot of workers read and watch and listen to the ethnic press. That’s the main focus of our media work. We’re happy if we can get coverage from local media stations, but we mainly try to build relationships with the ethnic media, which in Los Angeles is huge,” said Liz Sunwoo, MIWON Coordinator.

The ethnic media is slowly getting a foothold in cities in Europe where there are large concentrations of immigrants from a certain country or geographical region. One way of reaching these workers is through newspapers that are published by organizations working with specific immigrant groups. An example is the *Sabiá*, a monthly newspaper published by the Casa do Brasil de Lisboa and targeted primarily at Brazilians residing in Portugal.

As a pro bono lawyer providing legal assistance to undocumented Brazilian workers in Portugal, Gustavo Behr and his colleagues of the Casa do Brasil de Lisboa have seen that there is a general lack of understanding amongst these workers about

their rights. He has written some articles that have been published in the *Sabiá* as well as in the mainstream press. Using the organization’s newspaper allows for important information to be communicated to the workers in their own language and is an efficient way of promoting their rights. “In those articles, I explained clearly that you can be illegal but this doesn’t prevent you from going to the labor courts to prove that you were working,” said Gustavo Behr. “Many people think that in order to go to a labor court, they have to have a formal work contract with stamps from governmental institutions. The main thing is to be able to prove the work relationship, and that’s it.”

### Comic Books

Another way to provide information is through the use of comic books. Some organizations use comic books with engaging images and a clear storyline to inform workers about their labor rights and what to do when faced with an exploitative employer. These comic books also include contact information and general information about NGOs, workers’ centers and governmental institutions that can help workers who wish to make a claim against their employer.

The National Day Laborers Organizing Network (NDLON) uses a step-by-step guide with drawings and texts in Spanish to illustrate how workers can resolve a situation of unpaid wages and general exploitation.

In the English and Spanish versions of “Luchas Laborales: Dramatic Tales from the Lives of Immigrant Workers,” the Workplace Project uses images and dialogue reminiscent of soap operas that are common in Latin America to tell the stories of three Latino immigrants who confronted problems at work.

Sweatshop Watch uses a bilingual (English-Spanish and English-Chinese) comic book to show “How Anna Won Her Wages: How to File a Wage Claim with the Labor Commissioner.” The comic book goes through the different steps taken by Anna, an underpaid garment worker, to demand minimum wage and overtime by using the California Labor Commissioner.

## Help Desks

Some organizations inform undocumented workers about their rights by communicating with them via help desks. The direct contact between workers and advocates is essential not only for addressing a particular workplace problem but also for doing general awareness raising about their rights.

The main focus of the organization Kalayaan is to advise migrant domestic workers in the London area about their rights in the workplace, for example, how much they should be paid and how to negotiate with their employers. If necessary, Kalayaan will refer them to trade unions or law centers to take up cases against exploitative employers. With a very small staff and limited financial resources, it is important to couple awareness raising work with referrals to entities that can provide concrete assistance in a case of abuse. "We can give initial immigration advice about where to go for help, but we don't have the capacity to do a very intense level of case work, because we're seeing well over 1,500 people a year, and we don't have the people power to do that. So what we do is refer people," said Fiona Luckhoo of Kalayaan.

The Deutscher Gewerkschaftsbund (DGB) trade union federation runs an advice center for migrants who are not part of the union. A former staff member of a Polish community organization in Germany presently works at this center, and is able to bring the issue of undocumented workers into the advice center, said Norbert Cyrus of the Berlin-based Polish Social Council. Her contacts and experience with undocumented workers are helpful in cooperating with staff at the advice center to make them aware of the subject and discuss ways to deal with problems faced by undocumented workers.

In addition to providing information to workers in its office in the city of Almeria, Spain, the Sindicato de Obreros del Campo (SOC) goes to places where the workers live and work to bring information directly to them. Outreach is essential to the SOC's work because various obstacles hinder workers from coming to its office, including the possibility of losing a day of work due to the time it takes to get to the office, as well as a general hardship and inability to afford a simple trip.

To increase its impact and efficiency, the SOC needs to strengthen its presence directly in the greenhouse zone. For this reason, it has decided to open three union offices or centers in three small towns in the zone. The offices will enable the workers to have access to the services supplied by the union, including information about their rights and assistance with the many administrative procedures. The centers will also provide places where the workers can meet socially, exchange experiences and organize campaigns to demand better conditions. As it would be nearly impossible for the SOC to rent offices in these areas (given the high level of intimidation and pressure the landlord/landlady would be subject to), the SOC intends to buy the offices. Thanks to financial support from the European Civic Forum and other organizations, a first center has already been bought in El Ejido, where workers are most affected by exclusion and repression (see Chapter One).

An organization that was founded on December 18<sup>th</sup>, 2003 - International Migrants Day - aims to work exclusively on the issue of undocumented workers. Until recently, there was no entity in Belgium focusing specifically on workplace problems encountered by undocumented workers. Of the NGOs and very few trade unions that provide assistance to undocumented migrants, these organizations address issues such as health care, education and legal status. While they may intervene from time to time in a workplace issue, they generally do not focus on the growing problems of exploitation and abuse faced by undocumented workers in Belgium.

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. OR.C.A. intends to publish 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.

OR.C.A. also aims to stimulate cooperation amongst trade unions, labor inspection, employers and NGOs to strengthen support for undocumented workers.



Issues of exploitative workplace conditions are a particular concern for the Coalition for Humane Immigration Rights of Los Angeles (CHIRLA), which has a special project to educate workers about their rights: a bilingual Spanish/English hotline where immigrants can call in to get information on a whole range of issues.

“In many instances, a worker might think, ‘I’m undocumented, so I’m not protected by the work standards or labor laws,’” said Angelica Salas, CHIRLA Executive Director. “Both they and many times their employers believe that if they’re undocumented, they’re somehow exempted from these labor laws. So they end up getting paid less than the minimum wage or not paid at all. Part of our job is to get information to them that they are protected, regardless of their status as undocumented.”

CHIRLA receives about 14,000 calls a year on the hotline. When an immigrant calls in, the staff person will find out what the specifics are of the case, and then either try to take on the situation within CHIRLA itself or refer the caller to a non-profit service within the network, based on the person’s zip code in the Los Angeles area. The hotline has had much success and becomes known to workers by word of mouth.

## Group Information Sessions

Many organizations address issues of concern to undocumented workers in a group setting, by holding a meeting or informative workshop or gathering workers in a support group.

Sweatshop Watch works closely with the Garment Worker Center to develop materials that are used in workshops to educate garment workers about health and safety and labor laws. These materials include comic books or other easy-to-read resources that are published in Spanish and Chinese. The materials describe garment workers’ basic workplace rights, explain how to calculate wages owed and how to keep necessary records, and provide a calendar to record information such as hours worked.

The Brussels-based Filipino migrants’ organization Samahan has held information campaigns for workers on different topics throughout the years. Past topics of campaigns have included the implications

of the 1992 Schengen agreement on Filipino migrant workers in Europe, as well as women’s and family issues.

## Support from the Group

A group setting is advantageous not only for informing many workers at the same time but also for offering an opportunity for workers to provide support to one other.

Undocumented women who are part of the Collectif des travailleurs et des travailleuses sans statut légal - Genève (CTSSL) come together on a regular basis to discuss problems they face at work. A number of the women have suffered from sexual harassment at work and even rape, said CTSSL member Silvia Marino. The majority of the women in the CTSSL do domestic work, and fear that by speaking out against their employer they might lose their job. The CTSSL Women’s Group provides them a space for talking about these issues freely. They offer each other support, such as when one woman goes to a job interview for domestic work, another accompanies her to make sure that the employer makes an honest proposal in regard to the type of work expected.

The organization Andolan Organizing South Asian Workers, which brings together low-income South-Asian workers in the New York City area, holds meetings every two months for its members. At the meetings, workers share their problems and strategize together on possible solutions. The range of issues discussed at the meetings includes immigration status, health problems, low wages, problems with employers or working conditions, domestic disputes and learning English.

## Preventing Future Abuse from Occuring

Educating undocumented workers about their rights is also a way to prevent further abuse or exploitation from taking place.

The Workplace Project in New York primarily uses group information sessions to inform undocumented workers about their workplace rights. The founder of the organization, Jennifer Gordon, is a lawyer who initially supported workers by taking their cases to the small claims court or the Department of Labor. She soon started to realize that as soon as a worker

would recover unpaid wages from an employer, the same worker would return a couple of months later to file a claim for unpaid wages against a different employer. There was a feeling of not being able to change the situation in any way, so the Workplace Project started to redirect its efforts to focus less on providing legal services and more on education.

A workers' rights course was started, which lasts eight weeks and touches on basic information about minimum wage and overtime, what to do if one is injured on the job and other aspects of employment. There is also a compressed version which lasts a day and a half. In addition, the Workplace Project offers a workshop that is open to all workers once a week in the evening where workers can receive information about their workplace rights and what they can do to enforce them.

### **Using Popular Education to Communicate with Workers**

Many of the organizations interviewed have developed expertise on the use of popular education as a way of ensuring that their message comes across to a diverse group of undocumented workers. A popular education approach fosters participation and critical thinking and can be effective in transcending language barriers and different educational levels amongst the target group. The use of discussion and different materials such as drawings and skits can be beneficial in reaching out to group members.

An important aspect of the work of the Organización en California de Líderes Campesinas is to use popular education when it brings its members together locally at meetings to discuss and plan events and actions. Many of the members are indigenous women from Oaxaca, Mexico, who speak a variety of different languages and have difficulties in communicating in Spanish. To avoid the many language problems, members use skits and drama to present the information during meetings, said Executive Director Mily Treviño-Sauceda.

The Coalition of Immokalee Workers (CIW) also faces similar problems, and uses different techniques rooted in popular education to transcend the language differences amongst its members. "In Immokalee, there are many languages that are spoken: Spanish, Haitian Creole and a wide variety of indigenous languages such as Kan'jo'bal, Mam and Mixtec. Many people speak Spanish as a second language and many also don't know how to read or write. So we use popular education because you don't have to necessarily speak the same language and you can cross a lot of borders and boundaries with that," said Julia Perkins of the CIW.

The CIW paints murals on the sides of buildings throughout the town, makes videos that are produced by the workers themselves, uses theater and also has community meetings once a week where people can come and reflect on workers' issues as a community. The organization launched a community radio station in December 2003 with a broadcasting range covering the entire town. In addition to playing more political music than would be heard on a commercial station, the organizers also talk about workers' rights and ways in which workers can become involved in the organization.

Popular education is a tool used by an organization that brings together a diversity of grassroots groups in the United States. The National Network for Immigrant and Refugee Rights (NNIRR) is an organization that was formed nearly twenty years ago to bring together immigrant, refugee, community, religious, civil rights and labor organizations and activists. In 1998 it launched a project to bring together diverse communities and institutions in local areas to explore how immigrant communities related to issues such as racism, race relations, globalization, human rights and other key topics. The result of a process that lasted several years is an educational tool that can be used to support the rights of immigrants and refugees.

The National Network for Immigrant and Refugee Rights (NNIRR) has made a toolbox of training materials, tips and resources based on a popular education framework entitled *BRIDGE – Building a Race and Immigration Dialogue in the Global Economy*.<sup>18</sup> It includes valuable discussion and practical ways to provide effective facilitation of meetings or group events. The training resource contains different modules on topics such as the history of immigration, globalization and workers' rights, migrants' rights and human rights, immigrant women leaders and conflict resolution. Each module includes a series of activities, exercises, and discussion questions grouped thematically around the particular subject area.

To further enhance the scope of the guide, NNIRR plans to do a training of trainers in four of the modules from *BRIDGE*, as well as trainings on doing media work in immigrant communities, said Catherine Tactaquin, NNIRR Director.

- Help desks are another way of providing information and assistance to undocumented workers. By creating a means of direct contact between undocumented workers and advocates, help desks are essential in raising general awareness about workers' rights and how to exercise them. Some organizations go to the places where the workers live and work. This outreach is valuable in information distribution since many workers are prevented from going to an organization's office because they might lose a day's worth of work or simply because they cannot afford the trip.
- Organizing group information sessions is also useful and advantageous in several ways. First, by holding meetings or informative workshops, information can be provided to many migrant workers at the same time. Second, they provide a basis for mutual exchange of experience, support and information between the workers themselves. Finally, popular education is also a way of transcending language barriers and reaching illiterate workers who have no other means of receiving information about their rights.

## GENERAL FINDINGS

- A central element in protecting undocumented workers is to inform them of the rights that they have and how to exercise them. This chapter has explored a variety of ways to communicate this essential information to these workers.
- Printed materials such as leaflets, comic books, websites and articles in ethnic media are useful tools that can easily be distributed among undocumented workers. Language difficulties can be overcome through the use of comic books. These resources illustrate situations that undocumented workers can identify with by providing drawings of what to do in a situation in which a worker is denied their wages.

<sup>18</sup> See [http://www.nnirr.org/projects/projects\\_bridge.html](http://www.nnirr.org/projects/projects_bridge.html), accessed on May 10, 2005.

## 4. Building Capacities Through Empowerment

*“In my community work, I have met many women who do manual labor on farms and do not have much formal education, but are very astute and good organizers. When I became executive director of my organization, I decided that this is going to be an organization of farmworker women, so it will be run by farmworker women.”*

• Mily Treviño-Sauceda, Executive Director of the Organización en California de Líderes Campesinas

**T**his chapter focuses on the empowerment of undocumented workers as a way of obtaining increased protection of their rights.

One of the key ways of empowering undocumented workers is to organize them so that they can collectively examine possibilities for challenging unfair employers. Many undocumented workers and their advocates subscribe to the philosophy of “power in numbers” and recognize the potential that can be had when workers join together to fight exploitation or abuse rather than working alone. Examples are provided of undocumented workers who are organized in workers’ centers and separate unions.

In addition to organizing workers, it is also important to build their capacities so that they can become involved in policy decisions that affect them. A number of organizations strive to build workers’ leadership capacities and offer special courses to strengthen workers’ leadership skills. In addition, some advocates, particularly in the United States, emphasize the different ways that undocumented workers can be involved in the political decision-making process, even if they do not have a legal residence or working permit. Some examples of civic awareness initiatives are also highlighted.

### Organizing Undocumented Workers

Different forms of organizing have emerged to bring together undocumented workers based upon shared experiences in the workplace. The main emphasis is to empower workers by bringing them together to discuss issues that are relevant for them, and strate-

gize on how to involve other organizations to support them in their goals.

Before presenting some of the advantages of organizing workers and examples of workers’ centers and separate unions, it should be highlighted that many of the initiatives described in this chapter involve workers of different ethnicities and nationalities who have organized together. While type of organizing is advantageous in that workers can build strength by transcending such barriers, there is still a tendency in many places to organize workers based upon country of origin. This is the case in the United Kingdom, where workers mainly join together if they are from the same country, said Bridget Anderson of the Center on Migration, Policy and Society (COMPAS), University of Oxford. “More efforts need to be made to organize across national divides,” she urged.

### Benefits of Organizing

One of the benefits of organizing workers is the awareness that an individual situation of exploitation or abuse is often experienced by many other workers.

By working together to address exploitation or abuse in the workplace, workers can have more force in asserting their rights. “We focus mainly on meeting in a group, so that the worker can see that they are one person among many who have the same problem. That’s why we have to support each other and work together to get these things done,” explained Nadia Marin-Molina of the Workplace Project. The decision-making process is done in a group or committee of workers, so that the workers can appropriate their struggle and move together towards a common objective.

Another positive aspect of organizing is workers' increased confidence in recognizing that they have rights, and knowing what steps to take if they are in situations of exploitation or abuse.

The members of the Coalition of Immokalee Workers (CIW) in Florida emphasize organizing as a means of fostering more confidence amongst workers and building strength as a group. Julia Perkins of the CIW said that as workers become more organized, they become more confident in trying to resolve workplace problems themselves.

"We often get phone calls from members who are working in another state, far away from our offices," she said. "For instance, a member called recently to say that he and some other workers hadn't been paid their wages, and were told by their boss that they had a week to leave and look for another job. He told us that he talked to the other workers and they decided that they would all go and talk to the grower themselves. So this initiative wasn't led by the staff of the CIW, but by the workers themselves. We've seen that a lot of times, they've learned how to negotiate things for themselves."

Organizing is also a means to build strength by working together to fight against abuse and exploitation.

Domestic Workers United (DWU) in New York stresses organizing as a way to build power within workers' communities and as a way to raise the level of respect for domestic workers. Workers who enroll in a four-week intensive program offered by DWU learn important skills to build their confidence in the workplace and to build the power of their communities. More than 300 workers have completed the course, said Ai-Jen Poo of DWU.

Organizing domestic workers and day laborers (workers who mainly do temporary work) is also an important element of the Workers' Rights project of the Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA). Through this project, CHIRLA seeks to educate domestic workers and day laborers about their rights and to organize them as a way of fighting against the problems in their industries and against the abuses they face as immigrant workers. Committees of domestic workers and day laborers

work to advance their rights not only in their industries but also on policy issues. An important policy issue for these workers is the driver's license bill in the State of California. This bill would allow undocumented migrants in California to apply for a driver's license. (It is currently only possible for *legal* residents to obtain a driver's license in California). Many people need to be able to drive a car in the United States for work purposes, and domestic workers and day laborers have been active in pushing forward this bill in the State of California, said Angelica Salas, CHIRLA Executive Director.

### Setting Up Workers' Centers

The different obstacles that prevent undocumented workers from joining unions (see Chapter Five) have led many of these workers to seek different ways of organizing. One way is to set up workers' centers where workers can meet and work together on workplace issues of importance for them.

A Muslim community organization in The Hague, Netherlands, established a workers' center in recent years made up entirely of undocumented workers. The Stichting Haags Islamitisch Platform (SHIP) had been working for many years with the Muslim community in The Hague. In 2001, there was an increase in undocumented ethnic Turkish Bulgarian undocumented workers in The Hague, and SHIP started to learn about a pattern of exploitation and abuse amongst these workers.

"There were cases in which workers were fired all of a sudden or weren't paid for their work," said Khalil Wedad of SHIP. "We also became aware of the blatant exploitation by temporary work agencies. These agencies would receive €6 and pay the workers €4, and then say that the undocumented workers couldn't complain about it because they were illegal. Some workers who were desperate told us they would even accept work for €2 or even €1 an hour," he said.

It was decided that something had to be done, so SHIP carried out a study in collaboration with a consultancy organization to explore the living and working conditions of Bulgarian undocumented workers in The Hague.<sup>19</sup> After doing the research, SHIP decid-

<sup>19</sup> See Dirk Kloosterboer, Arif Potmis, Khalil Wedad and Mehmet Terlemis, *We just want to work and pay taxes: Bulgarian illegal workers in the Hague* (Dunya Advies and the Hague Islamic Platform (SHIP)), available online at: <http://www.khamsa.nl/dunya/bulgarian.doc>, accessed on April 9, 2004. For the original publication in Dutch, see Dirk Kloosterboer, Arif Potmis, Khalil Wedad and Mehmet Terlemis, *We willen gewoon werken en belasting betalen: Een onderzoek onder Bulgaarse illegalen in Den Haag* (Den Haag: VIA, 2002).

ed that it would be better to organize the workers, to encourage them to meet within a union or another setting so that they could become more independent.

The **Stichting Haags Islamitisch Platform (SHIP)** created the “Illegal Workers’ Union” (Vakbond van Illegale Arbeiders - VIA) in 2002 to inform undocumented workers about their rights and to draw public attention to the exploitation of the workers.

One of its first tasks was to find out more about the actual practices of exploitation and the companies where the workers were employed. VIA offered drop-in sessions for workers where they could explain their situation and discuss possibilities for solutions. The consultations lasted for a couple of months at the end of 2002 and beginning of 2003 and allowed VIA to become aware of the situations of 33 people, 19 of which specifically had work-related problems. Almost half of all of the workers had been in the Netherlands a number of years, had paid taxes, and had children in school. Most of them were also members of the FNV trade union, which provided them with legal assistance concerning their cases. For the other workers who were not union members, it was difficult to find a solution.

Until that time, the issue of undocumented workers had been a sensitive issue within the FNV, but the founding of VIA prompted discussion within the union, said Dirk Kloosterboer, Researcher at Dunya Advies. Although FNV did provide support, VIA faced extreme pressure from all sides to shut down, and dissolved in 2003. Nonetheless, its short-lived existence raised public awareness about the exploitation of undocumented workers in The Hague, and was also significant in bringing the workers together.

In the United States, local organizations exist throughout the country that organize day laborers, the men and women who solicit employment on a daily or temporary basis and usually wait for work on street corners, parking lots, parks, or stand in front of businesses such as home improvement stores. Although they are predominantly found in California (it is estimated that there are 25,000 day laborers who congregate on roughly 125 street corners in Los Angeles), they have become a fixed part of cities throughout the United States.<sup>20</sup> Their presence on street corners and in other public places has led to much anti-immigrant sentiment from local residents, who attack them because they feel that their presence has led to a deterioration of the quality of life in neighborhoods.

Community-based organizations throughout the country have been organizing day laborers for years to empower them and protect their rights. In 2001, an organization was launched on the national level to exchange information and to build the capacities of day laborer organizations throughout the country.

The **National Day Laborer Organizing Network (NDLON)** is composed of 39 member organizations. One of the main areas of its work is to strengthen and create workers’ centers: instead of being on the street, workers can go to a more humane and safer environment to meet with prospective employers. NDLON has created a model of an effective workers’ center and promotes the model with city officials, residents, day laborers, etc., in different cities throughout the United States.

Education and organizing are important elements of NDLON’s work. NDLON directly facilitates leadership development workshops with day laborers and has trained day laborer organizers and site coordinators. Pablo Alvarado, NDLON National Coordinator, said

<sup>20</sup> See Abel Valenzuela Jr., “Day Laborers in Southern California: Preliminary Findings from the Day Labor Survey,” (Center for the Study of Urban Poverty, University of California, Los Angeles, May 30, 1999), available online at: <http://www.sscnet.ucla.edu/issr/csup/pubs/papers/item.php?id=3>, accessed on June 20, 2005; Abel Valenzuela Jr., “Dispelling the Myths of Day Labor Work,” (Center for the Study of Urban Poverty, University of California, Los Angeles), available online at: <http://www.ndlon.org/research/Dispelling%20the%20Myths%20of%20Day%20Labor%20Work.doc>, accessed on June 20, 2005.

leadership training is an important element of a successful workers' center: "We have five staff for the whole country, so we have to make sure that when we are called to do a training course somewhere, that we leave behind well-trained community actors who understand the ins and outs of the day laborer issues. There is no way that you can create a workers' center without developing the leadership skills of the people, those who are running it, those who administer it, and those who use it to improve their lives and their living and working conditions."

NDLON holds monthly conference calls for its member organizations to coordinate campaigns and activities, share resources, and disseminate information. An outcome of this positive effort has been an increased sense of solidarity amongst the participating organizations, as well as being an opportunity for members to become better aware of the day laborer realities in every city where NDLON is present.

## Forming Separate Unions

Another common way of organizing workers is to form separate unions, which may or may not receive support from formal unions.

Many of the undocumented workers that come to the Multi-Ethnic Immigrant Worker Organizing Network (MIWON) work in low-wage industries where unions do not carry out organizing campaigns. The member organizations of MIWON mainly represent day laborers, domestic workers, ethnic restaurant and supermarket workers as well as some artists that are involved in production work in Hollywood (e.g. people who fill in or draw cartoons). The industries where they work are made up of small companies where there is a constant mutation – e.g. in the ethnic restaurant industry many restaurants close down after one year, change their name and reopen as a new restaurant. Unions do not have much incentive to organize in such volatile industries because they would not get many new members and they would not get contracts that would last for more than one year.

According to Liz Sunwoo, MIWON Coordinator, unions have to have a business perspective and won't organize in sectors that aren't profitable. "Some of the local unions in Los Angeles like the Service Employees International Union (SEIU) and Hotel Employees & Restaurant Employees (HERE) have carried out good organizing campaigns, but MIWON workers don't fall under their organizing categories. None of the undocumented Korean or Chinese workers have ever been approached by a union organizer. Some of them never even thought that a union existed here in LA," she said. Part of the problem is also due to language and cultural barriers – the unions don't have the capacity to have organizers that know the culture and can speak the language(s) of the workers.

In light of this reality, one of MIWON's member organizations, KIWA, has formed a union that is independent from the American Federation of Labor – Congress of Industrial Organizations (AFL-CIO). The Immigrant Workers' Union (IWU) aims to organize Korean immigrants that work in supermarkets in Los Angeles' Koreatown. The IWU is using collective bargaining to get one of the 14 supermarkets in Koreatown to sign a union contract, which will provide a guarantee of fair working conditions.

## Capacity Building

Many organizations, especially in the United States, stress that undocumented workers should be involved in the decision-making process concerning issues of importance to them. These advocates promote initiatives that build undocumented workers' skills as leaders within their own communities, and encourage undocumented workers to become active in the political process.

## Advocating on Their Own Behalf

One of the reasons why the Multi-Ethnic Immigrant Worker Organizing Network (MIWON) was formed was to empower low-wage immigrant workers to advocate on their own behalf. Liz Sunwoo, MIWON Coordinator, said that "in Los Angeles was a lot of movement around legalization, but we didn't see

actual undocumented workers at the table making decisions. Most of the time they are used as media spokespeople but when it came to making strategic decisions or even to be asked for suggestions, you rarely saw undocumented workers at the table.” MIWON’s goal was to have rigorous gatherings of immigrant workers, to prepare them to enter these kind of meetings and also to push other advocates to include many more undocumented workers in the discussion.

Building the capacities of undocumented workers involves developing their skills as leaders who stand up for their rights. The organization Andolan Organizing South Asian Workers, which fights against the exploitation and abuse of low-wage workers in New York, prioritizes the central leadership of its members and strives to break a system of dependency so as to foster worker empowerment, said Andolan Executive Director Nahar Alam. She added that Andolan finds it important that low-wage workers always clearly guide the leadership of the organization, and thus has a strict policy concerning membership: to ensure that workers retain the central role in the organization, membership must always achieve a balance of 75% workers and 25% volunteers.

The Organización en California de Líderes Campesinas organizes female farmworkers throughout the State of California. The women come together in local groups to exchange information and to be a support network for one other. It was started in 1992 by Executive Director Mily Treviño-Sauceda, who knew all about the difficulties faced by female farmworkers (many of whom are undocumented), because she was a farmworker herself before doing community work. “In my community work, I met many women who were either working on farms or did not have much formal education, but were very astute and good organizers. When I became Executive Director, I decided that this is going to be an organization of farmworker women, so it will be run by farmworker women,” she said. The approach is very grassroots oriented, as the organizers live in the same communities as the workers.

A similar rationale was behind the creation of Samahan, an organization that was founded in 1983 to serve the interests and promote the rights of

Filipino workers and their families in Belgium. Throughout its more than 20-year history, Samahan has empowered Filipino migrant workers in a variety of different ways.

**Samahan** uses social and political education, skills training, community building and information campaigns to build the capacities of Filipino migrant workers.

“Samahan is different from other Filipino organizations in Belgium that focus on sports, culture or other types of activities, since from the beginning it has focused on migrant workers and social issues relevant to them,” said Joyce Del Rosario of Samahan.

Leadership training courses and theater workshops have given workers the opportunity to assess their personal experiences as migrants and reflect on ways in which the organization could go forward and continue to meet the needs of Filipino workers in Belgium. The structure of the organization lends itself to strengthening workers’ capacities. Workers take turns leading the meetings and are involved in different committees. A participatory decision-making process promotes empowerment because decisions have to be made based upon consensus in the committees.

## Leadership Development

A number of organizations offer opportunities for workers to build their leadership skills through special training sessions and courses. These courses are often based on techniques based in popular education. The courses can be useful for workers who return to their respective organizations or labor unions and try to implement what they have learned.

Active members of the Coalition of Immokalee Workers (CIW) participate in leadership development retreat weekends, where they can discuss and strategize on different issues and activities. The idea for a boycott against Taco Bell came out of one of those weekends, said Julia Perkins of the CIW. That particular campaign – which achieved success when



Taco Bell made a historical decision early in 2005 that it would meet all of the workers' demands (see Chapter One) – was developed through the exchange of methodology with leaders from workers' centers in Haiti and Chiapas, Mexico. The CIW also looked to the Brazilian landless workers' movement – MST – for guidance in the development of the campaign, said Lucas Benitez, CIW Co-Director.

The Organización en California de Líderes Campesinas holds bi-annual conferences in which nearly 300 female farmworkers from the State of California participate. The key element of the conferences is workshops, where workers discuss a range of issues, including health and safety issues, sexual harassment on the job, field sanitation and salaries. For each issue, workers discuss how female farmworkers are particularly affected. The organization's strategy is not just to give the women information about these issues or train staff, but train members so that they can be agents to make changes. "The women are not only asked to share information about how it's affecting them, but they have to make recommendations, and see how our different organizations can respond to these issues," said Mily Treviño Saucedo, Executive Director.

Training sessions are an important element of the work of the Multi-Ethnic Immigrant Worker Organizing Network (MIWON), a coalition of five organizations that work with low-wage immigrant workers in Los Angeles. These organizations were aware that a root cause of the exploitation in the workplace is documentation status, so they formed MIWON to unite workers from different ethnic groups in different industries and to empower workers. "We saw that the discussion around immigrant rights or legalization is always focused on Latino communities, and that's why we're making an effort to make this a more multiethnic movement," said Liz Sunwoo, MIWON Coordinator.

It is important that the workers involved in MIWON build their capacities as leaders, since the organization's board of directors is made up of a committee of organizers and workers.

The **Multi-Ethnic Immigrant Worker Organizing Network (MIWON)** is currently developing an immigrant leadership school for low-wage immigrant workers. The school will offer advanced leadership training courses for members of MIWON's partner organizations who have already exhibited leadership skills in their respective organizations. The leadership school will have four components: political education, skills-based training, health and well-being and cultural exchange. The courses will be offered twice a month (once in the evening and once on the weekend) to be accessible to workers in different industries. After completing the whole program, which may take a couple of years, workers will be issued with a certificate.

The leadership school fits into MIWON's mission to build another level of leadership of immigrant workers. "The unions are a big force right now fighting for different immigrants' rights issues, and the churches and some big NGOs are involved, but our whole philosophy is that the people at the center of the oppression need to be guiding this fight. We're not at that point right now in the movement in Los Angeles or nationally, and there's something in our minds that feels that that's wrong when that's missing," said Liz Sunwoo, MIWON Coordinator.

The University of California, Los Angeles (UCLA) provides educational services for community organizations and unions to offer leadership schools for different communities in Los Angeles. Two courses focus on immigrant workers and organizers: a Spanish-language course for the Latin American community, and a course for the Asian-Pacific community. Topics covered in the courses include globalization and a history of labor movements and immigrants' rights movements, with a focus on the workers' movement in Los Angeles. There is also a skills development component (e.g. how to facilitate a meeting and how to work in a group), as well as relationship building so that the different groups represented can learn from each other's experiences.

The workers are referred to the UCLA program through unions or workers' centers. Many work in the garment industry or as day laborers, where a high percentage of workers are undocumented. To facilitate the participation of low-income workers, the course organizers usually look for stipends from the unions or workers' centers, so the workers can be covered for the days they don't work. The courses usually last three to four days and bring together approximately 35 participants, with an emphasis on quality more than quantity.

"We usually keep it to a maximum number of participants so that each participant can have an intensive experience. The payoff is when we later see that many of our participants go on to provide real leadership in their communities and organizations," said Victor Narro, Project Director.

### Civic Participation

There is a growing awareness in the United States amongst NGOs and unions about the importance of civic participation of immigrants as a way to influence changes in legislation and workplace regulations. The emphasis on participatory democracy is rooted in a general understanding that building the political power of immigrants is a key way to bring about change.

While immigrants have to have U.S. citizenship to vote in elections, this does not mean that undocumented migrants cannot be involved in the political process.

"Democracy as it's set up in this country still allows you to participate in demonstrations, to leaflet, to make phone calls to talk to voters, etc. It's important for undocumented workers to understand that everyone has a role to play and if we want to accomplish anything, we've got to organize ourselves," said Cuc Vu, Immigration Campaign Manager of the Service Employees International Union (SEIU).

Participation in the political process is one of three elements of SEIU's strategy to build power within the labor movement. "We need to effectively advocate, organize to have more power and mobilize for civic participation in order for that power to be seen and shown. Those three are the formula, and if we only do one of the three, it won't work," said Ben Monterroso, Western Regional Director of the Service Employees International Union (SEIU).

Civic engagement and electoral power are two elements of an internship program run by Unite for Dignity, an immigrant workers' rights organization in Miami, Florida. The organization is dedicated to building new leaders to fight for improved conditions in workplaces and in immigrant communities and views participation in the political system as a key part of the process.

The **Unite for Dignity** internship program aims to create a strong front of immigrants to do advocacy work on crucial issues affecting their communities. The six-week program uses a popular education model and combines weekly leadership development workshops with practical assignments in local communities. Participants are mainly immigrants from Haiti and Latin America. In the component on civic participation, workers learn about how the U.S. government functions on the federal, state and local levels and the role played by elected officials. They discuss power relations in local communities and how decisions are made that affect immigrant communities.

One of the ways workers get hands-on experience in the political process is by challenging local elected officials to engage in policies that have positive effects on immigrant communities. Winie Cantave of Unite for Dignity gave an example of workers who called a local elected official for a meeting to make him aware of some key problems faced by his constituency: "These workers were mainly documented and undocumented immigrant women from Haiti with little formal education. They sat in front of this elected official, a well-educated lawyer who was also from Haiti, and were not afraid to tell him about the problems they were experiencing in their communities." In another situation, an elected official had made strong anti-immigrant remarks in a newspaper article. At a town hall meeting, workers reminded him that the community had elected him to office, and would also be responsible for not re-electing him. And in the election that soon followed, he was not re-elected.

By having a say in the political system, immigrants can influence the decision-making process concerning policies that affect their communities.

The allocation of resources for education, housing and health care has an effect on the daily lives of all people, including immigrants. In the United States, these resources are usually decided upon at the state level, where immigrants in some cases represent a substantial percentage of the total population in the state. In some counties in California, immigrants represent more than 40% of the population in schools, said Catherine Tactaquin, Director of the National Network for Immigrant and Refugee Rights (NNIRR). There have been campaigns in California, New York and Washington, D.C. for undocumented migrants to participate in school board elections and parent-teacher organizations, and in some cases they have been a prominent voice in arguing for smaller class sizes for bilingual education.

- There are several ways to organize undocumented workers. One is through the use of workers' centers, which gives workers an opportunity to come together and work on issues that are relevant to them. Another way is by forming separate unions, which aim to defend and protect the rights of workers who are otherwise not approached by traditional unions.
- Furthermore, civic participation is an important way to influence changes in legislation. By developing their leadership skills, workers can be involved in the decision-making process for issues that are relevant to them rather than depending on other people to promote their rights.

## GENERAL FINDINGS

- Empowering undocumented workers is an important step in strengthening the protection of their rights. It counteracts a system of dependency and enables workers to become involved in the decision-making that affects their lives.
- Many undocumented workers and their advocates subscribe to the "power in numbers" approach and thereby recognize the strength of working together rather than standing alone. Organizing undocumented workers also allows them to strategize on how to obtain their goals and increases workers' confidence in realizing that they are not alone.

## 5. Unionizing Undocumented Workers

*“Our main strategy in building solidarity amongst workers is to focus on the fact that we’re dealing with human beings who are workers and who ultimately at the end of the day have the same needs, desires, wants, dreams... You know, we’re all people and we’re workers.”*

• Ana Avedaño, Associate General Counsel and Director of the Immigrant Worker Program at the American Federation of Labor – Congress of Industrial Organizations (AFL-CIO)

*“What we’ve always just said is that ‘a worker is a worker is a worker; there’s no such thing as an illegal worker.’”*

• Pauline Doyle, Head of Campaigns at the Transport and General Workers’ Union (T&G)

This chapter discusses the much-debated issue of trade union membership of undocumented migrants. A number of arguments that trade unions use to either incorporate or exclude undocumented workers from their membership base are presented, as well as some strategies used by unions in Europe and in the United States to unionize undocumented workers. For the convenience of the reader, however, the numerous examples of the other ways in which unions protect undocumented workers – which are included throughout the report – are cited at the end of the chapter.

Before delving into the issue of unionizing undocumented workers, this chapter begins with a brief overview of some of the basic differences amongst unions in the United States and in Europe, as a backdrop for understanding how a union’s structure may impact the way it deals with the issue of undocumented workers.

Some of the benefits that undocumented workers can obtain by joining a union are presented, as well as various barriers that make it difficult for them to become members. Different obstacles encountered by unions in organizing undocumented workers are presented. Much attention is devoted to the numerous arguments and strategies used by unions to organize undocumented workers.

The last part of the chapter lists different trade union initiatives to protect undocumented workers that are cited throughout the report. This list also includes the different strategies to unionize undocumented workers described in the present chapter.

### Differences in Union Structures

The role played by unions in mobilizing workers and in promoting labor standards differs in the United States and in Europe, as well as amongst different countries within Europe itself. These differences in union structures are important to bear in mind to better comprehend unions’ responses to new challenges, notably the increasing presence of undocumented workers in the workforce.

### Unions as an Accepted Social Partner

“The USA is the world’s number one in many areas but Europe is the trade union superpower,” claimed John Monks, General Secretary of the European Trade Union Confederation (ETUC) when addressing a gathering of trade union leaders from the United States and Europe. While his comment referred to the fact that Europe’s trade unions make up 70% of those who pay to support the International Confederation of Free Trade Unions (ICFTU), it also

underscores the successes achieved by unions in Europe in promoting labor laws.<sup>21</sup>

Trade unions in Europe operate within a social model that values welfare states, public services and social dialogue. The concept of social dialogue infers that trade unions and collective bargaining are central to society, since economies and labor markets need to be run in consultation with trade unions. In many countries in Europe, governmental regulations affect the outcome of wage bargaining.

In the United States, the government traditionally intervenes much less in determining an issue such as workers' wages and benefits. While it does determine some minimum standards, it leaves it up market forces and to collective bargaining to determine most workers' wages and benefits.<sup>22</sup> "In Europe, especially in Northern Europe, there is sometimes not much of a presence of the union at the community level because unions are sitting down at the macroeconomic level, cutting the mega deals. In the United States, unions are not an accepted social partner and are much weaker. They are under threat and direct struggle with their employers for their very existence," explained Bruce Herman, Executive Director of the U.S. organization, the National Employment Law Project (NELP).

### Collective Bargaining and Other Factors

But perhaps it is not very accurate to focus on a transatlantic dichotomy of trade unions. It could be argued that the real differences are between unions in Anglo-Saxon countries and continental European countries. Even though the trade union movement in Britain has a stronger position than in the U.S., there are a lot of similarities between the two countries, argued Dirk Kloosterboer, Researcher at Dunya Advies. He highlighted some factors that differentiate Anglo-Saxon and continental European unions, such as collective bargaining. It is essential to consider if collective bargaining agreements cover entire sectors or just one company.

Decentralized bargaining structures give unions an incentive to pursue focused organizing campaigns in order to secure deals at individual workplaces, whereas centralized bargaining presents less of an incentive to organize.

Collective bargaining is dependent on a number of factors, such as:

- governmental regulations - is there an extension of collective bargaining agreements to all employers in a sector?
- employers' organizations - if they are present, they can negotiate on behalf of their members
- trade union strategies - even in the absence of supportive regulations, U.S. unions such as SEIU and UNITE-HERE try to coordinate bargaining in an entire sector.

Besides collective bargaining, other factors may offer unions alternative sources of strength and thus weaken the incentive to organize:

- regulations on work councils
- trade union involvement in national tripartite social pacts
- government subsidies for trade unions (the latter especially in Southern European countries).

Continental European countries tend to have more centralized bargaining structures, stronger work council legislation and stronger trade union involvement in national government policy making. There is therefore generally less of an incentive to organize than in Anglo-Saxon countries. "This does not mean that all Anglo-Saxon unions are focused on organizing and vice versa. In fact, some American and British unions have embraced the organizing approach and some of them are highly successful at it, but many still are focused on servicing the existing membership," said Dirk Kloosterboer, Researcher at Dunya Advies.

<sup>21</sup> See speech given by John Monks, General Secretary of the European Trade Union Confederation, at the Service Employees International Union (SEIU) Executive Committee meeting, available online at: <http://www.etuc.org/a/1093>, accessed on August 22, 2005.

<sup>22</sup> See listing on "Trade Union" at [http://en.wikipedia.org/wiki/Trade\\_union](http://en.wikipedia.org/wiki/Trade_union), accessed on August 22, 2005.

## Joining a Union: Benefits and Barriers

Before examining the different issues at stake in unionizing undocumented workers, it is useful to consider the benefits that union membership can bring to undocumented workers themselves, as well as the obstacles that prevent them from becoming members of a union.

### Why Join a Union?

The benefits of joining a union for undocumented workers are the same for all workers who wish to be part of an organized association that protects and furthers their rights and interests. Unions promote fair working conditions, defend workers' rights and gather strength by organizing workers. An additional benefit of union membership for undocumented workers is the ability to receive a union membership card.

A union membership card is by no means a residence permit, but it is proof of residence in the host country. "It is an official document and it can give an undocumented worker a sense of identity," said Elsa Ramos of the Filipino migrants' organization Samahan. Bridget Anderson of COMPAS, University of Oxford, said that through her work with the organization Kalayaan in London as well as in other areas, it has become evident that even though a union membership card is not a residence permit, undocumented workers feel that it gives them some level of protection. "The provision of membership cards is something concrete that unions can do for undocumented workers, and is a real benefit of membership," she said.

Another incentive to join a union for undocumented workers in the United States is to be able to benefit from negotiations for collective bargaining agreements.

Union members in the United States negotiate to have contracts, which are one of the best sources of protection of the labor rights of undocumented workers. Legal advocates in the United States believe that a contract that is obtained through collective bargaining is actually the *only* legal protection that undocumented workers have in the U.S. nowadays.

Community organizations in the United States that work directly with undocumented workers recognize the importance of union contracts, and will often promote union membership as a way to have increased protection. "As part of our workers' rights course, we make it very clear that being a union member is one of the only ways that you have protections. Your employer always has the right to fire you, for any reason or for no reason at all. But with a union contract, you can actually have a process, where he has to give warnings," said Nadia Marin-Molina of the Workplace Project.

### Barriers to Joining Unions

To want to join a union, a worker first has to understand exactly what a union is and how it can be relevant for him/her.

Khalil Wedad said that his community organization, the Stichting Haags Islamitisch Platform (SHIP), clearly explains the purpose of a union to each worker individually, but it is not uncommon for workers to have misunderstandings and false hopes about what union membership can bring them: "Most of the undocumented workers we come into contact with are illiterate and have little formal education, and they don't know what membership in a union means, what objectives the union has and which target groups it works with. They think that 'If I become a member of the FNV trade union, then I'll obtain legal status in the Netherlands,' but it doesn't work like that."

The cost of the monthly or yearly membership fees is an important consideration for low-wage workers. Though most unions will offer a reduced rate, the fees may still be a hindrance.

Some workers also do not properly understand that although a union is an official entity, it does not transmit undocumented workers' personal data to governmental officials.

The Transport and General Workers Union (T&G) is trying to organize office cleaners in Canary Wharf, the new financial district of London, but is facing difficulties in convincing the less regular workers to join the union. "We are now attempting to organize migrant workers but there are barriers in persuading undocumented workers to join a union. Perhaps it is because,

on very low wages, the union fees just seem like another expense to meet. Perhaps it is a fear that to identify yourself on paper is to somehow bring yourself within reach of authorities who do not consider you a legal worker. Our organizing strategy is designed to tell these workers that this union is here to support them,” said Pauline Doyle, Head of Campaigns at the T&G.

A worker who is in a situation of abuse or exploitation may not immediately think of joining a union due to a preoccupation with trying to find a solution to their immediate concerns.

“Often when domestic workers come to us, they’ve had their passports withheld, they’ve got no ID, and their main priority is finding a job, which is often finding somewhere to live as well, because they are live-in workers. They are also concerned about having some money so that they can send it back home. We really encourage people to join unions, but they don’t always see the relevance of it, because their main priority is getting a job,” said Fiona Luckhoo of Kalayaan.

A further obstacle to becoming a member of a union is the very real and serious situation of being threatened by the employer. Many employers threaten workers with reporting them to the Immigration authorities if they wish to join a union. This issue is discussed more in the following section.

## Challenges of Unionizing Undocumented Workers

To better understand the role of unions in protecting undocumented workers, it is helpful to point out a number of obstacles that prevent this important actor from providing support to undocumented workers. The following is a presentation of some of the main challenges faced by unions in organizing undocumented workers.

### Employers Threaten Organizing Efforts

Employers use different tactics against workers to prevent them from unionizing, including prohibiting union leaders from gaining access to the workplace.

“We’ve had a lot of problems with larger companies because they don’t respect us. We have tried to meet the workers during their 20-minute breaks to pass on information and explain the purpose of our union. But the employers don’t consider our union to be a very representative union, so they close the door in our faces and immediately call the police, saying that it’s private property and we don’t have access. So we’re forced to leave,” said Gabriel M’Binki Ataya of the Sindicato de Obreros del Campo (SOC).

As opposed to the situation in Europe, where unions generally enjoy a good degree of power, unions in the United States are generally much weaker (see “Differences in Union Structures” at beginning of chapter). To prevent workers from unionizing in the United States, employers will hire lawyers who will use whatever legal arguments they can come up with against the workers. This phenomenon not only affects undocumented workers, but documented and native workers *as well*.

“There is no legal right for workers to join a union in the United States today,” said Dave Glaser of the Hotel Employees & Restaurant Employees (HERE). “On paper there is, but in practice there is no ability to join a union. Lawyers can now use the law to permanently thwart people’s desire to join a union, and that’s true for citizens as well as undocumented and documented workers. It’s an extremely difficult process and so even if 100,000 undocumented workers wanted to join a union in a particular industry, they have no more ability to achieve that goal than citizens do.”

Though the right to organize for *all* workers is being threatened in the United States, undocumented workers face even more obstacles due of the additional threat of being reported to the Immigration authorities. Employers harass and threaten undocumented workers with reporting their irregular status to prevent them from joining unions. This fear has had negative consequences in terms of union win rates at workplaces, said Dirk Kloosterboer, Researcher at Dunya Advies, referring to a study that made statistical analyses of campaigns to unionize workplaces in the United States.<sup>23</sup>

<sup>23</sup> See Kate Bronfenbrenner and Robert Hickey, “The State of Organizing in California: Challenges and Possibilities,” *The State of California Labor*, vol. 3 (2003), available online at: <http://www.iir.ucla.edu/scl/pdf03/scl2003ch2.pdf>, accessed on August 25, 2005. The authors discuss the significantly high union win rate at workplaces with a high proportion of immigrant workers (the same applies to women). However, the picture changes when undocumented immigrants are involved. In fifty per cent of these cases employers threaten to report workers to the immigration authorities. Union win rates in such cases are considerably low.

## Unions' Reluctance to Engage in "Illegal" Actions

In several countries in Europe, particularly in the Nordic countries, trade unions are generally reluctant to organize undocumented workers because they prefer to work within what the state defines as legal. In Finland, for example, union representatives have been involved in surprise raids on construction sites, along with labor and tax inspectors.<sup>24</sup>

The question of organizing undocumented workers in the Nordic unions is almost unheard of. These unions are known for supporting the deportation of a worker who is caught working illegally rather than trying to protect their rights. There is also a lack of analysis amongst unions about the contribution of undocumented workers to the workforce.

One explanation for a union's desire to strictly follow what a state defines as legal instead of supporting all workers stems from the tendency to view undocumented workers as a threat rather than an ally. These

unions feel that undocumented workers undercut wages and accept inferior working conditions. This argument is seriously being debated within the trade union movement. Most unions recognize that the only way to solve the problem of undercutting wages and working standards is to stop undocumented migrants from being unprotected.

"Unions know that migrant workers are used to undercut the achievements of the trade unions and replace organized and protected workers. This leads many unions to agree to tight immigration policies. However, unions are also aware that it is these high barriers that serve to increase the levels of exploitation and unfair competition with national workers."<sup>25</sup>

## Organizing in Untraditional Sectors of Employment

Unions face a challenge of organizing in sectors that have traditionally not had a strong union presence and that are increasingly being filled by undocumented workers. These sectors are characterized by dif-

### ETUC DECISION ON PREVENTING AND COMBATING THE EXPLOITATION OF UNDOCUMENTED WORKERS IN EUROPE

In 2003, the Executive Committee of the **European Trade Union Confederation (ETUC)** adopted an *Action Plan for all ETUC affiliates to encourage action at the national level on migration and integration and to combat discrimination, racism and xenophobia*.<sup>26</sup> In the Action Plan, the ETUC indicates that it will demand common criteria for the regularization of undocumented workers and the development of measures to prevent and combat the underground economy and the exploitation of undocumented workers. It also states in the Action Plan that it intends to work with its affiliates to organize undocumented workers in unions.

Now that the Action Plan has been adopted, the key issue remains the development of measures to implement it. This is not a straightforward process given the diametrical opposite union views and

practices concerning undocumented workers throughout Europe. In Southern European countries such as Spain, Italy, and Portugal, for example, unions take pride in organizing workers regardless of nationality or legal status, whereas in the Nordic countries, trade unions do not engage in unlawful activities by supporting individuals who illegally reside in their countries. There are also the unions in other countries that may accept undocumented workers within their unions but do not actively advocate on their behalf amongst native workers and the general public. "The ETUC still has to win the argument that unions should be present to all workers, including undocumented workers. The ETUC can stimulate debate and exchange of good practice, but the real power is in the 87 affiliated member organizations," said ETUC Confederal Secretary Catelene Passchier.

<sup>24</sup> See FNV, *From Marginal Work to Core Business: European Trade Unions Organizing in the Informal Economy* (FNV: Amsterdam, 2003).

<sup>25</sup> Ibid.

<sup>26</sup> See ETUC, "Action Plan for an ETUC policy on migration, integration, and combating discrimination, racism and xenophobia," adopted by the ETUC Executive Committee in their meeting held in Brussels on 16-17 October 2003, available online at: [http://etuco.etuc.org/en/eu\\_information/library/20-Res-Migration-ActionPlan-gb.pdf](http://etuco.etuc.org/en/eu_information/library/20-Res-Migration-ActionPlan-gb.pdf), accessed on November 10, 2004.



ferent realities that complicate unions' efforts to organize workers.

One problem is that workers are hard to reach because they are working in isolated places. It is not always a straightforward process to locate the employer, which makes it hard for the union to intervene and press for fair working conditions.

Domestic work is a case in point. While unions in some parts of the world organize household workers, this has not been the case overall in Europe or the United States. The nature of domestic work, which isolates workers in individual homes, poses difficulties for unions, who have to do outreach to effectively reach these workers. Many unions simply do not prioritize the organization of workers who are employed in places that are difficult to access.

Ai-Jen Poo of Domestic Workers United (DWU) commented that unions generally do not want to make special efforts to organize the more than 200,000 women who work as nannies, companions and housekeepers in the greater New York metropolitan area. "To be fair, I don't think that unions are against us, they are simply not interested in supporting independent organizing efforts or organizing domestic workers themselves," she said. Elsa Ramos of Samahan said that unions in Belgium "never really closed their doors to undocumented workers, but they didn't know at first how to properly integrate Filipino migrant workers. These workers were mainly doing domestic work, where there wasn't much mobilization of unions. If the Filipinos had been in construction work, for example, then it would have been logical for them to go to a union that organizes workers in that sector."

Transformations within a country's economic structure also impact unions' efforts to organize undocumented workers.

The Portuguese economy is increasingly being composed of small and medium sized businesses, where there is a large market for immigrants. Portuguese unions have traditionally used collective bargaining in workplaces with many workers, but the new trend towards smaller businesses has resulted in

increased difficulties for unions who find it harder to organize workers.

"Take the example of an undocumented Brazilian who works side by side with his boss in a café from 8:00 a.m. until 8:00 p.m.," said Manuel Correia of the União dos Sindicatos de Lisboa (USL). "It's really hard for a union to intervene in a situation like this. It's not the same as in a workplace where workers are aware of the laws, are represented by workers' committees with union leaders, and where there is continuous union activity. Also, by law, a union is required to have access to a room in the workplace where it can represent workers. But in a case like this, it would be really difficult for an employee to make a complaint to his boss who has the same working conditions and even does the same work. This is a problem." To respond to this growing phenomenon, the USL has attempted to sign a protocol with the Confederation of Micro, Small and Medium Sized Businesses in Portugal to reach these types of businesses which traditionally have been hard for unions to access.

Unions should "think outside of the box" and build a strategy for organizing to bring informal economy workers into the union movement, suggests Pat Horn, coordinator of Streetnet, an international network for street vendors. "If you only accept as 'workers' those who are so defined legally, why are you accepting the government's definition? In South Africa before 1979, black workers were not defined as 'employees' under law. So we organized black workers and got the law changed. We do not need someone else's permission."<sup>27</sup>

### **Organizing Workers Is Generally Not a Priority**

A union's lack of efforts to organize undocumented workers may be linked to its policies on organizing workers in general. This is an element in the traditional trade union mindset that should be reconsidered, particularly amongst European unions. In many countries in Europe, unions don't see the need to strengthen their membership base by organizing workers because they are strong and are an accepted social partner (see "Differences in Union Structures" at beginning of chapter).

<sup>27</sup> See FNV, *From Marginal Work to Core Business: European Trade Unions Organizing in the Informal Economy* (FNV: Amsterdam, 2003).

According to Dirk Kloosterboer, Researcher at Dunya Advies, the emphasis on social dialogue amongst unions, employers and the government is beneficial for working conditions in Europe, but has consequences for the labor movement itself. Organizing in general has a low priority amongst Dutch trade unions in comparison with Anglo-Saxon countries.

“The trade union movement in the Netherlands is used to working through the Polder model - which is based on tri-partite consultation involving the government, unions and employers’ representatives -

but they’re not really into rank-and-file mobilization of people. I think that in theory more could be achieved if you actually mobilize both legal and undocumented workers, and explain to them that it’s not in their best interests to work against each other, but with one another. But that’s not what trade unions in the Netherlands are used to,” said Dirk Kloosterboer.

Unions may also not prioritize organizing because they benefit from special schemes that result in high membership rates of native workers. Denmark,

### HOW TWO UNIONS’ HISTORIES OF ORGANIZING NATIVE WORKERS IN THE UNITED STATES RELATE TO THEIR CURRENT POLICIES ON ORGANIZING UNDOCUMENTED WORKERS

Throughout their histories, the manufacturing and crafts unions<sup>28</sup> in the United States have had different approaches to negotiating contracts and organizing workers. Understanding the differences in these approaches can shed some light on the reasons why these unions have generally valued or disregarded the organizing of undocumented workers. Ana Avendaño, Associate General Counsel and Director of the Immigrant Worker Program at the American Federation of Labor – Congress of Industrial Organizations (AFL-CIO), gave a brief overview of how these unions have had to evolve to face new workplace realities involving undocumented workers:

*“Workers in the manufacturing unions have traditionally bargained collectively through their union directly through the employer, whereas workers in the crafts unions are hired by union contractors in ‘hiring halls.’*

*The difference in how union contracts work is linked to the fundamental concept of organizing workers. In manufacturing, you want to increase your membership base as much as possible, because you want many members being covered by a contract. In the crafts, you want to have fewer people sitting on the bench waiting for work in the hiring hall, because then those people are going to work more and will be able to command higher wages. So the concept of organ-*

*izing in the sense of bringing more people under contract is something that is at odds with the fundamental structure of the crafts unions, whereas the manufacturing unions were already of the mindset that it was necessary to organize and bring more people into the movement.*

*But now that’s all changed and the crafts unions are rethinking their whole organizing strategy, because now they have to compete with non-union contractors who are employing undocumented workers. When non-union contractors make a bid to get a job in the building trades, their bid will represent fewer costs. Unlike union contractors, who provide good wages and benefits, non-union contractors pay less than the minimum wage, no health benefits and not even workers’ compensation insurance. They hire undocumented workers who work for essentially pennies, with no overtime pay, no health care and no other benefits. Non-union contractors are unfair competition for union contractors, who are responsible to their workers.*

*So how do we deal with this problem of unfair competition amongst union and non-union workers? The answer is that you have to focus on worker solidarity. You have to convince workers that it is in their interest to belong to a union, and that unions don’t have to call the Immigration Services for every construction project that they suspect has undocumented workers.”*

<sup>28</sup> Manufacturing unions represent workers in healthcare, hacking and poultry, janitorial services, garment workers and anyone who does manufacturing work. Crafts unions include brick layers, boiler makers, plumbers, laborers, operating engineers and anyone working in the building and construction trades.

Sweden, Finland and to some degree Belgium have the so-called Ghent system of unemployment schemes managed by trade unions, which results in high rates of union membership, said Dirk Kloosterboer. “These countries tend to have high membership rates among immigrant workers as well, but it is not clear how this system affects the unionization of undocumented workers. One might expect that the system takes away the incentive for trade unions to make an active effort to organize new groups of workers.”

### **Discouragement if Unable to Obtain Legal Victories for Undocumented Workers**

It is worth highlighting a further reason why unions do not actively promote the membership of undocumented workers, as it characterizes the sentiment of some unions that may otherwise be genuinely interested in mobilizing these workers. Despite the advances that are being made in Europe and in the United States concerning the legal assertiveness of undocumented workers (see Chapter Eight), there are still many difficulties in obtaining legal results in favor of undocumented workers who have been exploited or abused. Such difficulties represent obstacles for trade unions who determine that it is simply too difficult to advocate for undocumented workers within their unions.

A case in point is the way that the major trade unions in the Netherlands have responded to these dilemmas. “It has always been possible in the Netherlands for undocumented workers to become a member of one of the two largest unions (FNV and CNV). By joining the union, undocumented workers could get legal support to put a claim against their employer,” said Marijke Bijl of the OndersteuningsKomitee Illegale Arbeiders (OKIA). Indeed, Dutch law holds that if an undocumented worker was not paid and has been working for at least one and a half years in the Netherlands, they benefit from the right to file a claim for up to six months of wages.

The problem lies in the fact that the legislation is ill-suited to the reality of work carried out by undocumented workers, explained Dirk Kloosterboer, Researcher at Dunya Advies. He said that the legal department of the FNV trade union feels that there is a gap between the legislation and the reality, because undocumented workers tend to work only

for limited periods for the same employer and are afraid of retaliation if they file a case. “The trade union cannot file a case on behalf of anonymous workers,” he said, so the FNV has decided not to pursue the legal option of claiming unpaid wages for undocumented workers.

## **Why Should Unions Organize Undocumented Workers?**

Although the above-mentioned barriers prevent many unions from supporting undocumented workers, there are numerous examples of unions that have overcome these obstacles and have incorporated undocumented workers in their membership. The following sections highlight some of the arguments used by unions to maintain inclusive policies towards undocumented migrant workers.

### **A Worker Is a Worker!**

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 workers.

Part of an awareness raising strategy is to emphasize that all workers aspire to earn a decent living and have normal working conditions, regardless of legal status. “Our main strategy in building worker solidarity is to focus on the fact that we’re dealing with human beings who are workers and who ultimately at the end of the day have the same needs, desires, wants, dreams... you know, we’re all people and we’re workers,” said Ana Avendaño, Associate General Counsel and Director of the Immigrant Worker Program at the American Federation of Labor – Congress of Industrial Organizations (AFL-CIO).

A supportive union policy towards undocumented workers seeks to steer away from status-related discussions, since this creates a natural division amongst workers. “What we’ve always just said is that ‘a worker is a worker is a worker; there’s no such thing as an illegal worker,’” said Pauline Doyle, Head of Campaigns at the T&G.

Unions also highlight the contributions that immigrant workers make to the economy, and that they have inherent rights as workers. “We try to inform Italian workers about this so that there is solidarity amongst workers,” said Lamine Sow of the Confederazione Generale Italiana del Lavoro (CGIL).

“All workers, regardless of their legal status, should be treated with dignity and respect. And if we can make their lives a lot easier, then we should. And that is what unionizing should be all about, not about race or language or classification of work,” said Ben Monterroso, Western Regional Director of the Service Employees International Union (SEIU).

The Confederação Geral dos Trabalhadores Portugueses - Intersindical Nacional (CGTP-IN) has had a pro-immigrant worker policy since its conception in 1970. Carlos Trindade, who is in charge of migrant worker issues within the confederation, said that “we don’t need to do much convincing of Portuguese workers of the importance of working with undocumented workers, because we’ve had this policy from the beginning.”

When undocumented workers join a union in Portugal, their status is not questioned because it simply is not an issue for the union. “In our opinion, immigrants are first of all citizens, so they can be members of our union whether they’re documented or not. In fact, we don’t even know what their status is because our database system makes no distinction between legal or undocumented workers. We want people to have trust in the system that it’s safe,” said Manuel Correia of the União dos Sindicatos de Lisboa (USL).

Spanish unions are also staunch supporters of undocumented workers, to the extent that they immediately denounced a law when it was decreed in recent years that excluded undocumented workers from five internationally recognized labor rights, including the right to organize. These unions continue to allow undocumented workers to become members of their unions, as they adhere to the general philosophy that unions should promote the rights of all workers.

The 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.<sup>29</sup>

Another Spanish union, the Sindicato de Obreros del Campo (SOC), also goes 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.

### **An Unprotected Worker Is a Threat for All Workers**

Undocumented workers in Europe and in the United States are used as an experimental ground for the restructuring of the labor market. These workers are attractive because they are dependent on employers and thus easily exploitable; they are invisible and not a burden on society; and available to fulfill employers’ needs.<sup>30</sup> There is a link between the growth of employment of undocumented workers and the increasing flexibility of the labor market. Such a reality should prompt trade unions to recognize that the presence of undocumented workers in the workforce concerns all workers.

<sup>29</sup> See PICUM, *Book of Solidarity: Providing Assistance to Undocumented Migrants in France, Spain and Italy, Volume II* (Brussels: PICUM, 2003).

<sup>30</sup> See Alain Morice, “Migratory Policies and the Evolution of Work in the European Union: Where Undocumented Migrants Fit Into this System,” in Michele LeVoy, Nele Verbruggen, and Johan Wets, eds., *Undocumented Workers in Europe* (Leuven: PICUM and HIVA, 2004).

To increase support for undocumented workers within unions, native workers have to be aware of the benefits in upholding fair working conditions for all workers. They must be convinced that the only way to fight the tendency of worsening conditions and wage decreases is by working together and building strength as a workers' movement.

The general philosophy of unions that have inclusive policies towards undocumented workers is that if

these workers encounter problems with their wages or working conditions, the union will deal with the issue collectively to be able to have more power. This was the rationale behind the Justice for Janitors campaign spearheaded by the Service Employees International Union (SEIU) in the United States, described later in this chapter.

Ben Monterroso, SEIU Western Regional Director, said that workers joined together during the

### AFL-CIO RESOLUTION CALLING FOR PRO-IMMIGRANT MEASURES IN UNIONS IN THE UNITED STATES

Until 2000, the general philosophy in the labor movement in the United States was that immigrant workers would undercut the union standards that existed. The **American Federation of Labor - Congress of Industrial Relations - AFL-CIO**, which represents more than nine million workers in the United States,<sup>31</sup> had supported the "employer sanctions" provision of the 1986 Immigration Reform and Control Act (IRCA), which for the first time made it illegal for an employer to hire an undocumented worker.

There came a change in the late 1990s, when some unions, such as the service employees in some cities, farmworkers, hotel workers and textile workers, amongst others, started to take a more progressive position, said Dave Glaser, National Director of the Immigrant Workers Freedom Ride and a Hotel Employees & Restaurant Employees (HERE) organizer. These unions acknowledged that the labor movement had historically been a movement of immigrants, whether they were Irish, Italian, Jewish, Hungarians, Poles, or involuntary immigrants (the African American community). They all represented the labor movement when it was most successful and powerful in the 1930s and 1940s. These unions made the link between their own history, which was strongly immigrant-

led, and the current situation in which immigrants were continuing to come to the United States, both documented and undocumented. They felt that the labor movement had to change its position because it was futile to try to attract new members while at the same time maintaining a criminalizing and repressive attitude towards them.

In 2000, the Executive Committee of the AFL-CIO made a historical reverse of its long-standing anti-immigrant worker policy by adopting a resolution that called for a new amnesty for undocumented workers, union representation of undocumented migrants and the repeal of all employer sanctions for hiring illegal workers.<sup>32</sup>

The AFL-CIO has since made immigrant workers one of its key program areas, based on an underlying philosophy that improving the conditions for immigrant workers serves to improve conditions for all workers. A plan is currently being discussed within the confederation to develop the infrastructure within the labor movement to effectively mobilize, organize and represent immigrant workers and all workers who are organizing and mobilizing with them, said Ana Avendaño, Associate General Counsel and Director of the Immigrant Worker Program at the AFL-CIO.

<sup>31</sup> In July 2005, three of the AFL-CIO's largest members (the Service Employees International Union (SEIU), the Teamsters, and the United Food and Commercial Workers (UFCW)) split from the federation, thereby decreasing AFL-CIO membership from 13 million to 9 million members. Nonetheless, the AFL-CIO remains deeply committed to working to improve the lives of immigrant workers, and adopted two resolutions to that effect at its August 2005 Convention in Chicago (available at: <http://www.aflcio.org/aboutus/thisistheafclcio/convention/2005/resolutions.cfm>, accessed on September 2, 2005).

<sup>32</sup> See AFL-CIO, Executive Council Action on Immigration, February 16, 2000, New Orleans, LA, available online at: <http://www.aflcio.org/aboutus/thisistheafclcio/ecouncil/ec0216200b.cfm>, accessed on September 2, 2005. For a historical overview of the AFL-CIO's positions on immigrants (especially from the 1980s until the present), see John Tuason, "Friend of Immigrants? The AFL-CIO: Past and Present," *Labor Watch* (December 2003), available online at: <http://www.capitalresearch.org/pubs/pdf/x3797848638.pdf>, accessed on November 30, 2004. See also David Bacon, "Labor Fights for Immigrants," *The Nation*, May 3, 2001, available online at: <http://www.thenation.com/doc/20010521/bacon>, accessed on July 12, 2005.

Justice for Janitors campaign because “if we weren’t going to fight, then nothing was going to change. We also knew that if we didn’t do the work, then nobody was going to do it for us. And we knew that if we did not do it then, nobody was going to do it later. So it was now or never.” The Justice for Janitors campaign was very successful in mobilizing workers and bringing about industry-wide change that positively affected the conditions of *all* workers in the industry.

### **Illegal Activities of Employers, not Workers**

Another way of fostering common aims among workers is to turn the tables on arguments against undocumented workers that label them as criminals because they engage in illegal employment.

“What we do is to emphasize that the employer is the one who is doing something wrong, not the undocumented worker,” said Carlos Trindade of the Confederação Geral dos Trabalhadores Portugueses - Intersindical Nacional (CGTP-IN). “Because if an employer has hired undocumented workers, then he most likely has a whole parallel accounting system to be able to pay them illegally, so the whole schema is illegal. We use this argument to steer away from employers’ tendencies to pit native workers against undocumented workers.”

## **Strategies for Unionizing Undocumented Workers**

### **Outreach Efforts**

Many union affiliates are leading the way in supporting undocumented workers by carrying out special outreach efforts to make them union members.

Unions in Southern Europe generally maintain inclusive policies towards immigrant workers, including undocumented workers.

María Helena Bedoya of the Spanish trade union Comisiones Obreras (CCOO) emphasized that part of a pro-immigrant policy includes making immigrants – both documented and undocumented – part of unions and promoting their representation as union leaders.

“A trade union struggles and wins back rights, that’s why it’s a union. It’s important for us to have immigrant leaders and representatives in the CCOO so that they can help other immigrants to demand their rights. We train immigrants so that they can stand for election as union leaders in their workplaces,” she said.

Within the restrictive context in which unions operate in Nordic countries, a small socialist union in Sweden has taken a step forward by making undocumented workers union members.

The Sveriges Arbetares Centralorganisation (SAC) has approximately 10,000 members and is small in comparison with other unions in Sweden. A dedicated group of SAC members in Stockholm has been supporting undocumented workers for a number of years. Some of the group members have written articles in the union’s magazine about undocumented workers in Sweden to sensitize other members.

For SAC’s purposes, undocumented workers also include asylum seekers. “This is because it is very difficult for people to receive asylum in Sweden, and most asylum seekers become undocumented in any case,” said Lotta Holmberg of the SAC. “It is different in Sweden in relation to Spain, for example, where there are large groups of undocumented workers and the unions there can do collective bargaining and try to improve the lot of many workers. In Sweden, undocumented workers do not work together in large groups. For example, some may clean in an office, or a few may work in a construction site or in a restaurant, but it’s not common to find large groups of undocumented workers,” she said.

The **Sveriges Arbetares Centralorganisation (SAC)** does outreach to undocumented workers by distributing informational leaflets in several languages and making information available on its website.

In April 2004, the SAC held a weekend course for undocumented and Swedish workers in collaboration with its sister organization in Spain, the Confederación General de Trabajo (CGT). A representative from the CGT came to

Sweden to discuss the union's experiences in organizing undocumented workers in Spain. The information exchange was also helpful in raising awareness about the existence and needs of undocumented workers in the three major cities in Sweden (Stockholm, Gothenberg and Malmo) as well as in other smaller towns.

In the United States, a notable example of a union with a pro-immigrant policy is the Service Employees International Union (SEIU). Many years ago, the SEIU recognized that in order to keep its unions strong, it needed to adapt its strategies to a rapidly changing workforce.

In the janitor industry in Los Angeles, the workforce was primarily African American until the 1980s, when it started to become predominantly Latin American and included many undocumented workers. The unions were not ready to adapt their organizing strategy to this new workforce, and started to lose power in the industry. Ben Monterroso, SEIU Western Regional Director, started off as a janitor in 1979 but lost his job due to the industry changes. He described how the conditions generally degraded: "When I was working as a janitor I was making \$6.02 an hour and benefits. When I left the industry in 1980, I was making \$7.32 an hour - which was a great salary because minimum wage back then was \$3.35 an hour - plus benefits from vacations, sick days, holidays, and health insurance for my family and I. But then the industry started changing and the salaries got reduced to \$5.50 in order just to keep the membership up and just to keep the jobs. The union was losing power, because the employer could hire people for minimum wage or lower, and there was very little resistance from the union."

As a way to rebuild the janitor industry and increase membership, the SEIU launched a campaign in 1985 in Los Angeles, which has since become known internationally for its success in revitalizing the union's membership base and for bringing about industry-wide change that has benefited low-wage workers.

Union organizers involved in the **Justice for Janitors campaign** realized that in order to fight for better salaries, they shouldn't concentrate their efforts on trying to persuade the companies that hired them, but rather go to the top level. Organizers used the image of a pyramid to explain to workers that the owners of the building were at the top of the pyramid and had the most money. Below them were the administrators of the building, who hired the companies that hired the janitors to clean the building. "We explained to the janitors that we could hit those companies as hard as we want, but they would not be able to pay us more money if they couldn't get more money from the building administrators, and if the latter couldn't get more money from the owners, then there would be no change," said Ben Monterroso, Western Regional Director of the **Service Employees International Union (SEIU)**.

Campaigners used collective actions to try to pressure the building owners to concede and increase workers' wages, coupled with drives to organize the workers and build power in the industry. The union hired organizers that spoke the language and knew the culture of the new workforce from Latin America, and emphasized that if they didn't stick together and fight, nobody would do it for them. "The worst thing that could happen to workers was that they would lose their job, but they were going to lose it anyway, so they might as well fight for something to not only keep their job but to make it better," said Ben Monterroso.

The union strategy focused going after the owners of the buildings and above all building power in the industry. The Justice for Janitors campaign has been a success for janitors in Los Angeles. Presently about 80% of the building services (which janitors are a part of) is unionized. One of the positive outcomes of increased power in the industry is a provision in collective bargaining agreements protecting undocumented workers. The SEIU secured a contract that stated that employers

must inform the trade union when the Immigration Authorities plan an investigation. The same contract stipulated that employers cannot provide any information to the Immigration Authorities beyond the information that they are legally obliged to provide.

The Justice for Janitors campaign has been used as model for similar actions in other cities in the United States, and was also the inspiration for the 2001 film *Bread and Roses* by director Ken Loach.

While the policies of unions that affiliate undocumented workers are praised for their inclusive approach, it is useful to point out a drawback to organizing workers without focus on national origin.

Like their counterparts in Spain and Portugal, Italian unions do not distinguish between native and undocumented workers when it comes to union membership. “In our offices, we don’t ask if a person is undocumented or not, because we always try to avoid repeating the same scenario that undocumented migrants face when they’re questioned by the police. We see that so many foreigners go through this type of questioning about status,” said Lamine Sow of the Confederazione Generale Italiana del Lavoro (CGIL).

A drawback to this inclusive policy is that immigrant workers are usually not able to organize amongst themselves in unions. The CGIL has five million members, of which approximately 150,000 are immigrant workers, but these workers are not well organized. “The union structure doesn’t allow this, because you join as a worker, not as an immigrant, and you’re organized in one of the different local unions. But local unions don’t deal very much with immigration issues. The confederation works more on these issues,” said Lamine Sow.

### **Building Strength Through Coalitions with Immigrant Advocacy Groups**

To build power and credibility on immigration issues, most unions recognize the importance of working in collaboration with like-minded organizations on the social and human rights of workers. The mutual ben-

efits that can be gained by working through coalitions are significant.

Union collaboration with community-based organizations can be helpful in reaching workers who are often left behind in union organizing efforts.

The Brussels-based Filipino migrants’ organization Samahan works closely with trade unions and in 2000 held a membership drive with two Belgian unions (the Socialist FGTB and the Social Christian CSC). A positive result has been the steady increase in trade union membership amongst both documented and undocumented Filipino domestic workers since 2000.

The London-based organization Kalayaan works with the T&G trade union on learning and training development programs for migrant domestic workers. However, in order for them to actually access these programs they need to join the trade union, said Fiona Luckhoo of Kalayaan.

In April 2005, the European Trade Union Confederation (ETUC) held a conference in collaboration with the Platform for International Cooperation on Undocumented Migrants (PICUM) and the International Restructuring Education Network Europe (IRENE), to examine organizing and policy initiatives in the area of domestic work. Nearly one hundred participants came together from trade unions across Europe, as well as migrant workers’ support groups, associations concerned with domestic workers and on labor issues, and women’s organizations. Participants discussed how to organize domestic workers and how to develop methods and strategies to provide them with basic protection.

An inherent benefit in working in coalitions is the strength that is gained from working together.

“I think that there is not one group in the United States that can make these changes by themselves,” said Ben Monterroso, Western Regional Director of the Service Employees International Union (SEIU). “Some of us have potentially more power than others, but that doesn’t matter if we don’t work together.”

It has taken some time for unions in the United States to gain the trust of immigrants’ rights’ groups and to build a working relationship, mostly because unions had been absent from the immigrants’ rights



debate for many years. An important element of the strategy of the American Federation of Labor – Congress of Industrial Organizations (AFL-CIO) to gain the trust of the immigrant community is to obtain commitment from the labor movement by developing partnerships or coalitions with key community and immigrant advocacy groups. One such existing partnership brings together unions, immigrants' rights advocates, community organizers and other organizations to improve the lives and working conditions of low-wage immigrant workers.

The **Low Wage Immigrant Worker Coalition (LWIW)** is a network of lawyers and community/labor organizers and activists throughout the United States that share practices about how to protect the rights of undocumented workers. The idea for the coalition came in 1998, when legal advocates throughout the country wanted to establish a forum where they could discuss, share resources and develop strategies on issues that affect low-wage immigrant workers. A number of NGOs had been doing this type of work, but there was no national organization or infrastructure on low-wage immigrant worker issues. There was also no mechanism within the labor movement where organizers in different unions could call each other - or call NGOs - to get tips on how to intervene in situations in which immigrant workers' rights are violated but their irregular legal status was an obstacle to knowing how to effectively deal with the situation.

The LWIW was founded to bridge this gap, and is co-convened by the American Federation of Labor – Congress of Industrial Organizations (AFL-CIO) and two leading immigrant advocacy organizations: the National Council of La Raza (NCLR) and the National Immigration Law Center (NILC). Participants in the LWIW used to meet on a regular basis in person to share information

but switched to national conference calls that facilitate the participation of a broader range of advocates. The LWIW schedules 1<sup>1/2</sup> hour long conference calls every six weeks for advocates from across the country to call in to share ideas and strategize.

An important element of the LWIW's work is to monitor legal cases that involve undocumented workers, and to try to talk to the lawyers involved and the workers to insist that they keep immigration status out of the proceeding. Once immigration status is brought up as an element of the case, it gives the employer the possibility of arguing that the worker is not entitled to a remedy. The LWIW has been able to get the courts to issue protective orders in cases involving undocumented workers, to forbid an employer from asking a worker about his/her immigration status during court proceedings.<sup>33</sup>

Working in coalitions is an important means of exchanging resources and expertise.

Unions in Italy are part of networks of voluntary organizations that work with immigrants and undocumented migrants. Francesco Ciafaloni of the Associazione IRES Lucia Morosini said that the Confederazione Generale Italiana del Lavoro (CGIL) has a permanent relationship with the Associazione Studi Giuridici sull'Immigrazione (ASGI), an association of lawyers and judges that work on immigration issues. The CGIL collaborates with ASGI to hold training seminars for union members on immigration issues.

The Comisiones Obreras (CCOO) and the anti-racism organization SOS Racismo lead a platform that brings together more than 100 organizations in Barcelona, Spain, under the theme of living together in harmony. CCOO continuously feeds information to platform members and also provides them with legal assistance. The Sindicato de Obreros del Campo

<sup>33</sup> To get a protective order, a lawyer must apply to the court to keep immigration status out of the court proceedings. The lawyer would argue that the Supreme Court has never said that workers are not entitled to the protection of the law, and that if employers are allowed to ask workers questions about their immigration status, then the workers will usually be too scared to come forward to even try to enforce their rights, explained Ana Avendaño, Associate General Counsel and Director of the Immigrant Worker Program at the AFL-CIO.

(SOC) in the Spanish province of Almeria works with many different groups that bring together workers from several countries in sub-Saharan Africa.

### Offering Services Tailored to Immigrants

In Portugal, Spain and Italy, immigrants with legal status and undocumented migrants can freely obtain information and services in specially designated centers within trade union structures. All immigrants can use these service centers, regardless if they are union members or not.

The service centers are a visible sign of unions' commitment to immigrants. They are also a means of providing an opportunity for immigrants to become familiar with the work carried out by the particular union. Becoming more aware of what a union does may encourage some immigrants to actually join the union.

A noteworthy example of a service center for immigrants is the Foreign Workers' Information Centers (CITE) of the Comisiones Obreras (CCOO) trade union in Spain. CITE provides numerous types of services to immigrants in Spain, including free advice concerning the legal and administrative situation of foreigners (residence permit, work permit, family reunification, nationality, etc.). CITE also offers a special occupational training program, which includes Catalan language classes for workers based in Catalonia, Spain.<sup>34</sup> There are more than 200 CITE offices throughout Spain, of which there are 38 in the region of Catalonia alone.

### Examples of Union Initiatives to Protect Undocumented Workers

The following list is a brief mention of the various trade union initiatives to protect undocumented workers that are cited throughout this report. These initiatives are listed chronologically by chapter.

Engaging public support through events and consumer campaigns:

- The União dos Sindicatos de Lisboa (USL) holds an annual "Run for Tolerance – Run Against Racism"

in Lisbon, Portugal, to raise public awareness and take a stand against discrimination based on race, sex, color, nationality, etc. (p. 15)

- The American Federation of Labor – Congress of Industrial Organizations (AFL-CIO) and the Hotel Employees and Restaurant Employees (HERE) sponsored the Immigrant Workers Freedom Ride in 2003, in which nearly 1,000 documented and undocumented workers and their supporters traveled across the United States to spotlight the need for immigration reform. (pp. 15-16)
- The Sindicato de Obreros del Campo (SOC) holds conferences and seminars, participates in demonstrations and tries to get media coverage to inform the public about the mass exploitation of immigrant workers in the greenhouse region in Almeria, Spain. (p. 16)

Informing undocumented workers about their rights:

- The Deutscher Gewerkschaftsbund (DGB) trade union federation runs an advice center for migrants who are not part of the union. A former staff member of a Polish community organization in Germany presently works at this center and is able to bring the issue of undocumented workers into the advice center. (p. 30)
- In addition to providing information to workers in its office in the city of Almeria, Spain, the Sindicato de Obreros del Campo (SOC) goes to places where the workers live and work to bring information directly to them about their workplace rights. (p. 30)

Building undocumented workers' capacities through empowerment:

- The Dutch trade union FNV provided support for the "Illegal Workers' Union," launched by the migrants' organization Stichting Haags Islamitisch Platform (SHIP) in The Hague in 2002. (p. 36)
- Participation of immigrants in the political process in the United States is one of three elements of the strategy of the Service Employees International Union (SEIU) to build power within the labor movement. In addition to mobilizing workers for civic

<sup>34</sup> See Ghassan Saliba, "What a Union Can Do For Undocumented Workers," in Michele LeVoy, Nele Verbruggen, and Johan Wets, eds., *Undocumented Workers in Europe* (Leuven: PICUM and HIVA, 2004).

participation, the SEIU also emphasizes advocacy work and organizing. (p. 40)

Unionizing undocumented workers:

- The Sveriges Arbetares Centralorganisation (SAC) does outreach to undocumented workers in Sweden by distributing informational leaflets in several languages and making information available on its website. In April 2004, the SAC held a weekend course for undocumented and Swedish workers in collaboration with its sister organization in Spain, the Confederación General de Trabajo (CGT). (pp. 52-53)
- The Service Employees International Union (SEIU) launched the Justice for Janitors campaign in 1985 in Los Angeles, United States, which has since become known internationally for its success in revitalizing the union's membership base and for bringing about industry-wide change that has benefited low-wage workers. (p. 53)
- The Filipino migrants' organization Samahan works closely with Belgian trade unions and in 2000 held a membership drive with the Socialist FGTB and the Social Christian CSC trade unions. This resulted in the steady increase in trade union membership amongst both documented and undocumented Filipino domestic workers. (p. 54)
- The London-based organization Kalayaan works with the T&G trade union on learning and training development programs for migrant domestic workers. (p. 54)
- The European Trade Union Confederation (ETUC) held a conference in April 2005 in collaboration with the Platform for International Cooperation on Undocumented Migrants (PICUM) and the International Restructuring Education Network Europe (IRENE) to examine organizing and policy initiatives in the area of domestic work. (p. 54)
- The American Federation of Labor – Congress of Industrial Organizations (AFL-CIO) is a co-convenor of the Low Wage Immigrant Worker Coalition (LWIW), a network of lawyers and community/labor organizers and activists throughout the United States that share practices about how to protect the rights of undocumented workers. (p. 55)
- The Confederazione Generale Italiana del Lavoro (CGIL) has a permanent relationship with the Associazione Studi Giuridici sull'Immigrazione (ASGI), an association of lawyers and judges that work on immigration issues. CGIL collaborates with ASGI to hold training seminars for union members on immigration issues. (p. 55)
- The Comisiones Obreras (CCOO) and the anti-racism organization SOS Racismo lead a platform that brings together more than 100 organizations in Barcelona, Spain, under the theme of living together in harmony. CCOO continuously feeds information to platform members and also provides them with legal assistance. (p. 55)
- The Sindicato de Obreros del Campo (SOC) in the Spanish province of Almeria works with many different groups that bring together workers from several countries in sub-Saharan Africa. (pp. 55-56)
- The Foreign Workers' Information Centers (CITE) of the Comisiones Obreras (CCOO) trade union in Spain provides numerous types of services to immigrants in Spain, including free advice concerning the legal and administrative situation of foreigners (residence permit, work permit, family reunification, nationality, etc.), as well as a special occupational training program, which includes Catalan language classes for workers based in Catalonia, Spain. (p. 56)

Working with employers to prevent exploitation and advocating for laws to hold them accountable to fair labor standards:

- The Spanish union Sindicato de Obreros del Campo (SOC) dialogues with employers as part of its awareness raising work about the situation of immigrant workers in the agricultural sector in the region of Andalusia. (pp. 60-61)
- The União dos Sindicatos de Lisboa (USL) campaigned to get a law passed that would establish accountability of employers in industries that rely heavily on the use of sub-contractors. Through its efforts, the "social responsibility" law was passed in 1998. (pp. 63-64)

- The Transport and General Workers Union (T&G) spearheaded a campaign calling for a system of registration and licensing of gangmasters. The Government passed the Gangmasters Licensing Act on July 8<sup>th</sup>, 2004, which makes it an offence to operate as a gangmaster without a license. (pp. 65-66)

Challenging exploitation and abuse through mediation and collective actions:

- In an attempt to solve a problem of abuse or exploitation of undocumented workers in the workplace, the Sindicato de Obreros del Campo (SOC) engages in mediation with employers. (p. 70)

Asserting undocumented workers' rights in the legal system:

- The Portuguese trade unions União dos Sindicatos de Lisboa (USL) and the Sindicato dos Trabalhadores da Construção, Mármore e Madeiras e Materiais de Construção do Sul have brought forth numerous cases to the Social Security Administration of undocumented workers who have suffered injuries and accidents on the job. These unions also represent undocumented workers in industrial tribunals, and numerous cases brought forth by these unions have been ruled in favor of undocumented workers. (pp. 76-77)
- The Comisiones Obreras (CCOO) trade union has been able to win indemnities for immediate family members of undocumented workers who have been killed while working in Spain. In recent years, the CCOO has defended and won a number of cases in industrial tribunals involving undocumented workers who have filed complaints against their employers. (pp. 77-78)

Working with governmental agencies to promote undocumented workers' rights:

- The Foreign Workers' Information Center (CITE) of the Comisiones Obreras (CCOO) trade union in the Spanish province of Catalonia has developed a working relationship over the years with all of the governmental agencies in Catalonia that deal with immigration, including the industrial tribunals, the Attorney General's Office and the police. It works with the Foreigners' Police to help it clarify who the victims are and why they're victims. (pp. 94-95)

Advocating for legal status of undocumented workers:

- The União dos Sindicatos de Lisboa (USL) was influential in obtaining changes in the law in Portugal, which have resulted in several regularization campaigns since 1993. (p. 99)
- The Syndicat interprofessionnel de travailleuses et travailleurs (SIT) launched a proxy program in 2001 to register undocumented workers in the union. To register the workers, the SIT worked closely with the Collectif des travailleurs et des travailleuses sans statut legal - Genève (CTSSL), an organization of approximately 300 undocumented workers in the Geneva area. (pp. 100-101)
- The U.S. Service Employees International Union (SEIU) spearheaded a campaign in which it collected one million postcards and delivered them to President Bush to encourage the administration to tackle the issue of a legalization program for undocumented migrants. Following the campaign, SEIU gave its full support to the Hotel Employees & Restaurant Employees (HERE), the union that took the lead in organizing the Immigrant Workers Freedom Ride. (p. 101)
- The Sindicato de Obreros del Campo (SOC) dedicates much of its time to helping workers legalize their status, informing them about ways that they can be regularized and accompanying them to the Foreign Office to file a demand for regularization. (p. 101)
- During the 2003 regularization campaign in Portugal, the União dos Sindicatos de Santarém helped undocumented workers make applications for regularization. It also helped workers whose employers hadn't made social security deductions to make them, so that they could submit an application for legalization. (p. 102)
- The Confederazione Generale Italiana del Lavoro (CGIL) has provided assistance to undocumented workers in the five regularization campaigns that have taken place in Italy since 1986. It also informs these workers' bosses about possibilities of regularizing the workers. (p. 102)

## GENERAL FINDINGS

- Organizing undocumented workers in unions is a crucial step in preventing abuse and protecting these workers' rights. This chapter has focused on a range of benefits of union membership but also on the difficulties and obstacles that many unions face when trying to organize workers in unions. It also includes arguments why unions should include undocumented workers and strategies for unionization.
- Joining a union can be beneficial to undocumented workers in that they receive a membership card, which gives proof of residence in the host country and thereby a sense of belonging and a feeling of confidence. Furthermore, union membership enables workers to benefit from negotiations for collective bargaining agreements and strengthens their negotiation position.
- However, there are several obstacles related to organizing undocumented workers. It might not be clear to all workers how unions can be beneficial to them, and often they are afraid that unions might transmit their personal data to government officials who in turn might deport them from the country. Furthermore, many undocumented workers work in places where it is difficult to locate them (e.g. domestic workers), and high membership fees exclude them since they are often paid below minimum wage. Employers also create obstacles by threatening to turn workers in or preventing unions from gaining access to workers.
- Some unions have a tendency to view undocumented workers as a threat rather than an ally. There are, however, several reasons why unions should include undocumented workers: the only way of solving the problems of undercutting wages and working standards is by including undocumented migrants and thereby building strength as a workers' movement; undocumented workers are workers, regardless of their legal status; and they contribute to the economy of the host country and therefore also have inherent rights as workers.
- There are many strategies for unionizing undocumented workers such as outreach efforts and training and promoting them as union leaders. It is also important for unions to collaborate with like-minded organizations on the social and human rights of workers. Working in coalitions is a way of exchanging resources and expertise that in the end is beneficial for all workers.

## 6. Working with Employers to Prevent Exploitation and Advocating for Laws to Hold Them Accountable to Fair Labor Standards

*“A lot of the employers that we’ve been in contact with listen to us about these issues (the reasons why immigrant workers are present in their industries). We do this to avoid shocks and confrontations.”*

- Gabriel M’Binki Ataya of the Sindicato de Obreros del Campo (SOC)

Legislation, not exploitation.

- Title of a campaign spearheaded by the Transport and General Workers Union (T&G) calling for the registration and licensing of gangmasters – now a law in the UK.

While protecting undocumented workers includes seeking an adequate response in a situation of abuse or exploitation, it is also essential to take measures to prevent such situations from even occurring. In addition to empowering workers and informing them about their rights, another important preventative measure is to build relationships with employers that are based on respect for the worker and their rights.

“Value and sustain good relationships (with employers),” stressed European Trade Union Confederation (ETUC) General Secretary John Monks. “That is one of the ways of building a strong labor movement. Many employers are unscrupulous but some differentiation is important.” Though this advice is geared primarily at trade union leaders, it also has relevance for the many NGOs and other advocates whose work in protecting undocumented workers leads them to engage in contact with employers.

There is indeed a potential for protecting undocumented workers by fostering relationships with employers. But it is also paramount to have legal measures in place that sanction employers who do not uphold fair labor standards. A number of organizations thus undertake advocacy efforts to promote legislative measures that ensure that employers are held accountable if they exploit or abuse workers.

The information in this chapter is organized in two main themes. The first part of the chapter focuses on efforts made by organizations and unions to work *with* employers, by enhancing the communication between employers and workers and by stressing to employers that they should respect minimum standards of employment.

The second part of the chapter focuses on legislative measures that *hold employers accountable* to fair standards of labor. Several laws that have been enacted to sanction exploitative and abusive employers are presented.

### Enhancing Communication Between Workers and Employers

On a general level, some organizations undertake initiatives to foster a positive image of undocumented workers towards their employers, as a means of enhancing communication between both parties.

The Spanish union Sindicato de Obreros del Campo (SOC) targets employers as part of its awareness raising work about the situation of immigrant workers in the agricultural sector in the region of Andalusia. The SOC dialogues with employers to make them aware of the conditions in the countries

of origin of the workers and to break commonly held stereotypes, especially of the Moroccan workers who make up a large majority of the undocumented workers in the region.

“A lot of the employers that we’ve been in contact with listen to us about these issues. They’re also open to our suggestions about running a business. Many employers think that if there are just two people working, that it doesn’t constitute a formal relation of employment. So we emphasize that they should have an organized way of working with their own employees, have weekly meetings and meet certain conditions in order for the business to run well. We do this to avoid shocks and confrontations,” said Gabriel M’Binki Ataya of the SOC.

In some cases, the worker and the employer may speak the same language but are separated by cultural differences. Awareness-raising initiatives that address cultural differences that come into play in the work environment can contribute to improved contact and communication between the employer and the worker.

The organization Andalucía Acoge offers courses in several cities in the region of Andalusia to facilitate domestic workers’ adaptation to new cultural realities they may experience by working in Spain. Many of the workers come from Spanish-speaking countries in Latin America, thus language is not necessarily a barrier in communicating with the employer. However, these workers may run into problems with their employers if they are unfamiliar with the way of keeping house in Spain. “In domestic work the employer is

looking for someone who can do the cooking and cleaning according to the Spanish way of doing things, not based upon the immigrant’s customs. So we explain to the worker how to do all of these things in a Spanish household, and we work with the employer, to explain that it might be a bit of a cultural shock for the worker at first, but that they should be patient so that both can adapt to the new work situation,” explained Francisco Ramos Cabaleiro of Andalucía Acoge.

## Promoting Minimum Standards of Employment

As a means of protecting workers who may have more of a tendency to be exploited due to the less formal nature of their particular workplace, some organizations define minimum standards of employment that can be used by the employer.

### Day Laborers

Undocumented workers employed as day laborers in the private construction industry often suffer from exploitation in the workplace. At the various workers’ centers throughout the United States that are part of the National Day Laborer Organizing Network (NDLON), day laborers benefit from increased protection in the hiring process due to the contact that these centers maintain with potential employers.

“Our coordinators in the workers’ centers make sure that the deal is very clear for any employee, meaning how much they are going to get paid, what kind of work

### IF UNDOCUMENTED WORKERS ARE WORKING, THEN THEY SHOULD BE EMPLOYED IN A DECENT AND DIGNIFIED WAY

Many organizations that develop minimum standards of employment do so because they are contacted by employers who may have difficulties in finding workers and wish to hire immigrant workers. If the proposed job meets the criteria laid down by the organization, the employer’s contact information is made available to the worker. It is up to the worker to choose to contact the employer to pursue the job listing.

The organization’s role is not to negotiate a salary or contract on behalf of a worker, as this would

have serious legal implications. The emphasis is on facilitating contact between the worker and employer within a framework that promotes minimum standards, in order to prevent abuse and exploitation from taking place.

The organizations that are featured in this report that establish minimum standards of employment emphasize that they do not promote illegal work. Their main aim is to make sure that if undocumented workers are working, then they should be employed in a decent and dignified way.

it is, if safety protection equipment will be provided, how long the lunch breaks will be, etc. We have minimum standards and we won't let people be abused," said Pablo Alvarado, NDLOM National Coordinator.

## Domestic Workers

Some organizations that provide services to domestic workers also set certain conditions that must be met before an employer can provide the organization with information about a job vacancy.

One of the main criteria established by the organization Kalayaan is that the employer must fulfill the minimum wage in London. Kalayaan stipulates that a live-in worker must receive a minimum of £200 (approximately €300) per week plus tax for a full-time worker. In addition, the worker can work a maximum of 48 hours a week, and receive a minimum of one and a half days off. "These are the kind of things that we set out. But in reality, we don't have the capacity or anything to follow up on employers to find out what's really happening, unless a worker comes back to us and complains about what's happening," said Fiona Luckhoo of Kalayaan.

Domestic Workers United (DWU) has developed a guide to assist employers in determining fair and reasonable working conditions for domestic employees in the greater New York City area. The guidelines cover hours and wages, vacation, personal days and sick days, notice of termination and severance and health benefits. There is also a special section on immigration status, which states that "Undocumented workers can pay taxes and carry the same job responsibilities as documented workers and therefore should be considered and compensated equally for work."

An organization in Spain that works with domestic workers has also developed certain criteria and tries to do a follow-up once a worker becomes employed. Andalucía Acoge is a federation that was established in 1991 by the founding members Sevilla Acoge, Almería Acoge, Granada Acoge and Málaga Acoge. These organizations wished to join forces to give a more efficient and global answer to the recent immigration phenomenon in Spain. Most of the immigrants that come to Andalucía Acoge seek assistance because they are undocumented and cannot easily access certain services such as employment offices or even health and educational services that are run for immigrants with legal status.

**Andalucía Acoge** aims at improving the labor situation of immigrants and runs an employment office to facilitate contact between immigrant workers and potential employers.

To prevent abuse of undocumented workers, Andalucía Acoge establishes minimum criteria. "Otherwise you run into situations where an employer will try to get away with anything. We've had people call in and say that they're looking for someone to help out at home. For example, a lady wanted someone to take care of her father who was in a wheelchair, and if she provided food and a bed to sleep in, could Andalucía Acoge find someone to take care of him? This woman didn't even consider paying a salary. Or sometimes a potential employer will say that they'll pay the worker, but then they propose a pittance of €240 a month," said José Miguel Morales, Executive Director of Andalucía Acoge.

The criteria that have to be met by employers include: paying the minimum wage in accordance with the economic level of the different cities and provinces in Andalusia; respecting a maximum number of hours that a worker can work per week (with an absolute minimum of 1 <sup>1/2</sup> free days per week for a live-in domestic worker); and not discriminating in the hiring process based upon the worker's country of origin. Andalucía Acoge tries to make potential employers understand that workers have duties that must be fulfilled in a work relation, but they also have rights, and thus rejects offers from employers that don't meet the minimum criteria.

The organization tries to carry out a follow-up with the worker by inquiring if they ended up getting the job, if the employer fulfilled the minimum conditions set out by Andalucía Acoge or if there was a change, and if the worker is doing fine with the working conditions or if they are facing difficulties. If there are problems, Andalucía Acoge intervenes by mediating between the worker and the employer.



## Advocating for Laws to Hold Employers Accountable to Fair Labor Standards

The following sections highlight some of the laws that have been enacted in several countries to ensure that employers comply with adequate labor norms in different industries.

Legislative measures that affect employers in the construction industry in Portugal, the garment industry in the United States, the entire food chain in the United Kingdom, and domestic services in New York City are presented. In addition, a bill that would sanction restaurant employers who violate the health and labor code in New York City is highlighted.

### “Social Responsibility” Law in Portugal

In recent years in Portugal, the União dos Sindicatos de Lisboa (USL) waged a campaign to pass a law to protect the rights of immigrant workers, who were increasingly being employed in industries where the sub-contracting system made it difficult to put the blame on employers who exploited or abused them. The union wanted to find a gradual system in which someone along the supply chain would be sanctioned if they did not uphold fair working conditions for workers.

Manuel Correia of the USL said that the union fought hard during the campaign and ran into major resistance from the government. “The government tried to do everything to prevent such a law from getting passed, because in many cases, the government itself is the main employer. The majority of construction projects in Portugal are commissioned and financed by the government. So with a law of ‘social responsibility,’ the government would have been directly responsible. During our campaign, we carried out demonstrations and had to really convince and confront Portuguese civil society about the lack of a culture of responsibility in our country in order to get things to change,” he said.

The USL had pushed for a different version of the law, which would have made the main employer at the top of the supply chain responsible in such cases, said Manuel Correia. Due to difficulties in getting the law passed at all, it had to accept the version that was finally enacted, which allows for a system of gradual responsibility.

### USE OF SUB-CONTRACTORS FACILITATES EMPLOYERS’ ABILITIES TO TRANSFER BLAME

In many of the industries where undocumented workers suffer from exploitation and abuse, the use of a sub-contracting system makes it difficult for workers to hold their employers accountable. The workers are usually separated from the main employer by several degrees due to the different sub-contractors who are hired along the supply chain. Many times a worker is hired and knows a sub-contractor only through contact by mobile phone. But if the worker is exploited or abused, simply having a phone number is not enough information to file a complaint. Such a system allows employers to transfer the blame for alleged exploitation or abuse of workers to sub-contractors. Employers can claim that they didn’t hire the workers; the sub-contractors hired them.

The Wal-Mart case in the United States is a prime example of the transfer of blame. In October 2003, federal authorities arrested 352 undocumented workers contracted as janitors in 60 Wal-Mart stores across the country. A federal investigation was launched to determine if Wal-Mart knowingly hired undocumented workers. In the United States, the 1986 Immigration Reform and Control Act (IRCA) established that employers can only hire workers with proper proof of identification and proper work authorization. The Employer Sanction System in IRCA further stipulates that an employer cannot *knowingly* hire or continue to hire an undocumented worker.

In this case, Wal-Mart said that it was unaware that its contractors and store managers had hired undocumented workers. In March 2005, Wal-Mart agreed to pay \$11 million to settle the case and end the federal investigation. Nonetheless, it is still facing a class-action lawsuit on behalf of undocumented workers who claim that they were underpaid while working for the chain.

### NO MORE PASSING THE BUCK IN PORTUGAL

Through the efforts of the União dos Sindicatos de Lisboa (USL), the “social responsibility” law was passed in 1998.

This law holds that if a worker files a case against an employer for alleged exploitation or abuse, the blame is put on the person who contracted the worker. If this person can't be located, then the blame is put on the person who contracted that sub-contractor, and so forth, until the blame is put on the main employer if necessary.

### Garment Industry: *California Assembly Bill 633*

In the early 1990s, a campaign was started by a coalition of organizations to hold manufacturers and retailers accountable in the garment industry in California, which is the largest in the United States with as many as 5,000 sewing shops employing over 70,000 workers. The workforce in the California garment industry is dominated by immigrant women, many of whom are undocumented. The industry is also rife with violations of labor laws. According to a 2000 survey by the U.S. Department of Labor, 70% of Los Angeles garment factories violate minimum wage and overtime laws.

In 1995, the coalition that had launched the campaign officially founded Sweatshop Watch, an organization which includes over thirty labor, community, civil rights, immigrant rights, women's, religious and student organizations, as well as individuals. Sweatshop Watch aims to eliminate the exploitation that occurs in sweatshops and serves low-wage workers nationally and globally, with a focus on garment workers in California.

After nearly ten years of advocacy for corporate accountability in the garment industry, **Sweatshop Watch** succeeded in getting a law passed for corporate accountability in the garment industry. The **California Assembly Bill 633 (AB 633)** was enacted in 2000 and is the strongest garment worker legislation in the United States.

AB 633 addresses the reality that garment manufacturers can play a central role in ensuring that the factories they contract with to produce their clothing fulfil basic labor law. Under AB 633, garment manufacturers, not just employers, are legally responsible for workers' minimum wages and overtime compensation. Garment workers may claim these wages through an expedited administrative process before the state Labor Commissioner.

Karin Mak of Sweatshop Watch said that the law is a big step forward for workers, because “if they are not paid the legal minimum wage, the first step is still to hold their employers responsible. However, since employers often squeeze workers because they cannot demand a fair contract from manufacturers and still compete in this highly globalized industry, this law requires that the manufacturers *also* take responsibility for ensuring that the workers sewing their clothing receive minimum wage and overtime. A worker who hasn't been paid can thus ask for back wages from the employer, but if the employer does not resolve the claim, then the manufacturers involved may also be held liable. This law starts to address the role of people at the top of the chain – the labels of the major clothing companies. This is really powerful for the garment industry.”

Sweatshop Watch has played a lead role in educating garment workers in California about their rights with multi-lingual materials and workshops (see Chapter Three). It was a lead organization in the drafting and passing of AB 633, as well as coordinating public comments on the proposed regulations for implementing the law.

Sweatshop Watch is currently involved in a thorough review of AB 633, which will result in a report analyzing the law's strengths and weaknesses, to be released in September 2005. “We've been involved in interviews with deputies and investigators at the Labor Commissioner's office to understand the challenges to implementing the law. We have also incorporated the experiences of workers going through the process. In addition, we reviewed the Labor Commissioner's records for a ran-

dom sample of over 200 cases. In the report, we will make recommendations for how to improve the implementation of the law. AB 633 has been a groundbreaking tool for workers, but still is a long way from meeting its potential,” Alejandra Domenzain, Associate Director of Sweatshop Watch.

markets. It’s a hugely profitable industry. But there’s also the casualization within that sector and the contract culture which involves many links of the chain. At the end of the chain, where you actually pay for the use of workers, there can be real abuse. A contractor may be paying a sub-contractor minimum wage for the workers, but the sub-contractor pockets that and gives his workers far less,” she said.

### ***Gangmasters Licensing Act in the United Kingdom***

Striving for accountability in the supply chain was the focus of a recent campaign in the United Kingdom which aimed at ending the exploitation of workers by unscrupulous gangmasters. These employers were notorious for paying pittances to workers (many of whom are undocumented), who toil in difficult and even dangerous conditions.

The tragedy that occurred in February 2004, when twenty-three Chinese migrant workers died after being caught by a tide while picking cockles in the bay, brought some of these illegal practices to light. The workers were most likely all undocumented, and received wages of a couple of Euros for an entire day’s work.

“We’re all very dependent in the UK on massive retailers for food. There aren’t many alternative food outlets that aren’t owned by them,” commented Pauline Doyle, Head of Campaigns at the Transport and General Workers Union (T&G). The way the contract culture works in the UK is akin to the links in a chain: workers are hired by a gangmaster, who is hired by a sub-contractor, who in turn is hired by another sub-contractor, and so forth. At the top of the chain are the major supermarkets – four of which control nearly 85% of Britain’s food buying and consumption between them.

“This is an abusive situation,” said Pauline Doyle. “The big supermarkets now even own many of the corner stores as well, and we don’t have that many

In the beginning of 2004, the **Transport and General Workers Union (T&G)** spearheaded a campaign entitled “Legislation, not exploitation,” calling for a system of registration and licensing of gangmasters. The campaign attracted a broad base of support, including trade unions, refugee, migrant and religious organizations, Members of Parliament from all parties, employers’ unions and major supermarkets in the United Kingdom. The Government backed the bill, and passed the **Gangmasters Licensing Act** on July 8<sup>th</sup>, 2004, which makes it an offence to operate as a gangmaster without a license.

Any worker who is working in the areas that are covered by the act, regardless of whether they are documented or undocumented, migrant or native, would be protected by the act, said Gary Brisley, Head of Policy and Research at the T&G. It extends the full protection of the law, including minimum wage and health and safety legislation, to any individual worker undertaking work to which the provisions apply.

As drafted, the Gangmasters Licensing Act covers the entire UK food chain, including agricultural and horticultural work, shellfish gathering, and the processing or packaging of any products derived from these industries. However, the UK government is to introduce secondary legislation that will set out those activities that, for legitimate reasons, may need to be excluded from the scope of the Act.<sup>35</sup>

<sup>35</sup> Gary Brisley, Head of Policy and Research at the T&G, elaborated on how the union views the potential exclusions: “The T&G recognize that such exclusions, if too wide reaching, have the potential to open up rat-runs through which rogue gangmasters could pore, thereby leaving workers vulnerable to continued exploitation. We are therefore campaigning and lobbying hard to ensure that the secondary legislation does not bring into force blanket exclusions from the Act. We regard this act as a unique opportunity to tackle and to end both the abuse of workers and the criminal activities of rogue gangmasters. It is an opportunity we cannot afford to squander. In short, the UK government has to get any proposed exclusions regulations right – and that means that any exclusions must be limited in scope and specific in nature.”

The Act will make it illegal to use unlicensed, unregistered gangmasters. "This means that if a buyer contracts the services of a gangmaster, they will actually need to verify through a government register if the gangmaster is licensed and registered," said Pauline Doyle, Head of Campaigns at the T&G.

The Act creates a new regulatory body tasked with enforcing the law. A key issue for the T&G is to look for the human and financial resources to ensure that the regulatory body can practically investigate complaints and suspected abuses and breach of license conditions. "We find it important to work with the different governmental agencies to ensure that there is a joined up approach to enforcement. So if an inspector from the authority goes along to a gangmaster inspection but sees a health and safety issue, s/he can eventually report that to the Health and Safety department, and vice versa. We don't want the license to just become a piece of paper that legitimizes any gangmaster who won't have to worry about whether it's being enforced. We want this to be a rigorous and robust system," said Gary Brisley.

The Gangmasters Licensing Act is an important measure for ensuring that employers offer fair working conditions to their workers. "The Act is not the last word. What it will do in the first instance is close a very large loophole: it will allow legal employers to be clearly separated from illegal employers. With 30 years of deregulation, a sort of Wild West employ-

ment situation has developed where workers become casualized and where the most awful treatment of workers can go undetected. This act is a transparency measure that will help distinguish the rogues from the reputable," said Pauline Doyle, Head of Campaigns at the T&G.

The Act also has many implications for trade unions, added Pauline Doyle. "Once the Act becomes law, it gives the trade union a green light to organize amongst these workers. The government will have a duty to enforce the law and the supply chain will have a duty to comply with the law. But in terms of what it means for trade unions, it presents a tremendous opportunity to locate and organize migrant workers. And the new law allows us to be able to say to these workers, 'exploitation is unacceptable – and it is also illegal.'"

### **Standard Contract for Domestic Workers in New York City**

A coalition of organizations in the New York City area waged a campaign to urge New York City Council members to enact legislation that would compel employment agencies to do more to promote workers' rights in domestic employment relationships.

The campaign was led by Domestic Workers United (DWU), which developed draft legislation in conjunction with the New York University Immigrant Rights Law Clinic. The organization Andolan Organizing South Asian Workers was one of the founding members of the coalition. The coalition carried out advocacy and organizing efforts aimed at legislators, including a large demonstration in October 2002 where hundreds of domestic workers marched on City Hall.

### **BASIC LABOR STANDARDS FOR DOMESTIC WORKERS**

In June 2003, a bill was passed by the New York City Council demanding a standard contract for domestic workers that guarantees minimum wage laws, health insurance, regular working hours, overtime pay, and enforces other basic labor standards.

The companion legislation requires that employers and agencies provide domestic workers with a written statement of job conditions, and requires

agencies to inform workers of their rights and employers of their legal obligations.

There is still work to be done to ensure that this bill is implemented and enforced, such as campaigning for strong monitoring and recourse in cases of violation of the laws set forth. Most of the enforcement measures in the bill are for agencies that place domestic workers.

The coalition has developed a proposal for legislation for the whole state of New York, as opposed to just New York City (the scope of the original legislation), said Ai-Jen Poo of DWU. This legislative proposal is called the Domestic Workers' Bill of Rights, and provides comprehensive protection for domestic workers including notice, severance pay, paid vacation and sick leave.

"There are slim chances that this bill will be approved in the near future, but we are prepared to build a strong movement to make it happen," said Ai-Jen Poo.

### **Bill to Sanction Restaurant Employers in New York City**

The Restaurant Opportunities Center of New York (ROC-NY) is currently exploring policy options for the City Council of New York City that will protect restaurant workers from abuse and exploitation, and simultaneously protect restaurant clients from unsafe food handling practices. ROC-NY's Policy Committee, which is comprised entirely of restaurant workers, is reviewing the possibility of presenting a bill to the New York City Council that would sanction employers who do not pay their workers minimum wage or workers' compensation by canceling their operating licenses.

Sekou Siby, ROC-NY Outreach Coordinator, explained why his organization is promoting these options: "An inspector will check to see if the tables are clean and if it generally is a clean restaurant, but there is one factor that they ignore: the people that work in the restaurant. The Health Department just checks the material and doesn't know if the person who works inside might have a communicable disease because he is working in very difficult conditions, he's not paid, etc. It is our impression that these things are linked. If somebody is not getting the minimum wage and he doesn't have the capability of taking care of himself, he can be a public health threat. We know through research that we've conducted that most of the restaurants in New York City that violate the health code also violate the labor code. So it all goes together."

## **GENERAL FINDINGS**

- This chapter focuses on how working together with employers can help prevent exploitation and abuse of undocumented workers. At the same time it focuses on the legal measures that sanction employers who violate fair labor conditions.
- By fostering a positive image of undocumented workers, organizations can help enhance the relationship between employers and workers. It is important to build a relationship based on respect for workers and their rights in order to prevent exploitation and abuse.
- Some organizations establish minimum standards of employment making sure that *if* an undocumented worker is working, s/he is doing it within a framework of decent working conditions. Doing a follow-up on the minimum standards is an important way of contributing to fair standards of labor.
- Raising awareness about cultural differences can also have a positive effect on the relationship between employer and workers because it can help improve the contact and communication between the employer and the worker.
- Advocating for laws that hold employers accountable for fair labor conditions is also paramount in protecting undocumented workers. The last section of this chapter gives an overview of several laws, such as the "Social Responsibility" law in Portugal which holds that employers can be held accountable for the hiring of sub contractors who abuse and exploit undocumented workers. Another example is the California Assembly Bill 633, which also holds the people at the top of the hiring chain responsible for workers' minimum wages and overtime compensation.

## 7. Challenging Exploitation and Abuse Through Mediation and Collective Actions

*“We started with a group of workers going to a crew leader and demanding that they pay a particular worker or workers. Nobody wants a bunch of angry workers on their doorstep or circling their car, making it hard for them to do their work. The first year that we did that, we ended up getting \$150,000 in back wages. And now essentially all it takes is a call from our organization to the employer, telling him that so-and-so worked for him for x number of days, that he owes him x amount, and when can he get a check over to our office?”*

• Julia Perkins of the Coalition of Immokalee Workers (CIW)

*“Nearly 80% of the cases of exploitation of day laborers are resolved when our member organizations call the employer to talk about the situation and negotiate between the employer and the worker.”*

• Pablo Alvarado, National Coordinator of the National Day Laborer Organizing Network (NDLON)

It is very difficult for undocumented workers to make a complaint against their employer about poor working conditions or any form of abuse. 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.

Many organizations specialize in providing assistance to workers who wish to seek redress if they have serious workplace problems. Chapter Eight illustrates the ways that NGOs and trade unions attempt to resolve these problems through the legal system. The focus of the present chapter is to shed light on other invaluable methods workers and their advocates use to address serious workplace problems.

This chapter begins by presenting some of the reasons for using mediation and/or collective actions to address a labor dispute. The various examples included illustrate the effectiveness of mediation in resolving problems of exploitation or abuse. This

chapter also highlights various collective actions that advocates engage in to pressure abusive employers, including protests and demonstrations, strikes, and campaigns.

### Why Engage in Mediation and Collective Actions?

In most cases of exploitation or abuse of undocumented workers, mediation with the employer is the first step that an organization will take to resolve the particular problem. Mediation essentially involves contacting the employer by making a phone call and/or sending a letter to inform them about the specific complaint, and engaging in discussions with the worker and employer.

There are several reasons why organizations prioritize mediation and/or collective actions to try to obtain redress for undocumented workers who suffer from problems in the workplace.

As opposed to assisting workers in filing a complaint in the legal system (which is discussed at length in

## LOW WAGES, LATE WAGES, NO WAGES AT ALL: WHAT ROLE DOES MEDIATION WITH THE EMPLOYER PLAY?

One of the most common forms of exploitation of undocumented workers concerns wages. Not only do employers propose wages that are below the minimum wage, but they consistently pay undocumented workers late, and in many cases, do not even pay them at all.

Many times workers will ask an organization for assistance in recovering unpaid wages or in exerting pressure on the employer concerning other wage-related problems. When a worker comes to an organization to seek assistance, there is first an in-depth discussion with the worker and the advocate about the particular situation of abuse. Ensuring that the worker has a good, truthful case is part of the procedure for advocates who are often stretched beyond their resources. It is essential for organizations to make sure that the case is sound before continuing to the next step, which entails contacting the employer to try to resolve the problem.

The goal is to reach an agreement with the employer through negotiation. But the worker

faces the challenge of how to prove the complaint. Undocumented workers in most cases have no concrete means of demonstrating that an employer owes them a certain amount.

“Most of the time in these situations, the workers are paid off the books, so there’s no proof that they are owed anything by their employer. The worker can say, ‘I worked there for a month, and I’m owed \$2,000’ but the employer could say, ‘Oh no, he only worked there for three days.’ And how are you going to prove otherwise?” said Nadia Marin-Molina, Executive Director of the Workplace Project.

Negotiation is a first way of trying to recover the unpaid wages or to exert pressure on the employer for other concerns. “If we can get the employer to sign something that says, ‘I agree that I owe \$2,000 but I’m going to pay it in ten payments,’ or whatever, then at least we have something in writing that says he owes,” continued Nadia Marin-Molina.

Chapter Eight) - a process that puts many demands on organizations - negotiation is an alternative for organizations with few resources and limited capacities.

In addition, the official claims and hearing process involved in making a claim through a governmental body can be intimidating for workers. Hence, attempting to solve a case through mediation and/or collective action is a preferred option in many cases.

Another reason why mediation and collective action are alternatives to legal enforcement is because it is very time consuming to file a complaint through legal channels. The Restaurant Opportunities Center of New York (ROC-NY) organizes restaurant workers in New York City to fight against poor conditions. In cases of withheld wages, it uses mediation and demonstrations to publicly denounce exploitative employers. “We think that the legal process may take years, so what we do is to find an agreement, and we try to do this by protesting,” said Sekou Siby, Outreach Organizer at ROC-NY.

## Mediation with the Employer as an Effective Strategy

Mediation, the act of intervening in a dispute to bring about an agreement or reconciliation, 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. The following section highlights some of the reasons why mediation has proven to be an effective strategy used by organizations and unions in situations of exploitation and abuse of undocumented workers.

### Positive Impact Due to the “Weight” of the Organization

In many instances, a phone call or letter from an organization or a trade union is enough to make the employer take steps to solve the problem without having to go further.

“When we call the employer, we explain the situation to them. Many times they will agree to meet in a certain place so that they can pay what they owe, because they don’t necessarily want to get into a deeper problem. Having an organization act as a liaison helps,” said Angelica Salas, Executive Director of the Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA).

According to Pablo Alvarado, National Coordinator of the National Day Laborer Organizing Network (NDLON), nearly 80% of the cases of exploitation of day laborers are resolved when NDLON member organizations call the employer to talk about the situation and negotiate between the employer and the worker.

### **Unwillingness of Employer to Engage in Official Procedures**

In many cases employers agree to negotiate because they are not willing to go through the various administrative procedures involved when a worker files an official complaint against an employer.

Case managers at the Multi-Ethnic Immigrant Worker Organizing Network (MIWON) in California first send a letter to the employer stating the amount of money owed and the deadline for taking action. The letter stipulates that if the employer does not pay the worker by a certain date, then the case will be sent to the Department of Labor Standards Enforcement (DLSE), the entity in California that handles wage and hour claims.

If the employer wants to negotiate, then it essentially involves direct exchange between the worker and the employer, who come to MIWON’s office and sit across from one another at the table to discuss the problem. Liz Sunwoo, MIWON Coordinator, said that about 25% of employers are very stubborn and think that a case will never make it if it’s sent to the DLSE, so they refuse to pay the worker. Nonetheless, most employers will try to settle the case.

### **Employer’s Fear of Denunciation Due to Illegal Employment Practices**

An organization in Spain with limited staff and financial resources has successfully used the threat of denouncing an employer for illegal employment

practices to resolve numerous cases of exploitation of undocumented agricultural workers in the region of Andalusia through mediation.

The Sindicato de Obreros del Campo (SOC) has been fighting for nearly 30 years for the rights of Spanish day laborers working in agriculture in Andalusia. As a result of the February 2000 race riots against Moroccan immigrants in El Ejido, the SOC decided to set up an office in the greenhouse region in Almeria to support and organize the workers who are mainly from Morocco and sub-Saharan Africa and overwhelmingly undocumented. The SOC office in Almeria is run by a two-person staff and relies primarily on mediation to seek redress in cases of exploitation.

When the **Sindicato de Obreros del Campo (SOC)** SOC confronts an employer about alleged abuse or exploitation of one of his workers, the employer will usually deny that the person ever worked for him.

“We try to play a double game with the employer, because he’s counting on the worker being afraid and thinking that it would be impossible to receive the money owed because he’s undocumented,” said Gabriel M’Binki Ataya of the SOC. “We try to use the same tactics to ‘frighten’ the employer, because usually if he’s hired one undocumented worker, then all his employees are probably undocumented. So we tell him that if he doesn’t pay the worker, then we’ll denounce him and he’ll have an even bigger amount to pay due to the fines and whatever else.”

In many cases the employer will end up paying the amount due, but only after the SOC has exerted pressure.

### **Undertaking Collective Actions to Fight Abuse**

While mediation has proven to be an effective tool for advocates in resolving labor disputes, it does not work in all cases. Some employers simply have no



interest in negotiating and in recognizing that they have wronged a worker.

Manuel Correia of the União dos Sindicatos de Lisboa (USL) said that while leaders in his union have succeeded in many cases in demanding employers to observe fair working conditions, in many other cases they have encountered reluctance, sabotage and inadmissible behavior from employers. This phenomenon occurs in numerous places where advocates support undocumented workers.

When mediation alone appears to no longer have a potential for changing the situation, and filing a complaint in the legal system is not an option or does not yield immediate results, another method is to find out if more workers have similar stories of abuse and wage a collective action. Some organizations organize workers to carry out demonstrations, public protests, strikes and campaigns to contest employers.

### **Demonstrations and Public Protests**

The Restaurant Opportunities Center of New York (ROC-NY) holds demonstrations in front of restaurants in New York City where employers are known for abusing workers. The aim is to inform potential customers about the labor violations undertaken by the employer, and to encourage them not to eat in the restaurant.

When the restaurant owner sees a group of demonstrators, they usually get upset and call the police. However, the police usually do not intervene because as long as the demonstrators respect police boundaries and apply for a sound permit if they use a microphone, they have the right to protest. These types of demonstrations can hurt the restaurant by creating a loss of business, especially if they are done during peak hours such as lunchtime and dinnertime.

“When we demonstrate, we pass out leaflets that say ‘DAILY SPECIALS,’ so people really think that there is a daily special,” said Sekou Siby, ROC-NY Outreach Organizer. “Then we say ‘SERVING UP UNFAIR LABOR PRACTICES DAILY,’ and when you look inside the leaflet, there is a list of the different health code violations and unfair labor practices as well as the website where you can get more information. Some

people are supportive and say that they won’t eat in the restaurant. There are also people who come out of their car and see a big crowd in front of the restaurant and don’t think that it’s worth it.”

Protesting in front of an employer’s business or residence can be effective in drawing public attention to the fact that a community member is exploiting a group of workers, as well as reinforcing mutual support amongst workers. “It gives people an alternative to filing a Department of Labor complaint or a lawsuit, and a community to do it from. People have a sense that they’re not on their own, because the community backs them up,” said Julia Perkins of the Coalition of Immokalee Workers (CIW).

This tactic has been successful in Immokalee, Florida, where the CIW has built up a reputation for organizing workers and putting pressure on crew leaders who try to exploit them.

“We started with a group of workers going to a crew leader and demanding that they pay a particular worker or workers. Nobody wants a bunch of angry workers on their doorstep or circling their car, making it hard for them to do their work. The first year that we did that, we ended up getting \$150,000 in back wages. And now essentially all it takes is a call from our organization to the employer, telling him that so-and-so worked for him for x number of days, that he owes him x amount, and when can he get a check over to our office?” said Julia Perkins of the CIW.

### **Strikes**

The Coalition of Immokalee Workers (CIW) not only supports workers in cases of unpaid wages, but has successfully ended over twenty years of declining wages in the tomato industry by combining community-wide work stoppages with intense public pressure.

A campaign launched in 1997 included three general weeklong strikes of nearly 5,000 workers that essentially shut down tomato picking in the area. The strikes were not enough of an impetus to bring about improved conditions, and in 1998 six CIW members went on a month-long hunger strike to demand a raise in wages and to dialogue with growers to address the general deterioration of working conditions and wages. The strike was called off when for-

mer President Jimmy Carter intervened, and there was an ensuing industry-wide agreement to raise wages by 13% to 25%, which brought the tomato picking piece-rate back to pre-1980 levels. (In the past two decades workers have essentially been earning *less* than what workers were earning twenty years ago).

Despite the raise in wages, workers were still earning below poverty level, and the CIW was still not able to get growers to the table to negotiate for better working conditions. In 2000, workers again tried to call public attention to the working conditions of farmworkers in Immokalee and put pressure on employers to bring about changes in wages and working conditions. They thus decided to hold a historic 230-mile (370-kilometer) march across the state of Florida, to the Florida Fruit and Vegetable Growers Association.

## Campaigns

Domestic Workers United (DWU) has held campaigns to highlight the cases of domestic workers who are owed wages and in some cases even raped by their employers. “The majority of the migrant domestic workers we work with are undocumented, and complain about under payment, late payment and non-payment of wages. In many instances the women will even be denied the opportunity to see a doctor if they’re sick. We always send a letter to the employer when there is a labor dispute, but direct pressure is not as effective if there is no legal case. And suing an employer is a long and costly process, and many can’t engage in this,” said Ai-Jen Poo of DWU.

In some instances, DWU has picketed in front of the employer’s home and held meetings for the general public on the theme of rape in the workplace. DWU has also held demonstrations in front of an embassy to protest the treatment of a domestic worker by her diplomat boss.

The organization Andolan Organizing South Asian Workers challenges exploitative and abusive employers through various campaigns, such as the Campaign to Increase the Minimum Wage, which it co-coordinates with another community based organization, CAAAV Organizing Asian Communities. Through dialogue with local and state officials, advocacy efforts and public demonstrations, Andolan is

trying to spur greater action on minimum wage laws in New York. Andolan and CAAAV advocate for the institution of a livable wage of \$14 per hour.

In addition, Andolan is currently the only organization to be working on a campaign against the diplomatic immunity of UN employers. Andolan demands that diplomatic immunity not be used to shield abusive employers from accountability for their treatment of domestic workers.

Campaign activities include protests outside the homes and offices of abusive employers, community education sessions on the issue, and legal support for individual victims. In the past, Andolan has organized demonstrations with workers who have been exploited by UN employers to bring public attention to the campaign and to the need for accountability.

## Combination of Several Techniques

Collective actions can be effective in putting pressure on an employer to resolve the issue at stake while advocates continue to undertake other actions in support of the worker. Several approaches may be used simultaneously, such as negotiating with the employer, protesting, and introducing a case for protection through a governmental body.

This way of working is used by an organization that has combated the exploitation of workers throughout its 13-year history. The Workplace Project was created in 1992 as a response to the exploitation of low-wage immigrant workers in Long Island, New York. It aims to fight for the rights of these workers by providing information and orientation and by fostering organizing.

The Workplace Project provides support in seeking a variety of solutions to workplace abuse, as long as the worker commits to mutual support of workers who will join his/her justice committee. Workers are organized in committees in the areas of day labor, factory, building maintenance and domestic work. “The fact that it is an organization gives the workers some feeling that there is somebody behind them. And they also have to become aware that they’re usually not the only person who is owed wages, but that many other workers are likely to be in the same situation,” explained Nadia Marin-Molina, Executive Director.

The majority of cases of exploitation handled by the **Workplace Project** concern non-payment of wages of undocumented day laborers.

In cases of unpaid wages, the organization usually sends a letter to the employer to request payment and tries to hold a meeting to negotiate the case. If the employer refuses to negotiate, the Workplace Project might file a case at the state or federal Department of Labor or the small claims court on behalf of the worker. Depending on the particular case, the organization may file a case and continue negotiation with the employer, in addition to supporting workers in a collective action.

While a worker may be reluctant at first to confront their employer, they usually start to get angry when they see that even after several attempts from the Workplace Project to solve the problem through mediation, they still have not been paid for their work, said Nadia-Marin-Molina, Executive Director.

In such cases, workers will go as a group to an employer's house or business with a flyer, telling him that they will distribute it around the neighborhood because he refuses to negotiate. In one collective action, protesters went to the house of an employer who accumulated an enormous debt towards thirteen workers. They distributed a flyer with the following message: WANTED: GEORGE BESSER OF BESSER ROOFING COMPANY. HE DOESN'T PAY HIS WORKERS. AMOUNT OWED TO 13 WORKERS: \$25,077.75. "In cases like this, the employer is usually furious when he sees the flyer and may decide to negotiate. But if he doesn't, the workers continue with public actions," said Nadia Marin-Molina.

## GENERAL FINDINGS

- This chapter has focused on solving exploitation and abuse through mediation between employers and workers and through collective actions. The goal is to reach an agreement with the employer through negotiation.
- There are several reasons why mediation and collective actions can be useful alternatives to ending disputes rather than to filing a complaint. Filing a complaint through legal channels is often very time-consuming and many undocumented workers are intimidated by making a claim through a governmental body which they fear might deport them. This situation can be avoided by mediating with the employer. Furthermore, mediation and collective actions require fewer resources and capacities, which is beneficial for organizations of limited size.
- Mediation has proven to be a successful strategy in many ways. The "weight" of an organization can have a positive impact on employers who wish to avoid going through the various administrative procedures involved in the official claims process. Many therefore agree to engage in mediation. Some organizations threaten to denounce the employer for illegal employment, a strategy which in many cases encourages the employer to the negotiation table.
- Collective actions such as public protests, demonstrations, strikes, and campaigns can be necessary and helpful in situations where mediation does not reach the desired solution and where filing a complaint in the legal system is not a solution. The aim is to pressure the employer through public awareness and through a potential loss of business.

## 8. Asserting Undocumented Workers' Rights in the Legal System

*“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.”*

Henry Cardona of the Collectif des travailleurs et des travailleuses sans statut légal - Genève (CTSSL)

When mediation and collective actions are not influential in resolving a problem of abuse or exploitation, undocumented workers can resort to making a claim through legal channels. In many instances, laws guarantee fair working conditions for all workers, regardless of their legal status.

The information in this chapter is arranged in four main sections. The first section highlights some of the obstacles encountered by undocumented workers in filing a complaint through governmental mechanisms, and how they go about overcoming them.

The second and third sections represent the bulk of the chapter. In the second section, numerous cases in which NGOs and unions have assisted undocumented workers in filing for workers' compensation in the case of an accident or injury are presented. The third section devotes much attention to the procedures for labor disputes involving undocumented workers in the industrial tribunals and court system in various countries. Since the information on legal procedures is often very country specific, we have opted to arrange most of the information in these sections per country.

The fourth section sheds light on a recent court decision in the United States that has had a negative impact on undocumented workers' rights.

### Obstacles and How to Overcome Them

Many obstacles impede undocumented workers in obtaining protection when needed.

Fear is perhaps one of the biggest obstacles. As mentioned in the previous chapter, undocumented workers are often afraid to use governmental mechanisms to file a complaint, for fear that their irregular status might become known and would cause them to be deported. They also might fear that speaking out against an abusive employer would have negative repercussions for family members and/or friends who may be working for the same employer.

Organizations cope with undocumented workers' fear of filing a complaint by providing them with assistance, adequately informing them about their legal possibilities, and representing them in a court case (if they have the capacities to do so). But an advocate cannot force a worker to file an official complaint against his/her employer. As Greg Schell, attorney at the Migrant Farmworker Justice Project, explained: “Most workers are reluctant to talk to a lawyer and are particularly afraid if they are undocumented of losing their job. They may only approach a lawyer if they feel like they’ve got nothing to lose, if they feel like they’re already wrecked and don’t want to go back to work for the same employer.”

It is also difficult to show substantive proof of employment. If a worker decides to file an official complaint, they have to have proof to support their case. In the absence of a written contract, an undocumented worker has to provide other forms of proof of employment, a task which is not very simple.

“It’s the same problem for undocumented workers as for native workers who are working without a written contract,” said Norbert Cyrus of the Polish Social Council. “You have an oral contract and that is suffi-

### LEGAL PROTECTION OF UNDOCUMENTED WORKERS IN THE EUROPEAN UNION AND IN THE UNITED STATES

Various Member States of the European Union grant legal protection to undocumented workers.

Undocumented workers can make a claim against their employers for withheld wages in the industrial tribunals in Belgium, France, Germany, Greece, Italy, the Netherlands and Portugal. If the worker was employed in Belgium, Germany or Greece, and was deported or voluntarily returned to his/her country of origin, s/he may still initiate a claim against the employer from abroad.<sup>36</sup>

Undocumented workers in the United States generally have the same workplace rights under many labor and civil rights laws as documented workers and citizens, including the right to minimum wage and overtime pay, disability pay and compensation and safe worksite conditions. These laws also guarantee that the workplace will be free of discrimination based on race, gender, religion and ethnicity.<sup>37</sup>

Undocumented workers are entitled to accident insurance in many of the above-mentioned coun-

tries and often benefit from workers' compensation, the insurance system for job-related injuries and illnesses. Workers' compensation is generally supposed to provide injured workers with medical insurance coverage, rehabilitation costs, and part of their salary during the period that they were disabled due to a workplace injury. This system also has provisions to grant indemnities to family members of a worker killed on the job.

Nonetheless, it is not an easy task to be awarded such coverage. Obtaining a medical certificate that confirms that an injury or accident is job related is not always a straightforward process. Doctors may claim that a worker's injury is due to a general degradation of their health rather than due to the work itself. Undocumented workers often have to struggle to assert their right to workers' compensation, and face challenges from employers as well as insurance companies, both of whom try to flee from their responsibilities towards these workers.

cient because it is legally binding. But with an oral contract you need someone who can testify that both parties entered into agreement about it."

It is possible to overcome this problem, explained María Helena Bedoya of the Spanish trade union Comisiones Obreras (CCOO). "The courts realize that they have to accept the jurisprudence if the worker can prove that he was employed. Usually the proof is something physical, such as a photograph or a work uniform. But it can also be the fact that the worker can describe the place where they worked and knows the name(s) of their boss(es), and can back this up through witnesses," she said.

Another obstacle concerns undocumented workers who wish to take out a lawsuit against an employer, as opposed to filing a complaint against the employ-

er through an administrative agency (explained further in "Launching Lawsuits Against Abusive Employers in the United States" in this chapter).

Launching a lawsuit incurs many different costs, notably the fees demanded by the private lawyer taking the case. An undocumented worker would most likely be unable to pay such exorbitant fees, which can easily add up to tens of thousands of dollars.

To cover the costs of the case, lawyers often propose that they retain a percentage of the settlement if the case wins. However, the amount that the worker is owed is often not large enough to justify a private lawyer's handling of the case. Attorneys, legal clinics or the Attorney General are usually only interested in taking out a lawsuit if it is a big case, said Nadia Marin-Molina of the Workplace Project. But most of

<sup>36</sup> See Norbert Cyrus, "Protective and Repressive Measures in EU Member States," in Michele LeVoy, Nele Verbruggen, and Johan Wets, eds., *Undocumented Workers in Europe* (Leuven: PICUM and HIVA, 2004).

<sup>37</sup> See Anna Marie Gallagher, "The Situation of Undocumented Persons in the U.S.: A Practical Overview," in Michele LeVoy, Nele Verbruggen, and Johan Wets, eds., *Undocumented Workers in Europe* (Leuven: PICUM and HIVA, 2004). See also AFL-CIO, "What Union Members Should Know About ... Legal Rights of Immigrants," available online at: <http://www.aflcio.org/issuespolitics/immigration/upload/LEGAL.pdf>, accessed on May 2, 2005.

### PROBLEMS ENCOUNTERED BY WORKERS WHO FILE AN OFFICIAL CLAIM FOR UNPAID WAGES

“Workers face obstacles at every stage of the official claims process,” said Alejandra Domenzain, Associate Director of Sweatshop Watch. Her organization has extensive experience with garment workers who have filed claims in California against abusive and exploitative employers. Some of these problems include:

- language access barriers
- poor investigations
- long waits
- loopholes for employers
- deputies who fail to enforce certain provisions of the labor code
- pressure on the worker to accept a settlement instead of continuing with their case.

“In the case of garment wage claims, many cases may ‘settle,’ but often this means workers accept incredibly low payments that don’t even cover half of the minimum wage and/or overtime they are owed”, said Alejandra Domenzain.

the time the cases dealt with by organizations involve only small amounts of pay. “If a worker wasn’t paid for a week, and was supposed to receive \$100 a day, then he’s owed \$500. For an attorney, it’s not worth it in terms of the amount of money they’re going to spend going after the employer to get the \$500,” she said.

## Making a Claim for Workers’ Compensation

Undocumented workers toil in difficult and degrading conditions, but are often hesitant to report an accident or injury due to the numerous obstacles mentioned above that prevent them from asserting their legal rights. In some instances, such problems may sadly enough only become known when a serious accident occurs.

Based on his many years of experience with undocumented workers in the Italian trade union Confederazione Generale Italiana del Lavoro (CGIL), Francesco Ciafaloni of the Associazione IRES Lucia Morosini observed that it is indeed very difficult for undocumented workers to protest their conditions and demand their rights, including the right to workers’ compensation. “You never know how many irregular workers there are in a certain industry such as the construction industry, for example, until they die. If someone falls four or five stories and dies, then you know that he was an irregular Albanian,” he said.

## Unions Battle Insurance Companies in Portugal

Two major trade unions in Portugal have brought forth numerous cases to the Social Security Administration of undocumented workers who have suffered injuries and accidents on the job.

In the Portuguese system, a percentage of a worker’s salary is taken out by the employer for social security, which the employer is supposed to pay to the insurance company for every worker s/he employs, explained Manuel Correia of the União dos Sindicatos de Lisboa (USL). This is the usual system for workers under contract, including undocumented workers. Even if the worker does not have a contract, labor laws stipulate that as long as a worker is paid by an employer, they are entitled to protection. In the case of an industrial accident, the insurance company is responsible for carrying out the procedure for workers’ compensation.

The USL sees many problems concerning workers’ safety and health, as well as many accidents, some of which are fatal. The union has struggled with insurance companies to obtain workers’ compensation for numerous undocumented African and Eastern European workers and their families.

“We first go after the employer, because they have to demonstrate that they paid the insurance company. There are two ways that the employer can take out an insurance policy for a worker: either they make a nominative policy for each individual worker on the worksite, or they take out a blank policy which can be

filled in with the name of a worker if an accident occurs. So the first thing that we do when an accident occurs is to make sure that the employer puts the name of the worker on that policy. The insurance company then has to investigate the accident, but this can be a very long and arduous process. There is a lack of coordination amongst the different governmental entities, such as the Immigration Services and ACIME (the High Commissioner for Immigration and Ethnic Minorities)," said Manuel Correia of the USL.

The union will support a worker's request for an indemnity, but many times the insurance company proposes only a fraction of what they could be entitled to under workers' compensation, said Aquilino Joaquim Faustino Coelho of the Sindicato dos Trabalhadores da Construção, Mármore e Madeiras e Materiais de Construção do Sul. "It's clear that insurance companies are after a profit, so many times they only offer half or not even a third of what the worker should receive."

### **French Organization Fights to Get Compensation for Injured Farmworkers**

An organization in France that works primarily with seasonal migrant farmworkers has seen numerous instances of accidents in the fields due to poor working conditions.

Denis Natanelic of the Collectif de défense des travailleurs étrangers dans l'agriculture (CODETRAS) said that many times farmworkers fall and sustain back injuries, but encounter difficulties in receiving workers' compensation. This is largely due to the ambiguity between what the worker knows is a genuine workplace accident, versus what the Social Security office claims is a general degradation of the worker's health (e.g. problems due to old age, overwork, etc.).

Despite the frequent conflicts that occur, CODETRAS has filed complaints in the administrative courts for workers' compensation and has obtained favorable decisions for the workers in some cases.

During the summer of 2000, the **Collectif de défense des travailleurs étrangers dans l'agriculture (CODETRAS)** became aware of the situation of a seasonal migrant farmworker who fell on his back while working on a farm in the Bouches du Rhône region in the south of France. The worker broke his hip and had to have it removed. He was given an artificial hip, but was no longer able to work.

After receiving an indemnity for two years after the accident, the Social Security office offered him a rate of 14% of a pension for an industrial accident. His doctors said that 14% was insufficient, and he contested the offer. A hearing was held and it was decided to award the worker 18% of the pension for an industrial accident. He contested that decision as well, and was finally awarded a rate of 20%. Denis Natanelic of CODETRAS explained that 20% "may not be a high rate, but if a worker in France has an industrial accident or has an occupational illness and obtains a minimum rate of 20% of permanent disability, then they are eligible for a residence permit."<sup>38</sup>

He also underlined the general difficulties in obtaining workers' compensation: "Even in a case like this one, where it was clear that the worker would never be able to work again, it was still incredibly difficult to obtain even 20% of the pension for an industrial accident."

### **Spanish Unions Obtain Compensation for Workers Killed or Injured on the Job**

The Comisiones Obreras (CCOO) trade union has been able to win indemnities for immediate family members of undocumented workers who have been killed while working in Spain.

María Helena Bedoya, a lawyer working in the Foreign Workers' Information Center (CITE) of the CCOO trade union, said that the first case that the CCOO waged on behalf of an undocumented worker

<sup>38</sup> For more information on undocumented migrants' access to workers' compensation in France, see GISTI, *Sans-papiers mais pas sans droits*, 3<sup>ème</sup> édition (Paris: GISTI, 2004), available online at: <http://www.gisti.org/doc/publications/2004/sans-papiers/sommaire.html>, accessed on June 14, 2005.

was for an industrial accident. “We intervened in that case because it was shocking for a union to realize that if an undocumented worker suffered from an accident, they wouldn’t benefit from workers’ compensation simply because they were undocumented,” she said.

That case set a precedent for the courts, who from then on analyzed all possible situations that could come up concerning workers’ compensation, such as the many accidents involving immigrant workers that occurred during the construction of the high speed AVE train and a new metro line in Madrid. It was discovered that these workers were undocumented and had been hired by subcontractors, who had been hired by temporary employment agencies.

“In those cases, the first thing we did was to get in touch with the consulates. The Colombian Consulate has been particularly efficient in immediately providing legal assistance, because there have been many undocumented Colombians who have died on work-sites in Spain. We have been able to get indemnities for families of these workers. We have also worked with the consulates to suggest that the transfer of the indemnity from the insurance company to the family be made by diplomatic bag, so that the family would be guaranteed that the money wouldn’t disappear into the pockets of a lawyer they may have had little contact with in Spain,” said María Helena Bedoya.

The Sindicato de Obreros del Campo (SOC) has also dealt with a number of cases of accidents of undocumented workers in Spain. It has been able to receive some form of workers’ compensation in some cases, but has been unable to move forward in other instances due to the particular circumstances surrounding the cases.

Gabriel M’Binki Ataya of the SOC recalled a tragedy that occurred when the employer of an undocumented Malian worker provided housing for the worker in a farmhouse where some chemical products were stored.

“The worker’s bed was in a store room, right next to containers of toxic substances. One night, he woke up and wanted to drink something, and mistakenly drank from one of the containers. He was hospitalized and died shortly afterwards. We would have

been able to get an indemnity for his family but his employer didn’t even want to say that he worked for him, and we weren’t able to make any claim. The worker didn’t have any immediate family in Spain, only distant cousins, and we unfortunately were unable to track them down and gather more information about him to move on with the case,” he said.

### **Upholding Workers’ Right to Accident Insurance in Germany**

Undocumented workers in Germany are entitled to accident insurance and in some cases have been awarded workers’ compensation.

“The employer has to register all of his employees, and if he doesn’t, the insurance company has to pay for the employer. We filed a complaint for an undocumented Polish construction worker who fell and suffered a serious injury to his leg and his hip, which confined him to a wheelchair. The accident insurance covered his hospital costs and rehabilitation, and he was also able to get a pension,” said Norbert Cyrus of the Polish Social Council, an organization based in Berlin.

Domestic workers in Germany are also entitled to accident insurance, regardless of their legal status. “Employers have the obligation to insure their domestic workers, whether they’re legal or not. They are entitled to benefit from a pension if they suffer from an accident, and if it is fatal, their spouse and children can also claim entitlements,” said Norbert Cyrus.

### **U.S. Organization of Female Farmworkers Emphasizes Prevention and Intervention**

An organization in California takes a dual approach in addressing the issue of workplace health and safety, by emphasizing prevention as well as intervention in situations where workers may be exposed to toxic substances. It prioritizes awareness raising of the dangers of pesticides so that the women who work in farms in California may try to avoid situations where they may be unnecessarily exposed, and helps the women to file complaints for workers’ compensation.

Mily Treviño Saucedo, Executive Director of the Organización en California de Líderes Campesinas, used to be a farmworker in California and knows



what it's like when the members of her organization talk about being unaware of the effects of pesticides.

"You only know that you're being sprayed with chemicals, and you don't know how dangerous it is because you don't have that information. You just know that you're ill and you're afraid to stop working because you'll be fired. Or many times because of the lack of health clinics, you don't go to the doctor for pre-natal care because you don't even realize that you're pregnant. But one day you're working in the fields and all of a sudden you have a miscarriage. If you think back you could remember that there was a bad odor in the fields for a number of days, and maybe you had a miscarriage because you had been working in fields that were sprayed with pesticides. Or you're poisoned by pesticides but afraid to go to the hospital because you're undocumented. So when your crew leader tells you to go home for the day and come back to a different workplace in two days, you don't protest. You find out later that even though you may be undocumented, you still have rights, so you make an appointment with an agency who's going to listen to you about your case. But by that time the chemicals have dissolved and can't be traced in your blood, so it's too late for the necessary tests. Or you may already be aware that you have these rights, so if you're poisoned you get to a doctor. But sometimes doctors are not prepared to deal with the health impacts of pesticides, so they don't do the proper tests and end up examining you for something else like food poisoning... What can you do in situations like these? How can you prove you suffered from pesticide poisoning? It's a very complex situation," said Mily Treviño Saucedá.

One of the ways that the **Organización en California de Líderes Campesinas** has sought to find an answer to workplace health and safety problems is to educate its members about different ways *they can prevent* pesticide poisoning.

When the organization first started to tackle the issue of pesticide poisoning, the staff realized that although the women were receiving training at their workplaces about how to prevent being poisoned, these short presentations were extremely inadequate. Employers are

required by law to inform workers about any kinds of chemicals that are being applied in the workplace, but they would schedule 10-minute presentations and have the workers sign small cards saying that they have been trained, whereas the law requires the training to last a full day, said Mily Treviño Saucedá, Executive Director.

The Organización en California de Líderes Campesinas thus decided to train workers to make sure that they understood that they needed to leave the fields and tell other workers to leave if they found pesticide dust on the field or saw an adjoining field being sprayed. "Many times the women pressure the crew leaders to evacuate the other workers until they can go back and work, or they go to another field to work in the meantime. We want to make sure that members understand about how the chemicals work, and how to be alert for the smell and the white dust. They have to realize that pesticides can be dangerous, because it takes time for them take effect and decompose. This is why we emphasize the training of community members, so that they can fully understand these dangers," explained Mily Treviño Saucedá.

If workers are poisoned, the Organización en California de Líderes Campesinas helps them to file a complaint for workers' compensation and in some cases also files lawsuits. The non-profit organizations Californians for Pesticide Reform and Pesticide Action Network have supported their efforts to file lawsuits by providing legal services or private attorneys. The Organización en California de Líderes Campesinas also collaborates with several organizations working on environmental issues on the state, national and international levels, by acting as advisory members or by participating in the board of directors. Through this collaboration, it aims to ensure that the concerns of female farmworkers are on the agenda of all of the efforts made by these organizations in their work on pesticides.

## Filing a Case in Industrial Tribunals

If an undocumented worker wishes to make a claim against an abusive employer in the labor courts, the main concern of this legal entity is to determine if fair labor conditions are being respected, not if the worker is documented or undocumented.

Industrial tribunals in many countries in Europe do not have the duty to denounce an undocumented worker to the Immigration authorities simply because they are undocumented. There is no sharing of information between these legal entities, as this would be contrary to the idea of protection.

In the United States, there is no automatic reporting by the courts or governmental agencies to the immigration authorities when undocumented workers file claims against their employers. Groups around the country have worked with the police, with authorities and with all sorts of governmental agencies to make sure that there is a firewall, said Rebecca Smith, Immigrant Worker Project Coordinator at the National Employment Law Project (NELP).

The following sections describe legal practices in several countries in Europe as well as in the United States concerning the labor rights of undocumented workers. Examples of a class action lawsuit and a transnational approach to legal advocacy are also included.

### NGO Supports Workers' Claims in Industrial Tribunals in Germany

A situation in which a labor court would be required to report a worker's immigration status might arise in Germany. All public offices in Germany are required by law to notify the Foreigners' Office with information received on undocumented migrants during the course of public service. This law implies that although undocumented workers have the right in theory to file a claim in an industrial tribunal, information about their immigration status is nonetheless communicated to Immigration authorities, and they could risk deportation.

In examining the theoretical duty of the labor courts to report immigration status, Norbert Cyrus of the

Polish Social Council found that while industrial tribunals are obliged to *inform* the Foreigners' Office, they do not have to *investigate* the residence and work permit status of undocumented workers. This distinction between the obligation to *transmit* but not to *examine* the status opens an opportunity for undocumented workers to present a case in industrial tribunals.<sup>39</sup>

Based on this important distinction within the legal system, the Polish Social Council, an organization based in Berlin, Germany, helped a number of undocumented workers to file a case in the labor tribunals against abusive employers, and was successful in many cases.

Until 1997, there had been no court cases in Germany in which an undocumented worker had petitioned for withheld wages from his/her employer. "It was a generally held conviction that undocumented workers had no rights at all," explained Norbert Cyrus of the **Polish Social Council**. By conducting research and supporting cases of immigrant workers with *legal* contracts, the Polish Social Council acquired knowledge and experience of the proceedings of the industrial tribunals in Germany. The organization observed that industrial tribunals on the whole were not obsessed with the legal status of workers. If an undocumented worker filed a complaint against his/her employer, there was still a possibility that a judge could report the worker to the Immigration authorities, but the risk was most likely low.

In the meantime, the Polish Social Council had been dealing with a number of cases in which employers were abusing workers, many of them undocumented. The organization first tried to resolve these problems by mediating with the employer, and in some cases this worked. However, in others it didn't work, because the employer did not answer the demand letter, couldn't be reached, or simply refused to pay the worker. In the absence of a solution through mediation, the worker had to

<sup>39</sup> See Norbert Cyrus, "Representing Undocumented Migrant Workers in Industrial Tribunals: Stimulating NGO Experiences from Germany," in Michele LeVoy, Nele Verbruggen, and Johan Wets, eds., *Undocumented Workers in Europe* (Leuven: PICUM and HIVA, 2004).

decide if they wanted to take the case to the labor court. There was a slight risk that they could be deported, simply because there was no history of undocumented workers making claims through the labor courts in Germany. If a worker decided to take the case to court, the Polish Social Council helped them to build their cases by gathering elements of proof that they had been cheated.

Gathering proof was often a laborious process, as it entailed filing a claim within a certain deadline (e.g. in some industries a worker only has two months to file a claim concerning labor issues) and making sure that the worker had an accurate account of all the hours worked as well as the wage demanded. Photos or testimonies by witnesses confirming that the person worked for the employer could also be used as proof.

From 1997-2001, the Polish Social Council dealt with eleven cases in which employers had deceived 27 undocumented workers. In nine cases the workers appealed to industrial tribunals, and in some of these cases an industrial tribunal hearing took place with a final judgment in favor of the undocumented workers. In a case ruled in January 2003, an industrial tribunal ruled that the employers of an undocumented Polish domestic worker had to pay a withheld wage of €1,700. The worker, who had been fired after having an occupational accident without receiving medical care, was also awarded a small pension because of her amputated fingertip, which was recognized as a partial inability to work.

### Historical Ruling in Spanish Courts Won by Trade Union

Undocumented workers in Spain have the right to file a claim against their employer in court. This right was established by a 2002 Supreme Court ruling that

said that a worker has to be recognized as a worker, regardless of his/her legal status. The ruling, which was issued on May 14<sup>th</sup>, 2002 by the Supreme Court of Catalonia, referred to a case that was brought forth by the Comisiones Obreras (CCOO) trade union on December 4, 2000. The ruling also stipulated that criminal proceedings would be taken out against an employer found guilty of exploiting a worker.

#### IMPORTANT RULING IN FAVOR OF UNDOCUMENTED WORKERS IN THE UK

Undocumented workers in the United Kingdom face difficulties if they wish to file a complaint against their employers in the industrial tribunals, because the latter may decline to hear complaints from workers deemed not to have legal contracts. These workers also fear that by revealing their irregular status to an official entity, this could lead to their deportation (see section on “Obstacles and How to Overcome Them” in the beginning of this chapter). The following case is a crucial exception to this.

##### *Sharma v. Hindu Temple (EAT/253/90)*

Nineteen stonemasons were brought from rural India to build a Hindu temple in Wembley, United Kingdom. They were living in appalling conditions on the construction site and, having been told that they would receive up to £190 a week (approximately €280), they were in fact being paid £125 a month (approx. €183), or 30 pence an hour (approx. 43 Eurocents). Their employers tried to argue that they did not have to pay the minimum wage on the grounds that the workers were undocumented.

The construction union UCATT took up their case. The Employment Appeal Tribunal (EAT) said it was necessary to take into account public policy, which was to ensure that all workers were paid the national minimum wage. The employer was forced to pay the workers back wages totaling £100,000 (approx. €146,657).<sup>40</sup>

<sup>40</sup> See Bridget Anderson and Ben Rogaly, “Forced Labor and Migration to the UK,” Study prepared by COMPAS in collaboration with the Trades Union Congress, available online at: <http://www.compas.ox.ac.uk/publications/papers/Forced%20Labour%20TUC%20Report.pdf>, accessed on August 12, 2005. See also TUC and JCWI, *Migrant Workers: A TUC Guide* (London: TUC and JCWI, 2002); TUC, *Overworked, underpaid and over here: Migrant Workers in Britain* (London: TUC, 2003).

Before the historical ruling, a worker could not file a claim for withheld wages or other retribution if they were engaged in irregular employment. As a result of the ruling, courts have applied the jurisprudence and recognize that while a worker may have irregular legal status, s/he still has inalienable labor rights.<sup>41</sup> “A judge in an industrial tribunal is not interested at all in knowing whether a worker is legal or undocumented. The only thing that they are concerned about is the labor issue at stake,” said María Helena Bedoya of the CCOO.

The trade union has dealt with many cases in which workers seek assistance from the union because their employers don’t pay them their wages, or are unjustly fired. “We’ve come across many situations of workers who were fired, and when they protest, the employer or crew leader will beat them up or injure them. Many times these employers think that just because the worker is undocumented, they won’t report them to the police or take it any further,” said María Helena Bedoya.

When the worker comes to the union for help, the CCOO will go with them to the police to report the employer for physically abusing the worker, and a union lawyer will immediately make a demand for the withheld wages.

In recent years the **Comisiones Obreras (CCOO)** has defended and won a number of cases involving undocumented workers who have filed complaints against their employers.

One of the most influential cases concerned 38 undocumented Ecuadorian workers who were employed in an underground wood company. The workers were continually exploited and had been fired without receiving their wages. The CCOO took on the case and made a triple defense by demanding that: 1) the industrial tribunal pay the workers the wages; 2) criminal legal proceedings be made against

the employer for violating the workers’ labor rights; and 3) a residence permit be granted to the workers for collaborating with the justice system in a case concerning labor exploitation. The CCOO won in all three areas.

“Winning a case concerning an undocumented worker has more worth than winning a case concerning a legal immigrant worker, because these cases represent very important new developments in Spanish law,” said María Helena Bedoya of the CCOO.

### Undocumented Workers File Claims with the State Prosecutor in Portugal

Portuguese organizations and unions often use legal channels to address the growing problem of labor disputes involving undocumented workers.

Manuel Correia of the União dos Sindicatos de Lisboa (USL) said that in his union alone, there may be upwards of 1,000 labor disputes at a given time. Though they do not predominantly concern immigrant workers, in some industries (such as the construction industry), the majority of labor disputes involve undocumented workers. The hotel industry is another case in point, as 70% of the labor disputes involve immigrant workers, many of whom are undocumented Brazilians who were able to find jobs in the hotel industry due to their facility with the language and culture of Portugal, said Yasmine Arango Torres of the USL. “Three to five undocumented workers come to our union office in Santarém on a daily basis with workplace problems,” said Aquilino Joaquim Faustino Coelho of the Sindicato dos Trabalhadores da Construção, Mármore e Madeiras e Materiais de Construção do Sul.

To find a solution to these problems, these unions and organizations in Portugal first try to engage in mediation between the employer and the worker. Many labor disputes are settled this way, but those

<sup>41</sup> In addition, the Labor Division of the Supreme Court has created an interesting jurisprudence on the issue of labor rights of undocumented workers. A noteworthy example (amongst many others) is the June 9<sup>th</sup>, 2003 decision of the Fourth Division of the Supreme Court (Appeal 4217/2002 made by Judge Martínez Garrido). In an appeal for the standardization of doctrine, this decision holds that immigrant workers who do not have a work or residence permit but are employed, are entitled to payments from the Social Security Administration if they have an accident in the workplace, and to health care and financial benefits under the same conditions as Spanish workers.

that aren't can be taken to the department of labor inspection or to the State Prosecutor (*Ministério Público*) and industrial tribunals. In Portugal, these entities have demonstrated through practice that the irregular legal status of undocumented workers will not be a factor that prevents them from having access to legal channels.

The State Prosecutor and industrial tribunals are invoked in cases in which the employment has been terminated and issue at stake is e.g. non-payment of wages. The Department of Labor Inspection is contacted if the worker is still employed but has a workplace problem such as late payment of wages.

"Many times when undocumented workers are fired or encounter some other problem on the job, their employers will use the argument of 'Well, you're here illegally so you can't do anything.' Fortunately here in Portugal, this doesn't happen like this. The worker is already unprotected, and if they are exploited by their employer and don't have the right to be represented in the adequate institutions for this, then it would really be the law of the jungle!" said Gustavo Behr of the Casa do Brasil de Lisboa.

His organization has never come across any cases in which an undocumented worker hasn't been able to make a complaint through legal channels. The State Prosecutor of the industrial tribunals is usually not concerned if a worker has a valid legal status in Portugal or not, but simply verifies if the contract is being respected, and if not, then will act according to the law.

The unions described above have legal departments and represent undocumented workers in industrial tribunals. There have been numerous cases brought forth by these unions in which undocumented workers have been able to obtain a settlement in their favor. Two non-governmental organizations in Lisbon have also made important strides in informing undocumented workers about the possibilities of making a claim in industrial tribunals and guiding them through the legal process.

The legal services programs of the **Casa do Brasil de Lisboa** and the **Serviço Jesuítas aos Refugiados (JRS)** provide orientation and information to immigrants on general immi-

gration law as well as labor law. The programs are run by lawyers who usually come to the organizations during the evenings to provide volunteer legal assistance. José Manuel Macedo Vilaça, pro bono lawyer at JRS, said that many of the cases involving workplace problems that are handled by the JRS legal services program involve non-payment or under-payment of salaries. Gustavo Behr, pro bono lawyer at the Casa do Brasil de Lisboa, said that of all the labor-related cases handled by his organization concerning undocumented Brazilian workers, the majority concern workers who have been fired from their jobs without being paid.

Both the JRS and the Casa do Brasil de Lisboa usually refer undocumented workers to the State Prosecutor to file a complaint against their employers. Gustavo Behr explained what happens during a typical procedure involving the State Prosecutor: "The undocumented worker goes to the State Prosecutor's office to file a complaint against their employer. Within a certain timeframe, the worker is summoned to appear at the State Prosecutor's office along with the employer, and there is a first attempt at reconciliation before entering into legal proceedings. If they are not able to come to an agreement in this phase, then the State Prosecutor will be assigned to defend the worker, and will file an initial complaint stating the worker's demands. If there is no agreement after the initial complaint is filed, then the employer has ten days to contest it. In the absence of an agreement, the case moves on to the industrial tribunals. If there is adequate proof of exploitation, then the case is usually resolved in favor of the worker."

The State Prosecutor is legally required to provide assistance to all workers, regardless of their legal status. While Portuguese law has traditionally distinguished between legal and undocumented workers, the *practices* of the industrial tribunals have made the differences between these workers disappear. "In regard to workplace issues, the method of making a complaint to the State Prosecutor is quite effi-

cient, and the complaints are usually resolved. In a case involving e.g. late payment of wages, the employer receives an official summons to appear in court concerning the payment. If the employer does not show up in the tribunal, then they receive a fine,” said José Manuel Macedo Vilaçal. “I think that this system is preferable to a traditional legal judgment involving lawyers, because it seems to work better and is more efficient. The State Prosecutor also has powers that lawyers don’t have,” he added.

### **French Network Builds Knowledge About Cases Concerning Farmworkers**

The Collectif de défense des travailleurs étrangers dans l’agriculture (CODETRAS) strives to strengthen the legal assertiveness of migrant agricultural farmworkers in France by building knowledge about the different cases that have been filed in industrial tribunals.

CODETRAS was able to locate eight lawyers in the Bouches du Rhône region who work on these cases and asked them to participate in its network by sharing information and by adopting a common strategy on the cases. The lawyers were also asked to inform the different organizations in CODETRAS about any follow-up to the cases, so that the information and experiences could be used in other cases.

“It’s not always easy to make lawyers work together but some have shown keen interest in working with CODETRAS and agreed to share information about their cases. We find it important to be aware of the outcome of a particular case, and also to know more about the type of analysis used by the lawyer, particularly if it was successful and could be applied to another case,” said Denis Natanelic of CODETRAS.

CODETRAS has also developed a repertory that classifies all of the different labor disputes that have been filed in legal channels between these workers and their employers. Each file is continually updated and contains specific information about the case, the contact information of the lawyer representing the case, its current status in the legal system, and the

type of ruling issued. As the participating organizations in CODETRAS are often contacted by local organizations who are confronted in their daily work with these issues, the repertory is a useful tool in making a referral to the organization and/or lawyer in the network with expertise on the particular issue, said Denis Natanelic.

### **Launching Lawsuits Against Abusive Employers in the United States**

Most of the labor disputes involving undocumented workers and employers in the United States are handled by administrative agencies in the different states, rather than through lawsuits, said Ana Avendaño, Associate General Counsel and Director of the Immigrant Worker Program at the American Federation of Labor – Congress of Industrial Organizations (AFL-CIO). “There are very few NGOs and lawyers that do litigation on behalf of undocumented workers, because it is not economically feasible to be handling individual cases.”

Nonetheless, a number of NGOs have collaborated with pro bono lawyers in launching lawsuits against abusive employers. A decision in favor of the undocumented worker has been reached in many cases.

The Restaurant Opportunities Center of New York (ROC-NY) works with pro bono lawyers and recently settled long-standing lawsuits against two restaurants in New York City for alleged discrimination and failure to pay overtime against 23 workers, most of them immigrants from Mexico. ROC-NY helped arrange for lawyers at the Urban Justice Center, the CUNY Law School Immigrant Rights Clinic and a private law firm to handle cases against the Cité and Park Avenue Cafe restaurants in New York City. ROC-NY waged a campaign for one and a half years against the restaurant owners, using methods such as litigation, protests and hand billing in front of the restaurant, press coverage and clergy visits.

“We did protests almost every week. But when that wasn’t working, we decided that we would change tactics. So we stopped the protests but went every day in front of the restaurants to give out pamphlets about the ‘Daily Specials – Serving Up Unfair Labor Practices’ (see Chapter Seven),” said Sekou Siby, Outreach Coordinator at ROC-NY.

### BUDGET CUTS AFFECT NGOS' CAPACITIES TO LEGALLY REPRESENT UNDOCUMENTED WORKERS IN THE UNITED STATES

One of the reasons that NGOs in the United States rely on support from pro bono lawyers is due to the gradual cuts that have been made by the federal government to legal services programs over the past twenty years.

In the late 1980s, the Reagan administration cut funding for non-profit organizations that were providing legal services to undocumented migrants. Those budget cuts had serious impacts for organizations such as the National Employment Law Project (NELP), which at the time relied heavily on federal funding to carry out its work as a legal services backup center for labor and employment issues of low-income workers, said Cathy Ruckelshaus, NELP Litigation Director. Many organizations were forced to look for other funding if their mission included providing legal services to undocumented migrants.

The situation became worse in 1996, when the U.S. Congress decided to target federally funded legal services programs by making even more restric-

tions. Under the new rule, if an organization accepted money from the federal government, it had to promise not to represent undocumented workers with money from any other source, including private funding. Organizations that needed federal government funding to exist were thus forced to stop providing legal assistance to undocumented migrants, or depend entirely on private funding in order to carry out this work.

As a result, thousands of lawyers across the country that provided legal assistance to undocumented migrants were no longer available after 1996, putting a huge burden on the organizations that continued the work (without federal government funding). Some organizations were set up with private funding to provide legal services to undocumented migrants in some states. But in areas of the country such as the Southeast, which historically has had a high concentration of low-wage workers, there are only a handful of organizations that can provide legal services to undocumented workers.

In January 2005, ROC-NY won \$164,000 for the 23 workers when the executives from the restaurant group that owns the two restaurants agreed to settle the lawsuit. In an interview with the *New York Times*, Saru Jayaraman, ROC-NY Executive Director, commented on the important legal victory: "It's a big achievement for a nonunion workers' center to go up against one of the industry's biggest players and win such a good settlement, which goes far to improve working conditions. These problems are prevalent in the industry, and this settlement should send a signal through the industry."<sup>42</sup>

One of the main strategies of the organization Andolan Organizing South Asian Workers in upholding undocumented workers' rights is to bring lawsuits against and public attention to abusive employers. Claims include violations of federal and minimum state wage laws, sexual harassment and abuse, and assault and false imprisonment.

Successful cases involving abused and exploited domestic workers have resulted in payment of back wages and other damages.

#### Domestic worker fights abusive employers: case study of a member of Andolan Organizing South Asian Workers

Marjina was brought to the United States from Bangladesh on a temporary visa as a domestic worker by an Indian family. Upon arriving in the United States and being told by her employers to overstay her visa, Marijna was forced to work 80 hours per week with no holidays and endured severe verbal abuse. Her work duties included cooking three meals a day for twelve extended family members, cleaning, hand washing dishes, doing laundry for immediate and extended family, ironing

<sup>42</sup> For more information about the settlement, see Steven Greenhouse, "Two Restaurants to Pay Workers \$164,000," *New York Times*, January 12, 2005, available on ROC-NY website at: <http://www.rocny.org/programs-corporatecampaigns.htm>, accessed on April 17, 2005.

and shoveling snow, in addition to taking care of two infants, including a newborn baby. For this work, Marjina was paid only \$100 per month, wages which she never once saw since they were sent directly to her family in Bangladesh.

Marjina escaped from her abusive work situation in 1999 and decided to work for another Bangladeshi family who lived nearby and promised to pay her higher wages. Marjina faced extreme hardship with the new family, suffering sexual abuse and was again extremely underpaid. Complaining to the wife of the family about the abuse she faced at the hands of her husband, Marjina was thrown out of the house, unable to gather any of her belongings and forced to fend for herself with little money or knowledge of English. After finding her way to New York City, a bus driver introduced Marjina to an Indian storeowner with whom she could communicate and he called some contacts to seek a referral for her. It is through this chance encounter that Marjina was put in touch with Andolan.

With Andolan's support, Marjina met one of the many lawyers who do pro-bono work with Andolan and decided to file a lawsuit against both of her previous employers. After successfully winning one of the cases in 2002, Marjina settled the second case against her employer for back wages in July 2003. More important than the financial compensation was the message sent to the employers who were forced to account for their actions and recognize the unacceptable treatment of their former employee.

Another organization that launches lawsuits on behalf of workers is the National Day Labor Organizing Network (NDLON), which challenges anti-day labor solicitation ordinances in Federal Court. Ordinances have been made by a number of municipalities in the United States to prohibit day laborers from soliciting work in public places. "That means that basically it would be a crime if you go out in the streets to look for work to feed your family," said Pablo Alvarado, NDLON National Coordinator.

Before challenging a municipality in court, NDLON makes significant efforts to dialogue with cities in order to address the civil rights violations that these type of ordinances entail. However, if dialogue does not work, litigation can be a powerful weapon.

When NDLON challenges the ordinances in court, it always makes sure that the day laborers understand and take part in the process by holding comprehensive organizing campaigns. NDLON works closely with the Mexican American Legal Defense and Educational Fund (MALDEF) and the Puerto Rican Legal Defense and Educational Fund (PRLDEF), which provide and finance legal representation to challenge the ordinances. The outcome has been positive, since many of the ordinances have been declared unconstitutional.

### **Class Action Lawsuits Involving Undocumented Farmworkers in the United States**

One of the few organizations in the southeastern United States that provides legal services to undocumented migrants is the Migrant Farmworker Justice Project in Florida.

Established in 1996 and funded by the Florida Bar Foundation, the Migrant Farmworker Justice Project is committed to ensuring that the full range of legal advocacy is available to the 300,000 farmworkers who work in Florida's fields and groves. Greg Schell, attorney at the Migrant Farmworker Justice Project, says that nearly 80% of farmworkers in the State of Florida are undocumented. At a time when the undocumented proportion of the population is growing, his organization has been struggling to re-invent a system. Its main line of work is litigation, but given the organization's limited capacities and the sheer volume of labor disputes involving undocumented farmworkers, cases must be carefully chosen that will have a broad impact and will bring a maximum return.

Greg Schell explained that in agriculture or in any other low-wage job, it is common for employers not to cheat just one worker, but most likely all their workers: "So these are cases that lend themselves to class actions. You file a case and demand that not just one client is paid, but everyone who was working there and who was cheated gets paid." Paralegals



working for the Migrant Farmworker Justice Project do outreach to undocumented workers, carefully explaining them their rights and encouraging them to bring lawsuits when appropriate. Most of the cases taken on by the organization involve wage claims from a group of workers.

Greg Schell, attorney at the **Migrant Farmworker Justice Project**, gave the following example of a successful class action lawsuit represented by his organization:

“15-year old Mario Lopez Diaz came from Guatemala as an undocumented migrant and started working with family members illegally at the Pero pepper farm. Mario had only been in the country three months when a truck that was used to transport big bins of peppers ran over him and crushed his legs. Mario woke up two days later in a hospital in a town he’d never heard of and didn’t know where he was. Eventually he found a phone number somewhere from one of his relatives, so one of them picked him up. He received assistance from a social service agency, who brought him to our office because they said that he had some serious problems and needed legal assistance. We asked Mario who he worked for but all he could remember was that he had been picking peppers for a Mexican guy named José. We were able through really outstanding detective work to figure out who he worked for, and it turned out to be this huge company Pero, which he didn’t know at the time is the largest producer of green peppers in the United States.”

“We eventually got him paid for his accident. But we had been looking for somebody for years to sue Pero, because we knew that they were cheating workers right and left. So we asked Mario if he was happy with the way the company was treating him, and he replied, ‘No, they’re treating me terribly.’ We explained him his rights, and asked him if he would like to do something called a class action lawsuit. His family members working for Pero ostracized him as did a lot of the older workers, saying ‘You’re making trouble for the

boss, don’t do it,’ but he wanted to, so he took out a lawsuit against the nation’s largest pepper grower.”

“So we launched the lawsuit with Mario, and we find out that the labor contractor there - José, who, the truth be told, is not the worst guy in the world, but he’s not paid enough by the company, so he cheats the workers - not only does he pay workers less than the minimum wage, but José has stolen the social security money that he’s deducted from the workers for the past 25 years. Early in the case, we take José’s statement, and the farmer is sitting there, and José admits: ‘I stole the social security money. I made up the records. I didn’t insure the vehicles. Yes, I did all that stuff,’ and the farmer just says: ‘I want to stop this. I’m embarrassed for our company, I want to do better.’ We enter into negotiations, and at the end of the day the company now says: ‘We will no longer pay people through José. The workers will be our employees, and we will go to electronic time keeping, so that every time a worker (they all have electronic badges) hands in a bucket of peppers, it is scanned, so we can tell them down to the minute how long it takes them to pick a bucket.’ Like most farmworkers, these workers got paid based on volume and only were paid for the buckets they picked. But now the computer automatically - if they didn’t earn the minimum wage - makes up the difference, which is what the law requires. So all the workers thought: ‘We got a raise!’ What they really got for the first time in their lives was the minimum wage.”

“Pero is now paying out hundreds of thousands of dollars in back money to thousands of workers, the majority who are undocumented. It’s now regarded as a model company for treating its employees right, and has been able to use the data from the electronic badges to properly gage actual costs. The company farmer told us ‘I should have done this 20 years ago. It has been a win-win all around, because of one brave little Guatemalan undocumented worker.’”

## Transnational Approach to Legal Advocacy: Mexico and the United States

A sizeable percentage of the total population of undocumented migrants in the United States are Mexicans, many of whom are considered to be “shuttle migrants” because they go back and forth between the two countries to work and return to their families. The increased border restrictions on the U.S.-Mexico border have made it difficult and even deadly for these migrants to come and go. While many end up settling in the United States, the vast majority inevitably return to Mexico, said Greg Schell, attorney at the Migrant Farmworker Justice Project.

While they are working in the United States, Mexican workers toil in difficult conditions and in some industries run high risks of accidents or injuries due to the particular work they carry out. In addition, their unfamiliarity with safety precautions as well as government entities that can offer them protection increases their risk of accidents and injuries. Lawyer Rachel Micah-Jones said that Mexican workers in the United States are often unwilling to speak openly about workplace conditions because of employer control or immigration status. The costs and logistics of representing migrants in the United States are also an obstacle to obtaining justice in labor disputes.

Once these workers return to Mexico, it is almost impossible to seek redress, as connecting with and maintaining contact with advocates in the United States is extremely difficult. If they are deported, there is also no effort made by the U.S. government to make sure they receive their last pay.

“Undocumented workers rarely connect with the systems that exist in the United States to help them, be they legal assistance, be they medical assistance or be they social services. They end up in Mexico and try to get help from their local government officials, but most times these officials don’t know what to do with them. We have done training sessions for Mexican consulate officials who were going to work in the United States and we were struck by their lack of knowledge about what’s available in the United States to protect workers. These officials had absolutely no clue of the labor laws or where to send a worker if they have a labor dispute,” said Greg Schell of the Migrant Farmworker Justice Project.

A new organization is being developed that will take an innovative approach in seeking redress for workers based in Mexico with unresolved labor disputes in the United States.

The non-profit organization **Centro de los Derechos del Migrante, Inc. (CDM)** aims to bridge the transnational gap between Mexico-based migrant workers and advocates in the United States. CDM is projected to open in Fall 2005 in the state of Zacatecas, Mexico, which has the longest and most developed history of migration to the United States of any of the Mexican states.

The staff of both U.S. and Mexican trained advocates will conduct outreach efforts in Mexico, where workers are more accessible and speak openly about workplace conditions, said Rachel Micah-Jones, CDM director. These outreach efforts will include oral presentations to workers in major sending communities in Mexico about their workplace rights in the United States. CDM will also connect workers who have experienced problems with their employment in the United States (such as unpaid wages or workplace injuries) with lawyers, unions or worker groups in the United States that can help them. It will provide on the ground support for advocates in the U.S. who represent Mexico-based migrants but face financial difficulties due to the costs of conducting site visits to the workers in Mexico. In addition, the CDM will facilitate international cooperation around legal and policy issues.

## Crucial Legal Drawback: The Hoffman Plastic Case in the United States

While the above-mentioned examples demonstrate that it is indeed possible for undocumented workers to obtain victories in the legal system, it should also be highlighted that an *unfavorable* legal decision concerning undocumented workers can have very

serious and wide-reaching negative consequences. Such a legal decision may affect workers' rights in areas that were not the focus of the original ruling.

This situation has occurred in the United States due to the aftereffects of a 2002 Supreme Court ruling in the *Hoffman Plastic* case.

### Rights Without Remedies

How does a case involving the right to organize affect other cases concerning the labor rights of undocumented workers?

Ana Avendaño, Associate General Counsel and Director of the Immigrant Worker Program at the American Federation of Labor – Congress of Industrial Organizations (AFL-CIO), explained that there are two components to U.S. laws: a rights component that covers undocumented workers by law, and a remedy if they are wronged. “A right without a remedy is an empty right, because if I have a right to work, but if I have no remedy if that right is violated, then what’s the point in having a right? Since the 2002 *Hoffman* decision, the remedy is what’s become a problem in the U.S.,” she said.

As a result of the *Hoffman* ruling, undocumented workers have been fearful of challenging their employers through the legal system for fear that their immigration status could be used against them in *any* labor dispute. Amy Sugimori, Staff Attorney at

the National Employment Law Project (NELP), explained that “employers are arguing that the *Hoffman* decision makes immigration status relevant in more cases. They’re also saying that the *Hoffman* decision meant that undocumented workers have no rights anymore, which is actually wrong. But the *Hoffman* decision is an incentive for employers and their lawyers to start bringing up immigration status and using harassing questions which are intimidating and which can induce people to feel like they don’t want to go through with something.”

There have been a number of court cases since 2002 in which employers’ lawyers have attempted to make immigration status relevant in cases involving undocumented workers, even when the issue at stake in the case is not about receiving back pay as a remedy for being unlawfully fired for organizing in a union, which was the original meaning of the *Hoffman* decision.

### Advocates Fight Back By Exchanging Information and Strategies

NGOs and other advocates have responded to these developments by raising awareness amongst undocumented workers and their lawyers about the *Hoffman* decision and its impact.

The Low Wage Immigrant Worker Coalition (LWIW) has been an important vehicle for advocates to exchange information and legal strate-

#### HOFFMAN PLASTIC V. THE NATIONAL LABOR RELATIONS BOARD

This case involved an undocumented worker named José Castro who was working in a factory in California. His employer violated the National Labor Relations Act (NLRA) by firing him for helping to organize a union.

Under the NLRA, a worker whose rights have been violated can be awarded back pay. Back pay is the money the employer is required to pay a worker to make up for wages the worker would have earned if she or he had not been illegally fired. Back pay is

the primary and most effective remedy awarded under the NLRA. It serves as compensation, as an incentive for workers to complain about unfair and illegal practices, and deterrence against illegal labor practices.

However, in the *Hoffman* case, the Supreme Court decided in 2002 that Mr. Castro could not be awarded back pay, since he was unauthorized to work and had used false documents to obtain work.<sup>43</sup>

<sup>43</sup> See NELP, “Used and Abused: The Treatment of Undocumented Victims of Labor Law Violations Since *Hoffman Plastic Compounds v. NLRB*,” January 2003, more information available at: <http://www.nelp.org/iwp/rights/organize/usedandabused.cfm>, accessed on January 5, 2005. See also NELP, “Supreme Court Decision in *Hoffman Plastic Compounds v. NLRB*: Fact Sheet for Workers,” May 2002, available online at: <http://www.nelp.org/docUploads/pub132%2Epdf>, accessed on January 5, 2005.

gies concerning the impact of the *Hoffman* decision on undocumented workers. One of its successes has been to get the courts to issue protective orders to forbid an employer from asking a worker about his/her immigration status during court proceedings (see Chapter Five). Ana Avendaño, Associate General Counsel and Director of the Immigrant Worker Program at the American Federation of Labor – Congress of Industrial Organizations (AFL-CIO), said that one of the important roles of the LWIW is to educate lawyers who are representing undocumented workers in court on how to do the cases well and protect these workers' rights.

The National Immigration Law Center (NILC) has done significant work in informing NGOs and unions throughout the country about various issues impacting immigrant workers, including the *Hoffman* decision.

NILC holds training sessions in which it clarifies what the *Hoffman* decision means and doesn't mean for undocumented workers, and provides information about the different court rulings since then that impact undocumented workers' rights, said Marielena Hincapié, Director of Programs at NILC. NILC is pushing for legislative reform to undo the *Hoffman* decision, and the training sessions cover this and other legislative work.

NILC also holds a national conference every two years which aims to help set a national agenda on issues affecting low-income immigrant and refugee communities in the United States, focusing on workers' rights, access to government programs, and immigration rights. The annual conferences draw up to 500 of the leading advocates, organizers and other experts representing local, state and national immigrant and refugee rights, civil rights, health care, anti-poverty, legal, religious, ethnic, labor, community and low-wage worker groups.

Although the *Hoffman* decision represents an important legal drawback for undocumented workers in the United States, it has not weakened the resolve of their advocates. NGOs and other advocates continue to emphasize through their practices that the legal system is an important mechanism for undocumented workers to assert their rights to fair working conditions.

## GENERAL FINDINGS

- This chapter illustrates that undocumented workers do in fact have the possibility of obtaining victories in the legal system.
- Nonetheless, it was pointed out that there are many obstacles that prevent undocumented workers from filing a claim. Fear of being deported and the need for substantive proof makes it very difficult for undocumented workers to obtain needed protection. Other obstacles such as language barriers, poor investigation and the mere cost that lawsuits can amount to also create serious barriers. These must be overcome by informing the workers about their rights and about legal possibilities, as well as by providing them with assistance in filing a complaint. Helping workers obtain proof such as descriptions and photographs of the work place, work uniforms or even finding witnesses is also important in protecting their rights.
- Despite these obstacles, examples from France, Germany, Portugal, Spain, and the United States show how undocumented workers have successfully achieved workers' compensation for workplace injuries (and in some cases indemnities for families of workers killed on the job).
- Examples from industrial tribunals in Europe and in the United States show how undocumented workers are able to file complaints against abusive employers in the labor courts and achieve rulings in their favor. In many countries the main mission of an industrial tribunal is not to determine the legal status of the worker, but to investigate if fair labor conditions have been respected. Rulings have often been in favor of exploited and abused undocumented workers, as the examples in this chapter illustrate.
- Unfavorable cases such as the *Hoffman Plastic* case in the United States can, however, cause serious damage to undocumented workers' rights. This particular case shows how undocumented workers have rights but at the same time do not have remedies if they are wronged. The case is a serious legal drawback and implies wide-reaching negative consequences.

## 9. Working with Governmental Agencies to Promote Undocumented Workers' Rights

*“Ten years ago, it would have been unthinkable for a leftist trade union to have this type of relationship with the police. We have slowly developed a working relationship wherein we help the Foreigners’ Police to clarify who the victims are and why they’re victims, and they issue a report that is supportive of the worker and that can be used in applying for a residence permit due to the fact that they are a victim.”*

• María Helena Bedoya of the Comisiones Obreras (CCOO) trade union

This chapter portrays the different ways that organizations work with governmental agencies to promote awareness amongst these institutions about undocumented workers’ rights and to effectively improve their legal protection.

The first part of the chapter presents some of the different challenges advocates encounter when facing the governmental agency responsible for labor inspection.

The second part of the chapter highlights various examples of alliances that a number of organizations have formed to improve the way the governmental agencies responsible for labor inspection, occupational safety and health, social security, as well as the police department handle issues facing undocumented workers.

### Diverse Barriers When Approaching Labor Inspection

One way of attempting to solve a workplace problem is to contact the governmental entity responsible for labor inspection and request that it intervenes. The process of involving the department of labor inspection is similar in most countries. Advocates must first file a written complaint, indicating the type of irregularity encountered and what the worker should expect to receive. In a case involving e.g. unpaid wages, the worker’s salary needs to be indicated. The labor inspector goes to the workplace to inspect the situation and makes a report. If the worker is not satisfied with the labor inspector’s report, further actions can be undertaken, such as filing a case in the industrial tribunals to attack the employer(s) responsible for the problems.

#### A WORD OF CAUTION CONCERNING COLLABORATION WITH GOVERNMENTAL AGENCIES

Before delving into the issue of how NGOs and unions work with governmental agencies concerning undocumented workers, a word of caution is needed. Many advocates of undocumented workers have serious doubts about working with governmental agencies, because the latter have a reputation for *not* offering protection to undocumented workers. There are unfortunately many pockets within governmental agencies where immigration

status *is* important and constitutes a barrier to services.

On the other hand, there are also pockets within governmental agencies which constitute good practices in the protection of undocumented workers. Such initiatives – and NGOs’ and trade unions’ collaboration with governmental entities regarding these measures – are the focus of this chapter.

The governmental entity responsible for labor inspection has a duty to ensure that employers respect their obligations towards workers: they have to pay workers their wages, guarantee safe and fair working conditions, and maintain an employment relation that is free from exploitation. Given its pre-occupation with upholding fair working conditions and sanctioning employers who do not fulfill labor requirements, the department of labor inspection would seem to be a natural ally for those concerned by the working conditions of undocumented workers.

Nevertheless, while individual labor inspectors in many cases may be supportive of undocumented workers, this governmental entity faces a number of challenges that affect its ability to promote fair working conditions for these workers.

### **Lack of Resources**

A common complaint by advocates of undocumented workers is that there simply aren't enough resources and labor inspectors to properly investigate all of the accidents and abuses encountered by these workers.

Gabriel M'Binki Ataya of the Sindicato de Obreros del Campo (SOC) said that this is the case in Almeria, Spain, where there are six labor inspectors for the whole province. "In this region there are thousands of hectares of greenhouses. It's very difficult for inspectors to reach the worksites, because they are spread out all over the place and hard to get to. We have good relations with labor inspectors, and some are very concerned about the workers, but they just don't have the resources. In the past we made complaints and eight or nine months went by before the inspector was able to visit the particular worksite. By that time the worker had either left or been fired, but in any case was no longer available to confirm the complaint," he said.

Angelica Salas, Executive Director of the Coalition for Humane Immigration Rights of Los Angeles (CHIRLA), said that while the State of California has good laws on the protection of immigrant workers, including those who are undocumented, there isn't any money to hire inspectors who will actually go out and check up on whether people are actually following the law.

"There are something like 37 inspectors for a five-county area.<sup>44</sup> There is no way that you can have 37 people try and crack down on exploitative employers. But then it's also a question of how much money do you have to enforce the law? This is where I feel that we are really short, considering we have millions and millions of workers. Here in Los Angeles we have 1.27 million undocumented workers. This is just based on census numbers, so the actual numbers are most likely higher. We have the garment industry with about 140,000 workers here in Los Angeles. Day laborers are estimated at about 20,000 with 125 corners. There is mass abuse. What really also happens is that sometimes workers don't have just one employer, but they have multiple employers. So it would entail going after multiple employers for each worker," said Angelica Salas.

A lack of resources within the governmental agencies charged with enforcing labor law can have serious negative consequences for workers who file wage claims.

In the State of California, even though workers may win a case, they may never get the money they are owed. This is especially the case because the government agencies charged with enforcing labor law (such as the DLSE, Cal OSHA for health and safety, etc.) are all under funded, and unable to carry out enough investigations and ensure that employers pay once a case has been decided, said Alejandra Domenzain, Associate Director of Sweatshop Watch.

Liz Sunwoo, Coordinator of the Multi-Ethnic Immigrant Worker Organizing Network (MIWON), painted a similar picture of the situation involving workers' claims: "We've had cases in the past with judgments of hundreds of thousands of dollars, but the employer knew that after a long period of time passed and if they still didn't pay, then they could get away with it. The governmental entity responsible for collecting on judgments is so backlogged, and there is no one keeping up with the case judgments. It's kind of a slap in the face for the worker. It is intimidating to go through the whole hearing process. You can have a moral victory by winning the claim but then... no money. The money never sees the light of day."

<sup>44</sup> The Greater Los Angeles area encompasses the Los Angeles, Orange, Ventura, Riverside and San Bernardino counties and has a total area of 87,972 km<sup>2</sup>. As of 2005 the population was 17.5 million. See listing on "Greater Los Angeles Area," [http://en.wikipedia.org/wiki/Greater\\_Los\\_Angeles\\_Area](http://en.wikipedia.org/wiki/Greater_Los_Angeles_Area), accessed on September 2, 2005.

## Incompetent and Inefficient Inspectors

Not only is there an overall lack of resources, but those who are employed to do this work are expected to be competent and efficient, which isn't always the case. Union leaders in Portugal harshly criticize the management of this governmental entity in their country, which they said is classified as having the worst labor conditions amongst the original fifteen European Union Member States.

While there are labor inspectors in Portugal who carry out their work responsibly, they are overshadowed by the many labor inspectors who were appointed to their jobs by former party leaders and remained in the positions, explained Aquilino Joaquim Faustino Coelho of the Sindicato dos Trabalhadores da Construção, Mármore e Madeiras e Materiais de Construção do Sul. "There is a lack of seriousness within this department, even corruption," he said.

"Many times labor inspectors will be contacted to intervene in incidents which are clear violations of labor rights within contractual law, and they either don't go to inspect, or if they do show up, they don't even properly check which worker made the complaint," said Manuel Correia of the União dos Sindicatos de Lisboa (USL). "Unions have continually protested against these working methods but the situation has only gotten worse in the past three years. The government's attitude is that workplace problems have to be resolved between employers and employees, not by involving the department of labor inspection," he added.

## Inspectors Who Report a Worker to the Immigration Authorities

When an undocumented worker or advocate contacts the labor inspection to report a situation of abuse or exploitation, they have to have some reassurance that the inspector will not report the worker's irregular status to the Immigration Authorities. Yet in some countries visited during the course of the research for this report, it was observed that labor inspectors do denounce undocumented workers irregular legal status. This happens in the Netherlands, said Dirk Kloosterboer, Researcher at Dunya Advies. He said that it would be good if workers could contact the labor inspection to report unac-

ceptable working conditions or payment without the risk and fear of being deported, but "this is not really the case in the Netherlands, since the labor inspection agency maintains close collaboration with the Immigration Service."

It is worrying if the governmental entity charged with inspecting labor standards is sidetracked from the real issue at stake by a worker's irregular legal status. Fortunately, the department of labor inspection in a number of countries is clear about its mission, which is to uphold decent working conditions for all workers.

Stefan Malomgré, Head of the Social Inspection Unit of the Federal Public Service of Employment, Labor and Social Dialogue of the Brussels Capital Region, said that there are most likely 600 to 750 labor inspectors for the whole country of Belgium. The inspectors are divided amongst two different Federal Public Services and are all active in verifying working conditions and social security rights, including those experienced by undocumented workers. Amongst these departments, there is no obligation to denounce an undocumented worker to the police, since their main mission is to investigate if the employer is upholding the working conditions.

Inspectors in California and other U.S. states will not report workers to the Immigration Services because it is independent of their work, said Angelica Salas, Executive Director of the Coalition for Humane Immigration Rights of Los Angeles (CHIRLA). "Literally, they deal with labor issues. The only time they get involved is in situations where there is trafficking or slave labor," she said.

## Alliances with Governmental Agencies

Many organizations find it important to build relationships with governmental agencies that are required to protect workers, so that these agencies can effectively provide protection within the realm of their capacities.

While governmental agencies are commonly known for their negative practices towards undocumented workers, it is also important to underline that these institutions are not the enemy. Many times govern-

mental agencies can and want to intervene to protect workers, but are limited because they cannot effectively reach the workers.

Stefan Malomgré, Head of the Social Inspection Unit of the Federal Public Service of Employment, Labor and Social Dialogue of the Brussels Capital Region, said that if his department was contacted by an NGO or trade union, it would be possible to do many things for undocumented workers: “If an NGO or a union contacts us and asks us to investigate a situation in which an undocumented worker complained that s/he hadn’t been paid, and if this falls within our competences, we will investigate the situation and try to find a solution to the worker’s problem of not being paid. Another area that we think could be improved is the money owed to workers. There should be a way of paying an undocumented worker immediately if s/he’s a victim of fraud, because now these workers are doubly sanctioned: in most cases they are deported and their means of existence are destroyed because they often do not end up receiving the money they are owed. The employer is sanctioned, but he won’t feel it directly and even has the possibility of hiring another undocumented worker in the meantime to replace the one who was deported.”

The following sections highlight examples of the various coalitions and alliances amongst governmental agencies, organizations and other actors that have been influential in promoting workers’ rights and access to services.

### **Raising Awareness About Undocumented Workers’ Rights**

A number of organizations find it important to establish working relationships with governmental agencies that are required to protect all workers. The aim is to make these institutions aware that a worker’s legal status is irrelevant in many instances. “It seems evident, but a lot of agencies don’t know that they shouldn’t be asking about immigration status,” said Ana Avendaño, Associate General Counsel and Director of the Immigrant Worker Program at the American Federation of Labor – Congress of Industrial Organizations (AFL-CIO).

The National Employment Law Project (NELP) has taken the lead in working with agencies in the United

States to ensure that a worker’s legal status is not an impediment to protection. Within the framework of its Immigrant Worker Project, NELP has developed a number of resources as well as model legislation for ensuring that immigrant workers can access government services and other important institutions without fear of revealing confidential information. Amy Sugimori, Staff Attorney at NELP, said that NELP has been trying to work with local groups who want to negotiate with the Occupational Safety and Health Administration (OSHA), because OSHA is promoting and carrying out outreach to immigrant communities but at the same time not providing any guarantees about not asking or sharing immigration status information.

Trade unions – especially in Europe, where they are an accepted social partner (see Chapter Five) – can particularly make an impact amongst governmental entities by engaging in efforts to sensitize these institutions to undocumented workers’ rights.

The Foreign Workers’ Information Center (CITE) of the Comisiones Obreras (CCOO) trade union in the Spanish province of Catalonia has developed a working relationship over the years with all of the governmental agencies in Catalonia that deal with immigration, including the industrial tribunals, the Attorney General’s Office and the police. María Helena Bedoya of the CCOO said that CITE-CCOO’s relations with the Attorney General’s Office are particularly close and have resulted in the creation of a special Attorney General’s office to protect workers’ rights. On the other hand, it took a long time to build the protocol that it now maintains with the police.

“Ten years ago, it would have been unthinkable for a leftist trade union to have this type of relationship with the police. The mission of the Foreigners’ Police has mainly been to remove as many undocumented migrants from Spain as possible, whereas ours is the opposite – to protect these workers. So we started by asking them, ‘If these workers are exploited by their employers, then why should we deport them?’ And slowly we developed a working relationship wherein we help the Foreigners’ Police to clarify who the victims are and why they’re victims, and they issue a report that is supportive of the worker and that can be used in applying for a residence permit due to the fact that they are a victim,” said María Helena Bedoya of the CCOO.



When asked what made these governmental agencies slowly start working with the CITE-CCOO, María Helena Bedoya said that it might be due to their respect for the trade union's work in the protection of immigrant workers. "In a way it's because we do our work well and efficiently, and people recognize this. We may not always agree on things from an ideological perspective, but I think that these governmental agencies are no longer afraid of working with us because they respect us."

### Facilitating Access to a Special Help Desk for Immigrant Workers

An alliance of organizations in California seeks to promote immigrant workers' rights through a unique collaboration of governmental agencies and organizations that have direct contact with these workers.

**EMPLEO – Employment Education and Outreach** – is an alliance of federal and state governmental agencies, local business and community organizations and the consulates of Mexico, El Salvador, Guatemala, Honduras, Nicaragua and Costa Rica in the greater Los Angeles area.<sup>45</sup>

EMPLEO aims to empower the Hispanic community, especially recent immigrants (a large majority of whom are undocumented), by providing education, services and protection of their rights and responsibilities in the workplace.

The project has a toll-free help line that Latino immigrants can call to ask questions about workplace issues dealing with pay, benefits, discrimination, job safety and health. Spanish-speaking volunteers from the Diocese of San Bernardino's Catholic Charities Center staff the line. The volunteers are trained by each of the governmental agencies participating in the alliance, and forward information from callers

to the appropriate agency. If the agency determines that the case meets all of the required criteria, then it contacts the worker in order to proceed with the case.

By having the **Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA)** involved, it reinforces the notion that legal status is irrelevant for workers who need to contact or file a case at a government agency concerning a labor issue, said CHIRLA Executive Director Angelica Salas. "We wanted to try to facilitate direct access to these agencies, so we have an agreement with these agencies about workers' immigration status. We let people know that it doesn't matter what your immigration status is; you can still use these governmental agencies. That's also why the consulates are involved, so that people would be connected based upon their country of origin, as well as the church and the business community," she said.

In less than a month and a half after EMPLEO was launched in July 2004, 700 people used the service, indicating the need for more services directed at the immigrant community and enforcement of labor laws. "Part of the reason why we wanted EMPLEO to be such a broad alliance was to actually create an official documentation of the need. So if you have 700 cases in such a short time, then you know that there is a huge need and it might be a way of prompting more money to go into enforcement," said Angelica Salas.

### Collaborating on Strategies to Improve Labor Enforcement

In response to the problem of inadequate labor law enforcement, the Coalition of Immigrant Worker Advocates (CIWA)<sup>46</sup> was formed in 2001 to improve

<sup>45</sup> Partners in the EMPLEO Program include: the U.S. Department of Labor's Wage and Hour Division and Occupational Safety and Health Administration (OSHA); the U.S. Equal Opportunity Commission; the California Division of Labor Standards Enforcement (DLSE) and Division of Occupational Safety and Health (CAL-OSHA); the Diocese of San Bernardino, the consulates of Mexico, El Salvador, Guatemala, Honduras, Nicaragua and Costa Rica; the Regional Hispanic Chamber of Commerce; and the Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA).

<sup>46</sup> The Coalition of Immigrant Worker Advocates (CIWA) is a collaborative effort of the Garment Worker Center, Sweatshop Watch, Coalition of Humane Immigrant Rights of Los Angeles (CHIRLA), Maintenance Cooperation Trust Fund, Korean Immigrant Workers Advocates (KIWA), Pilipino Worker Center, Instituto de Educación Popular del Sur de California (IDEPSCA) and UCLA Labor Center.

the working conditions and labor law enforcement in low-wage industries around the state of California, including domestic, day labor, garment, market, restaurant and janitorial industries.

One of CIWA's approaches has been to work with the labor officials from the Labor and Workforce Development Agency to develop strategies for improving labor law enforcement within these complex industries where violations are rampant, predatory employers run businesses with total disregard for the law, and sub-contracting arrangements make it easier for parties to avoid labor law compliance.

An example of how CIWA works to ensure accountability for labor law enforcement is by meeting regularly with labor officials to propose ways to strengthen and streamline enforcement efforts. Another way CIWA pushes for reforms is to participate in public hearings where workers can testify about their experiences with the labor commissioner, describing the obstacles they face at every stage of filing a wage claim (see Chapter Eight), as well as other violations at work. "On the one hand, we try to work collaboratively with labor agencies to bring forth proposals that could save resources and increase effectiveness. Often, we are able to bring additional resources that help their work, such as language and outreach capacity. On the other hand, when we see that agencies are failing to enforce the law or protect workers,

we have to put pressure on them to ensure accountability," explained Alejandra Domenzain, Associate Director of Sweatshop Watch.

CIWA has a unique role in that it looks at patterns of abuse of certain employers or industries. Some of the member organizations of the Multi-Ethnic Immigrant Worker Organizing Network (MIWON) are also part of CIWA, because they recognize the importance of working within a coalition that can look beyond individual cases to industry-wide problems, said Liz Sunwoo, MIWON Coordinator. "We're just one organization and can battle one employer at a time, or maybe two. But with CIWA we're able to change the way the state uses enforcement by giving them more innovative ideas on law enforcement based on workers' experiences. In coalitions we can take on such huge issues as immigration reform (through MIWON) and labor law enforcement (through CIWA)," she said.

### **Influencing an Administration's Handling of a Particular Issue Affecting Undocumented Workers**

In an effort to assist workers and advocates dealing with problems encountered by "no-match" letters, the National Immigration Law Center (NILC) has developed a tool-kit that contains background information on the no-match program, samples of the various no-match letter sent by the Social Security

#### **"NO-MATCH" LETTERS AFFECT UNDOCUMENTED WORKERS IN THE UNITED STATES**

The U.S. Social Security Administration often sends employers letters informing them that some of their workers' social security numbers and names don't match. These letters are so-called "no-match" letters.

The National Immigration Law Center (NILC) Director of Programs, Marielena Hincapié, explained how the "no-match" letters have affected undocumented workers:

*"The Social Security Administration sends these letters to workers at their home address, and now are also sending some of them to employers. When employers get them, they're very confused because the letter says that the worker's name and their social security number do not match,*

*and they don't match the Social Security Administration's database."*

*"It doesn't mean that the numbers are wrong or false, or illegal, but that is immediately of course the reaction from employers. They think 'Oh my goodness, this person lied to me, they're undocumented,' and they fire workers on the spot, or they just give them a couple of days to correct their papers. Or, even in worse situations, employers know that the workers are undocumented and have received these letters in the past and don't do anything. But it's not until the workers start organizing a union or until the workers complain about sexual harassment or a safety violation, or whatever, that the employers suddenly remember they got these letters from the Social Security Administration and use them to fire the workers."*

Administration, and practical suggestions for workers and community and labor organizations about how to effectively deal with employers on this issue.

NILC also finds it crucial to build a relationship with the Social Security Administration to be able to have an effect on this agency's handling of the no-match issue as well as other issues affecting immigrants.

The **National Immigration Law Center (NILC)** has worked with the Social Security Administration (SSA) since 1996 to influence the way this governmental agency conveys information in "no-match" letters it sends to workers and employers. Marielena Hincapié, NILC Director of Programs, said that NILC has literally re-written these letters with the SSA every year, because issues kept coming up again and again and employers still didn't understand what kind of response they had to make when they received the letters.

"In 2003 we finally got the SSA to accept our changes and now we have specific language in the letter the SSA sends to employers, that says in big letters: 'Important: This letter does not say anything about the worker's immigration status. You cannot threaten, fire or suspend a worker simply based on having received this letter.' In the letter the SSA sends to workers, it also says, 'If you think that your rights have been violated contact these agencies,' and lists the agencies," said Marielena Hincapié.

Maintaining a close working relationship with the SSA is helpful in NILC's work on other issues concerning immigrants, such as public benefits and employment issues. But there have been instances where NILC has had to take a much stronger position and has helped organize protests and actions against the SSA at the local level.

"One of the things that we did in response to the no-match issue was to help organize local coalitions that would meet with the local Social Security Office, while we at NILC were meeting with them at the national level. We were all sending the same message so that

everybody in different parts of the country that was meeting with the SSA was saying, 'These social security no-match letters are causing workers to be fired, their employers are retaliating against workers, they're using it in the union context,' so that slowly that message would trickle up while we were meeting with them at the national level. The SSA is still a bureaucracy and there are times when it works well and other times not. But we've been fortunate to maintain a good relationship and when it works well, we take advantage of it as much as we can," said Marielena Hincapié.

### **Establishing an Agreement with the Police to Protect Domestic Workers**

An organization in the United Kingdom has fostered a relationship with the police in order to receive protection for migrant domestic workers who face a particular form of abuse from their employers.

The organization Kalayaan works primarily with immigrant women who are employed as live-in domestic workers in private households in the greater London area. Many of these workers arrive in the United Kingdom on specific domestic working visas but become undocumented when their visas expire and they remain in the country.

More than half of the women that seek assistance from Kalayaan have had their passports withheld by their employers, and they come to the organization when they've run away from their employers because they are exploited and/or abused, said Fiona Luckhoo of Kalayaan. "Not all workers will ask their employers for their passport back, because they're too frightened. But generally what we find is that for those who do ask for their passport back, the employers will do things like threaten to have their visa revoked, or send them back to their country of origin if they leave. So what tends to happen is people just leave, without saying anything. And their passports are usually locked away somewhere by the employers, and they don't know how to get them themselves," she said.

In response to the phenomenon of passport retention, Kalayaan has sought to develop a relationship with the police to offer protection to these vulnerable workers.

In 2004, the non-profit organization **Kalayaan** set up an agreement with the police departments in two boroughs in London to foster a better handling of cases of passport retention of migrant domestic workers.

When a worker flees a situation of exploitation or abuse and asks Kalayaan for help in retrieving her passport from her employer, the organization will either directly phone the employer, or write an official letter in which it states that the employer has seven working days to return the passport to its office or to the worker, in London. The police helped Kalayaan with the writing of the letter and also allow its logo to appear on the letter. As a result of the letter, Kalayaan has had some success in getting more passports returned. Nonetheless, if the employer does not get back to Kalayaan within a period of seven working days, Kalayaan reports it as theft.

Once the passport retention has been reported as theft, the worker is given a crime reference. But as far as Kalayaan is aware, no follow-up is made to investigate the employer for exploitation or abuse. "The police will investigate allegations of theft made by employers against domestic workers, but if a worker makes an allegation against her employer, it is not really investigated. The police don't seem to take the passport retention very seriously at all. And that's because strictly speaking, it's not a criminal offence, because the passport is the property of the embassy, not of the individual," said Fiona Luckhoo of Kalayaan.

While the agreement has been working well on the whole, Kalayaan runs into problems in boroughs where there isn't an agreement and the police are not sure about how to properly treat such cases. There is still a lot of ignorance about immigration laws. "What we tend to do, especially if the worker hasn't got any proof of their status or if their visa has actually expired, is go with them to the police station. If there are any problems, we can get a solicitor if necessary. We are very, very wary about sending a worker to the police, especially because the police have been known to call Immigration," explained Fiona Luckhoo.

Despite these drawbacks, Kalayaan has been successful in getting some passports returned and aims to extend the agreement to more police departments in other boroughs in London as well as throughout the country.

## GENERAL FINDINGS

- Working *together* with government officials is crucial for the protection and promotion of undocumented workers' rights. This chapter has focused on ways of collaboration between government officials, NGOs and other organizations.
- There are many obstacles that affect the ability of the governmental entity responsible for labor inspection from promoting fair working conditions for undocumented workers. Lack of resources means that they cannot do proper investigations. Some examples show that from the time a complaint is filed, eight or nine months might pass before an inspector is able to visit the worksite. In the meantime the worker has often either been fired or has left the worksite. Furthermore, many workers have several employers, making investigation more difficult since it entails going after multiple employers at the same time. Once a worker wins a case, the lack of resources also compounds the issue of ensuring that the worker receives compensation.
- There are several ways to collaborate with governmental agencies, such as informing them about undocumented workers' rights, and making government officials aware of the fact that the legal status of workers is irrelevant in many instances. This improves the possibility for undocumented workers of gaining access to government services without fear of being deported. Participating in public hearings and meeting on a regular basis with government officials enables organizations to affect policy developments and to improve labor enforcement.
- Finally, collaborating with the police and influencing a governmental entity's handling of certain issues such as in the case of "no-match" letters and the retention of passports is also important for the protection and promotion of undocumented workers' rights.

## 10. Advocating for Legal Status of Undocumented Workers

*“We’re asking for work and a residence permit so that we can better defend our rights.”*

• Henry Cardona of the Collectif des travailleurs/euses sans statut légal – Genève (CTSSL)

*“If you’re undocumented, you don’t have all of the rights that a worker with legal status has. Those who are legal face many obstacles in asserting their rights, and those who are undocumented face even more. We help workers to obtain protection if they’re undocumented, but our main aim is to help them become legalized.”*

• Lamine Sow of the Confederazione Generale Italiana del Lavoro (CGIL Piemonte)

A final way of protecting undocumented workers is to advocate for a more stable legal status through regularization. This chapter begins with a presentation of the different reasons why the legalization of undocumented workers is justified not only for workers and their advocates, but also for society at large.

The remaining sections list various examples of how NGOs and especially trade unions advocate for special regularization campaigns to legalize undocumented workers, and provide assistance to workers during the course of a legalization campaign.

### Why Advocate for Legal Status?

This report has gone to great lengths to show that even though they do not have legal residence in Europe or in the United States, undocumented workers do have the right to fair working conditions and can assert these rights. Nonetheless, there are many benefits for undocumented workers – as well as for society on the whole – if they obtain legal residence status.

### Legal Status = Increased Protection

“Undocumented status in the United States is a license to abuse,” said Ana Avendaño, Associate General Counsel and Director of the Immigrant

Worker Program at the American Federation of Labor – Congress of Industrial Organizations (AFL-CIO). “It creates a natural division amongst workers. So a large part of what we do is to teach people that we have to focus on the worker’s side, and at the same time we work for legalization, because that’s the other side of this. And how do you take away a license to abuse? By legalizing people.”

Legal status is a means for undocumented workers to have increased protection. “We’re asking for work and a residence permit so that we can better defend our rights,” said Henry Cardona of the Collectif des travailleurs/euses sans statut légal – Genève (CTSSL). This is also the reason why so many trade unions engage in campaigns to regularize undocumented workers.

The União dos Sindicatos de Lisboa (USL) has achieved many positive results over the years by advocating for the legalization of undocumented migrants in Portugal. The trade union was influential in obtaining changes in the law that resulted in five regularization campaigns that have taken place since 1993. “As a trade union, we feel that immigrants are first of all citizens. They can be members of our union if they’re legal or undocumented. But we emphasize that all workers should be legal so that they can have increased protection. The union will thus always help those who aren’t legal to obtain legal status,” said Manuel Correia of the USL.

Cuc Vu, Immigration Campaign Manager of the Service Employees International Union (SEIU), said that legalization is an important area that the U.S. trade union will cover in a four-year action plan that it adopted in June 2004. The action plan identifies seven “strengths.” The immigration program taps into global strength, political strength and community strength. “From our union’s perspective, we think of immigration not only within a rights framework but also as a movement building vehicle. We begin through an end goal of legalization to build a powerful advocacy and community base that has the power to change the laws concerning immigration as well as in the workplace,” she said.

### Legal Status = More Visibility

“Regularization brings to the limelight many problems that were hidden and brings millions of people out of the shadows,” said Carlos Trindade of the Confederação Geral dos Trabalhadores Portugueses - Intersindical Nacional (CGTP-IN).

Another reason why unions and NGOs engage in advocacy for regularization is to bring to the surface the many workers who toil in the informal economy. In the development of social policies, it is more conducive to have a *visible* target group as the beneficiaries of such policies. It is contradictory to the promotion of social policies that part of the population in a country remains invisible.

### Regularization Is Not *the* Solution

It should be noted, though, that regularization is never considered to be the only solution to the problems of exploitation and abuse of undocumented workers. Legalization is not a long-term solution, and only affects those immigrants without legal residence who are in the particular country at a given time. Those who are legalized are soon replaced by others, demonstrating that certain economic sectors need the presence of undocumented - and hence unprotected, cheap, and flexible - workers to continue running well.

A comprehensive solution goes beyond the regularization of workers by tackling the reason *why* these low wage sectors always rely on undocumented

workers.<sup>47</sup> Further discussion on the need to open up the debate on the low-wage sector is included in the recommendations at the end of this report.

## Promoting Regularization Campaigns

This section highlights the efforts of some trade unions and organizations in advocating for regularization campaigns for undocumented workers.

### Proxy Program to Register Undocumented Workers

In recent years a campaign to support undocumented workers was launched in Geneva, Switzerland, with the end of goal of obtaining the legalization of these workers.

In 2001, a host of NGOs, unions and community organizations formed the Collectif de soutien aux Sans-papiers Genève to provide support to undocumented migrants in Geneva and to do advocacy work towards the government. One of the participating trade unions in the coalition launched a program to register undocumented workers in its union by working with a community group of undocumented workers.

The **Syndicat interprofessionnel de travailleuses et travailleurs (SIT)** launched a proxy program in 2001 to register undocumented workers in the union. The undocumented worker would give the SIT the power to intervene on his/her behalf if they were arrested due to their irregular status.

To register the workers, the SIT worked closely with the **Collectif des travailleuses et des travailleuses sans statut legal - Genève (CTSSL)**, an organization of approximately 300 undocumented workers in the Geneva area.

The majority of the workers in the CTSSL are Latin American, but some members are African and Filipino immigrants. The CTSSL aims to bring together undocumented workers to call for a regularization of their residence

<sup>47</sup> See Michele LeVoy, Nele Verbruggen, and Johan Wets, eds., *Undocumented Workers in Europe* (Leuven: PICUM and HIVA, 2004).

status, and to make referrals, inform, and search for solutions to the various difficulties encountered by the workers in their daily lives. The CTSSL is supported by a host of trade unions, organizations, political parties, churches and individuals. It participates in working groups on the issue of women and migration in several trade unions.

By 2004, nearly 5,000 undocumented workers were registered through the proxy program. The Collectif de soutien aux Sans-papiers Genève (Geneva Support Collective for Undocumented Migrants), which groups churches, NGOs, political parties, and trade unions, has applied for the regularization of these workers based on their contributions to the economy.

### **U.S. Trade Union Leads the Way to Change Policies**

Some trade unions in the United States have also actively supported undocumented workers in their struggle for legalization.

The Service Employees International Union (SEIU) has been one of the leading forces in the labor movement to change immigration laws. SEIU spearheaded a campaign in which it collected one million postcards and delivered them to President Bush to encourage the administration to tackle the issue of a legalization program for undocumented migrants. Following the campaign, SEIU gave its full support to the Hotel Employees & Restaurant Employees (HERE), the union that took the lead in organizing the Immigrant Workers Freedom Ride (see Chapter One).

“We realize that if we don’t allow our members to freely be able to fight for their rights, then they remain with the feeling that they’re going to lose their livelihood or their future by being deported. We need to obviously legalize their status, and the SEIU along with other unions has been leading the way to change policies concerning undocumented workers,” said SEIU Western Regional Director Ben Monterroso.

### **NGOs Advocate for the Legalization of Workers**

The organization Domestic Workers United (DWU) is affiliated with two national campaigns for a broad legalization program for undocumented immigrants: the National Coalition for Dignity and Amnesty and the National Legalization Campaign of the National Network for Immigrant and Refugee Rights (NNIRR). Through these coalitions, DWU participates in various coordinated activities to transform the immigration system and to receive the most up to date information on the fight for general amnesty.

The National Day Labor Organizing Network (NDLON) also does work on legalization, mainly by participating in existing campaigns. Pablo Alvarado, NDLON National Coordinator, said that 1,000 day laborers participated in the Immigrant Workers Freedom Ride (see Chapter One), which called for the regularization of undocumented workers as one of its main themes.

### **Providing Assistance to Workers to Legalize Their Status**

In addition to advocating for measures to legalize undocumented workers, many organizations and unions provide assistance to workers by helping them file an application to regularize their status. This assistance may be a continual facet of an organization’s work, or be limited to the period when a regularization campaign is launched.

The Sindicato de Obreros del Campo (SOC) dedicates much of its time to helping workers legalize their status. “We help them with their documentation, informing them about ways that they can be regularized, such as through family reunification. We also accompany them to the Foreign Office to file a demand for regularization. We’re constantly busy in this area,” said Gabriel M’Binki Ataya of the SOC.

During the 1999 regularization campaign in Belgium, the Filipino migrants’ organization Samahan worked with the Filipino chaplaincy in Brussels and other organizations to facilitate the application and follow-up of files.

The Serviço Jesuita aos Refugiados (JRS) was active during the 2001 legalization campaign in Portugal by putting undocumented workers in touch with employers, who also benefited because the workers could become regularized if they had a job.

The London-based organization Kalayaan also helps workers to regularize their status, since the application for legalization is based upon having a job.

Two trade unions in Europe have done a substantial amount of work in recent legalization campaigns by informing workers about the possibilities for regularization as well as helping them to submit a file.

During the 2003 regularization campaign in Portugal, the **União dos Sindicatos de Santarém** helped undocumented workers make applications to legalize their status. The union helped the workers whose employers hadn't made social security deductions to make them, so that they could submit an application for legalization.

"Our capacity for organization and our ability to work with employers, with the department of labor inspection, and with the Foreigners' Office has been influential in helping undocumented workers to obtain legal residence permits. Of all of the workers that we've helped to apply for legalization, we can guarantee that more than 90% have been able to obtain legal residence in Portugal," said Aquilino Joaquim Faustino Coelho of the Sindicato dos Trabalhadores da Construção, Mármore e Madeiras e Materiais de Construção do Sul, one of the unions affiliated to the União dos Sindicatos de Santarém.

There have been a number of regularization campaigns in Italy in recent years – in 1986, 1990, 1995, 1998 and 2002 – and the **Confederazione Generale Italiana del Lavoro (CGIL)** has provided assistance to undocumented workers in all of these campaigns. It also informs these workers' bosses about possibilities of regularizing the workers.

"The general policy within the CGIL is to help undocumented workers become legalized. Because if you're undocumented, you don't have all of the rights that a worker with legal status has. Those who are legal face many obstacles in asserting their rights, so those who are undocumented face even more, right? We help workers to obtain protection if they're undocumented, but our main aim is to help them become legalized," said Lamine Sow of the CGIL.

## GENERAL FINDINGS

- Regularizing undocumented workers is a way of increasing protection of their rights. Obtaining a work and residence permit gives undocumented workers a better opportunity of defending their rights.
- There are several reasons as to why regularization is good not only for undocumented workers, but for society at large. Having a large group of people working in an informal economy undermines the economy as a whole. Regularizing undocumented workers is a way of combating the informal economy while at the same time improving the lives of these workers. Furthermore, regularization creates more visibility of the target group that social policies are meant to protect but who, because of their irregular status, are denied this protection.
- Regularization campaigns are promoted in several ways. One way is through coalitions of NGOs, unions and other organizations. Another way is for trade unions to register the number of undocumented workers within unions and at the same time actively support undocumented workers in their struggle for legalization by putting pressure on policy makers. Many organizations also assist workers by helping them file an application to regularize their status.
- Regularization, however, is not a long-term solution, since the undocumented workers who are regularized are soon replaced by new workers. Attention to the underlying reasons for why low wage sectors rely on the work of undocumented workers must be given immediate priority in order to create long-term solutions for the root causes of undocumented workers.



## The Way Forward: Ten Policy Recommendations

The employment and the exploitation of thousands of undocumented migrant workers in Europe is a symptom of the shortcomings of social, employment and migration policies. Tackling the roots of the problem of the exploitation of undocumented workers therefore constitutes a major challenge, requiring concerted efforts in all of these fields.

PICUM does not hold a magic key for solving the situation in all of its complexity. But the expertise we have acquired by working on a daily basis with undocumented migrants throughout Europe leads us to formulate the following recommendations that should be taken into account by policy makers.

It should be noted that our use of the term “policy makers” does not refer exclusively to national or European lawmakers. Many more institutions and bodies contribute to the development of policies in the field of migration and more explicitly in the area of undocumented migration. In a broad sense, policy makers include unions and schools, as well as local authorities. All of these actors formulate and implement policies that affect PICUM’s target group and the public at large.

### 1. Acknowledge the social and economic presence of undocumented migrants

PICUM urges policy makers to acknowledge the presence of undocumented migrants in the European Union. Whether they are desired or not,

large numbers of undocumented migrants are present in the Member States of the European Union, and even though they tend to live in the shadows, they are part of our societies and our economies.

Although all consumers in the EU are affected by the presence of undocumented migrants, too many policy discussions are held without taking this reality into account. To structurally deny the presence of undocumented migrants in the EU inevitably leads to ineffective social, employment and migration policies.

Irregular migration is mainly debated in terms of the fight against illegal migration. Nonetheless, this fight is unsuccessful, and it has been acknowledged by the European Commission that illegal migration will never disappear. The need for social policies directed at undocumented migrants is therefore an urgent necessity.

Confronted with this fact, politicians often resort to almost commonplace conversation stoppers, ranging from “We cannot reward people who break the law,” to “The better treatment we give them will make more of them come here,” or “Regularization schemes have a magnet effect.” None of these concerns justify not dealing with the issue at all. These assumptions need to be carefully studied, and the alternatives should be investigated.

### 2. Prioritize data collection

To be able to develop genuine policies in the fields of migration, integration, and employment, it is important to have an understanding of who undocumented migrants are, why they come here and how they survive.

There is a general lack of research on undocumented migrants in Europe. Policy makers should prioritize collecting and exchanging data on mainly three levels:

- Firstly, there is a need for qualitative and quantitative research regarding undocumented migrants.
- Researchers should also engage in impact studies on current and future policies: What are the societal impacts of policies on irregular migration? What are the impacts of migration policies on working conditions in general and specifically on undocumented workers?
- Thirdly, research should be conducted on experimental and pilot problem resolution processes, demonstrating alternative constructive and cooperative policy options.

### **3. Involve (local) NGOs in conducting research and making policies**

To collect information on undocumented migrants, it is important to have a relation based on trust, as undocumented migrants are often reluctant to speak about their situation. Local NGOs providing assistance to undocumented migrants on a daily basis are therefore important partners for researchers.

It is also essential for NGOs to be involved in the process by which researchers and research institutions develop their work plans. Based on their expertise, NGOs are good advisors concerning research priorities and ensure that the output of the research is relevant and supported.

NGOs' expertise is also beneficial for policy makers. Authorities and grant makers should therefore enable grassroots NGOs to contribute to research and to policy work by providing them with the time and the resources to do so. Indeed, it is mostly these NGOs that are very much put under pressure to work on a practical level. As a consequence, their role in criticizing policies, stimulating the public debate, and assisting in research projects comes in second place.

## **4. Mainstream undocumented migrants in integration policies and in the Social Inclusion Strategy**

### ***Integration policies***

If social cohesion is a real concern for policy makers, the living and working conditions of undocumented migrants should be addressed.

Many local authorities in Europe have voiced their concerns about the presence of large numbers of undocumented migrants in their cities and local districts, indicating that it is detrimental for social cohesion that the needs of these immigrants are not being addressed. Even though there is a cost in providing services to undocumented migrants, most local authorities know very well that the price of *not* providing these services is much higher.

The urgent integration needs of undocumented migrants are generally very basic and concern access to health care, housing, education for undocumented minors, and fair working conditions. Nonetheless, it is advisable that other integration measures designed for legal migrants (such as language courses) should not be closed off to undocumented migrants.

### ***Social Inclusion Strategy***

A stronger link between migration and the European Social Inclusion Strategy is urgently needed. The main aim of this strategy is to fight social exclusion and poverty. This report underlines that undocumented migrants are a vulnerable group and thus at risk for social exclusion and poverty.

The European Union upholds principles of social inclusion. The creation of second-class citizens and workers should thus be avoided at all costs. To this end, PICUM urges European policy makers to include undocumented migrants as a specific target group in the Social Inclusion Strategy.

## 5. Invest in workplace inspection

This report has referred to the attractiveness of undocumented workers for employers, a phenomenon that mainly stems from the fact that these workers are not protected, and therefore unlikely to complain against exploitative conditions, which allows employers to make more profits by cutting down labor costs. The chance that an employer will be caught and penalized for exploiting an undocumented worker is indeed still very small in comparison to the potential profits they can gain by hiring these workers.

The demand for undocumented workers is not seriously addressed in policy debates. European governments overwhelmingly focus on the supply side, as if there was no demand for undocumented labor.

PICUM urges national and European authorities to shift the focus away from border control and to invest more means in workplace inspection.

As part of this approach, PICUM urges governments to invest in legislative measures penalizing employers who exploit and abuse workers. This report has revealed that it is possible to develop laws that prevent employers from evading their responsibilities towards workers.

To ensure the enforcement of these and other legislative measures, a greater number of labor inspectors is needed to check if employers respect the minimum wage and working hours and take measures to ensure that workers (or their families, where relevant) receive financial compensation in the case of workplace accidents or injuries. Labor inspectors should be trained and sensitized to specific issues concerning undocumented workers. They should consider undeclared workers as victims, and should not report a worker's illegal status to the foreigners' police.

## 6. Safeguard the right to equality before the law

The right to equality before the courts and tribunals is a universal human right. To deny people the right to defend themselves in the judiciary system renders any claim to any other right problematic.

If undocumented workers would be given the means to legally enforce their rights, this would reduce incentives for hiring them, since they would no longer be an "easily exploitable" workforce. Given that the detection of poor employment conditions and exploitative employers is in governments' interest within the context of combating the informal labor market, legal challenges by undocumented workers against their employers should be facilitated.

This also means that there should be no risk of deportation if an undocumented worker files an official complaint against their employer. Judges and other staff in labor courts and industrial tribunals should not report undocumented workers to the foreigners' police, and the migration status of a worker should not play a role in a decision taken by a judge. We refer in this context to the United States, where courts have issued protective orders to ensure that immigration status will be kept out of the court proceedings.

## 7. Safeguard the right to organize

The benefits and even the necessity of organizing undocumented workers to fight against exploitation and abuse are illustrated throughout this report. Organized workers have more strength and an increased potential for making an impact in labor disputes.

An increasing number of unions are beginning to work on the issue of undocumented workers and see the urgent need to include them in their membership. It is indeed the mission of unions to uphold workers' rights: the present situation of exploitation and abuse of undocumented workers and the lack of protection in labor legislation is the same phenomenon that occurred more than a century ago when unions were beginning to be established. To deny a group of workers the right to organize would entail a serious relapse in the labor movement.

Including undocumented workers in unions is also crucial for unions' representativity and power base. 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

workers with permanent jobs in traditional industries, who feel threatened by the growing number of unprotected workers.<sup>48</sup>

To protect the most vulnerable workers and to ensure the survival of the trade union movement, PICUM subscribes to the conclusions made at an international trade union conference organized by the Dutch union FNV, that unions should agree that this is an issue worth fighting for, they should educate their members and officials, and allocate the necessary resources.<sup>49</sup>

For national authorities, it is of crucial importance to safeguard undocumented workers' right to organize in the law. This report has revealed that employers often prohibit workers from organizing. This adds to the importance of very clear and unbiased legislation in this regard.

## 8. Regularize undocumented migrants

In the "Study on the links between legal and illegal migration" (COM(2004) 412 final), the European Commission stated that there are limits to the existing channels for legal immigration and therefore many Member States establish ways to regularize undocumented migrants. The Commission also states that by carrying out regularization campaigns, governments attempt to incorporate these migrants in society rather than leave them on the margins, subject to exploitation.

Based on the experiences of its members, PICUM can fully endorse these findings. The experiences of past regularization programs have shown that the most effective way of reducing exploitation and employers' illegal practices is to remove workers' irregular and unprotected status. This renders them less vulnerable in employment relations.

Society at large benefits from reducing the number of people living outside of the system. Policies in general will be more effective. Regularizing workers also regularizes jobs, thus more contributions are brought into the social and welfare systems.

## 9. Open up the debate on the future of the low wage sector

As indicated in Chapter Ten of this report, regularizing undocumented migrants is not the only solution. Undocumented workers who are legalized are often replaced by new undocumented migrants. Indeed, national and European governments should take into account that several economic sectors in Europe depend on a cheap and voiceless workforce, and that the strong desire to rely on undocumented workers is not tackled by legalizing some of these workers.

This observation requires thinking about the question of *why* the low wage sector relies heavily on undocumented workers. This sector needs to be analyzed and studied, and a debate on its future should be begun.

If policy makers refuse to tackle the question of the regulation of the low wage sector in Europe, it is very unlikely that the demand for undocumented migrant workers will be reduced.

## 10. Ratify the Migrant Workers Convention

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

<sup>48</sup> See FNV, *From Marginal Work to Core Business: European Trade Unions Organising in the Informal Economy*

<sup>49</sup> Ibid.

# Index of Organizations

## EUROPE

### Andalucía Acoge

#### *Andalusia Welcomes*

Andalucía Acoge is a federation that was established in 1991 by the founding members Sevilla Acoge, Almería Acoge, Granada Acoge and Málaga Acoge. These organizations wished to join forces to give a more efficient and global answer to the recent immigration phenomenon in Spain. The overall objective of Andalucía Acoge is to promote the integration of immigrants in the host society through an intercultural approach, by fostering communication among diverse cultures coexisting in the same geographic area.  
(pp. 61-62)

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Email: [acoge@acoge.org](mailto:acoge@acoge.org)  
Website: <http://www.acoge.org>

### Associazione IRES Lucia Morosini

#### *The IRES Lucia Morosini Association*

IRES Lucia Morosini is a non-profit organization that was founded by the CGIL Piemonte trade union in 1982. From the beginning, the institute has been characterized by a pluralistic approach, gathering the experiences of researchers, trade union leaders and social workers. The institute aims to carry out studies and research on the present state and the dynamics of the economy and social issues, particularly focusing on the Piedmont region in Italy.  
(pp. 55, 76)

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Website: <http://www.irescgiltorino.it>

### Casa do Brasil de Lisboa

#### *The Brazil House in Lisbon*

The non-profit organization Casa do Brasil de Lisboa was founded in January 1992, by Brazilians residing in Portugal and by Portuguese people with an affinity for Brazil. The Casa do Brasil is open to all nationalities and promotes the interests of all immigrants in Portugal, especially those from Brazil and from Portuguese-speaking countries. The organization upholds social integration, equality of rights and civil responsibilities of immigrants. It acts as a center for reflection and promotion of thematic debates and actively intervenes on immigration policy issues in Portugal, as well as on anti-racism and anti-xenophobia issues.  
(pp. 29, 83)

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[casadobrasil@net.novis.pt](mailto:casadobrasil@net.novis.pt)  
Website: <http://www.casadobrasildelisboa.pt/>

### CGIL Piemonte • Confederazione Generale Italiana del Lavoro

#### *Italian General Confederation of Labour*

The CGIL is the oldest Italian trade union organization and is also the most representative one, with over 5.5 million members including workers, young people entering the world of work and retired people. When it was founded in 1906, it had 200,000 members. The CGIL organization has a double structure: a vertical one, with the branch union organizations (textile, chemical, industrial, etc.), and a territorial one, with labor chambers located throughout the country. There are currently fifteen national trade federations and 134 labor chambers. The CGIL Piemonte is a regional branch covering the Piedmont region in Italy.  
(pp. 50, 54-55, 57-58, 76, 99, 102)

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<http://www.pmt.cgil.it/>

### CGTP-IN • Confederação Geral dos Trabalhadores

#### *Portugueses - Intersindical Nacional*

#### *General Confederation of Portuguese Workers*

The trade union organizations which form the General Confederation of Portuguese Workers (CGTP-IN) are the trade unions, sectoral federations and trades councils. There are 97 trade unions and 13 sectoral federations affiliated to the CGTP-IN. The territorial structure of the CGTP-IN is composed of 22 trades councils whose scope corresponds to the political and administrative division of the country. At the 10th Congress of the CGTP-IN held in January 2004, there were 759,500 workers represented. Among these, 664,500 were represented by trade unions directly affiliated to the CGTP-IN and 105,000 by unions which, not being formally affiliated, regularly take part in its activities.  
(pp. 50, 52, 100)

#### CONTACT INFORMATION:

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Email: [cgtp@cgtp.pt](mailto:cgtp@cgtp.pt)  
Website: <http://www.cgtp.pt>

**CITE-CCOO • Centro de información para trabajadores y trabajadoras extranjeros de las Comisiones Obreras***Information Center for Foreign Workers of the Comisiones Obreras Trade Union*

CITE is an organization promoted by the CCOO trade union to support immigrants. CITE provides the following services to immigrants, free of charge: advising and orientating about immigration law; procedure to acquire a work permit, residency, family expatriation, citizenship and visa exemption; Catalan language classes; and mediation and communication with different educational centers in Catalonia in different languages.

(pp. 50, 52, 55-58, 75, 77, 81-82, 91, 94, 95)

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Fax: +34/93/315.17.24  
Email: cite1@concc.es (Organization)  
ricart.bedoya@icab.es (Legal Services: Ms. Maria Helena Bedoya)  
Website: <http://www.concc.es/cite>

**CODETRAS • Collectif de défense des travailleurs étrangers dans l'agriculture***Collective to Defend Seasonal Migrant Farmworkers*

CODETRAS is a network of organizations and trade unions that defend the rights of seasonal migrant farmworkers in the Bouches du Rhône region in the south of France. The following organizations and trade unions are members of CODETRAS: A.S.T.I. de Berre, Association de coopération Nafadji Pays d'Arles, ATTAC Martigues Ouest étang de Berre, Cimade, Confédération Paysanne, CREOPS, Droit Paysan Aureilles, Espace-Accueil aux étrangers, Fédération du MRAP 13, FGA CFDT, FNAF CGT, Forum Civique Européen, Ligue des Droits de l'Homme du Pays d'Arles.

(pp. 17, 77, 84)

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**CTSSL • Collectif des travailleurs/euses sans statut légal - Genève***Geneva Collective of Undocumented Workers*

The Collectif des travailleurs/euses sans statut légal – Genève (CTSSL) is a grassroots organization of approximately 300 undocumented workers residing in the area of Geneva, Switzerland. The CTSSL aims to bring together undocumented workers to call for a regularization of their residence status and to make referrals, inform, and search for solutions to the various difficulties encountered by the workers in their daily lives. The CTSSL is supported by a host of trade unions, organizations, political parties, churches and individuals. It participates in working groups on the issue of women and migration in several trade unions.

(pp. 14-15, 31, 58, 74, 99, 100-101)

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[elcolectivoginebra@ctssl.org](mailto:elcolectivoginebra@ctssl.org)

**ECF****European Civic Forum**

The European Civic Forum (ECF) was founded a couple of months after the fall of the Berlin Wall in 1989 by citizens from Eastern and Western Europe who had already been cooperating within the framework of the European Committee for the Defense of Refugees and Immigrants (CEDRI) and the European Federation of Free Radios (FERL). In recent years, the European Civic Forum has particularly been active in organizing international missions to El Ejido, Spain, to monitor the human rights conditions of migrant workers and the escalation of racial violence. The ECF is a founding member of the French network CODETRAS.

(pp. 16, 18, 30)

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Email: [francecf@forumcivique.org](mailto:francecf@forumcivique.org)  
Website: <http://www.forumcivique.org>

**ETUC****European Trade Union Confederation**

The European Trade Union Confederation (ETUC) was set up in 1973 to promote the interests of working people at the European level and to represent them in the EU institutions. The ETUC membership presently consists of 76 national trade union confederations from 34 European countries, as well as 11 European industry federations, making a total of 60 million members, plus observer organizations in Macedonia and Serbia. The ETUC is one of the European social partners and is recognized by the European Union, by the Council of Europe and by EFTA as the only representative cross-sectoral trade union organization at the European level.

(pp. 12, 42-43, 46, 54, 57, 60)

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Website: <http://www.etuc.org>

**GISTI • Groupe d'information et de soutien des immigrés***Immigrants' Information and Support Group*

GISTI has been working for the equality of rights of immigrants since 1972. GISTI is specialized in foreigners' law and makes its expertise available to those in need by offering free legal services, publishing resource materials, and holding training sessions. GISTI has approximately 150 members, of which nearly one third are lawyers.

(pp. 27-28, 77)

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Website: [www.gisti.org](http://www.gisti.org)

## Kalayaan

When the non-profit organization Kalayaan was founded in 1987, migrant domestic workers were entering the United Kingdom with their employers but weren't allowed to change employers, and many were subject to extremely poor working conditions and abusive conditions. Kalayaan waged a 10-year campaign with support from the T&G union and the United Workers' Association to change the immigration rules. Its efforts paid off in 1998, when a law was enacted that allows migrant domestic workers to change employers. Kalayaan presently works primarily with immigrant women who are employed as live-in domestic workers in private households in the greater London area, advising them about their rights. (pp. 30, 44-45, 54, 57, 62, 97-98, 102)

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## OKIA • OndersteuningsKomitee Illegale Arbeiders

### *Support Committee for Undocumented Workers*

OKIA was formed in 1992 at the request of undocumented Moroccan and Turkish Kurdish workers who were formed in committees. The workers wanted help from natives and legal residents in bringing their cases out in the open and organizing societal support for better living and working conditions and legal status. From the beginning, OKIA developed a network of professionals to provide social support to the workers and inform the public and policy makers about their living and working conditions. (pp. 24-26, 49)

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## O.R.C.A.

### Organisatie voor Clandestiene Arbeidsmigranten

#### *Organization for Undocumented Migrant Workers*

OR.C.A. was founded in December 2003 to defend the rights of undocumented workers in Belgium. OR.C.A. aims to stimulate cooperation amongst trade unions, labor inspection, employers and NGOs to strengthen support for undocumented workers. OR.C.A. also offers direct services to undocumented workers seeking advice on work-related problems through counseling and information campaigns. (p. 30)

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Website: www.orcasite.be

## Polish Social Council

The Polish Social Council was founded in the 1980s by Polish migrants who had fled to Berlin to escape from martial law in Poland. In the beginning years, the organization provided assistance to Poles concerning asylum applications and their legal status and integration in Germany. In more recent years, the Polish Social Council helped a number of undocumented workers to file cases in the labor tribunals against abusive employers, and was successful in many instances. (pp. 30, 78, 80-81)

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## SAC

### Sveriges Arbetares Centralorganisation

#### *Central Organization of Workers in Sweden*

The SAC is a small, socialist trade union with approximately 10,000 members. A dedicated group of SAC members in Stockholm has been supporting undocumented workers for a number of years. Some of the group members have written articles in the union's magazine about undocumented workers in Sweden to sensitize other members. (pp. 52, 57)

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Fax: +46/8/684.97.39  
Email: utanpapper@sac.se  
Website: <http://www.sac.se/>

## Samahan

Samahan is an independent and democratic organization that actively promotes justice, equality and the rights of Filipino migrant workers in Belgium. Established in 1983, Samahan aims to: serve the interests and promote the rights of Filipino workers and their families in Belgium; achieve unity in the struggle for the rights and interests of Filipino workers in the Philippines and elsewhere; and achieve unity in the struggle for the rights and interests of other migrant workers and Belgian workers in Belgium and elsewhere. (pp. 31, 38, 44, 47, 54, 57, 101)

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**Serviço Jesuíta aos Refugiados (JRS)***Jesuit Refugee Services*

Jesuit Refugee Services (JRS) is an international Catholic organization with a mission to accompany, serve and defend the rights of refugees and forcibly displaced people. JRS undertakes services at national and regional levels with the support of an international office in Rome. Founded in November 1980 as a work of the Society of Jesus, JRS was officially registered on 19 March 2000 at the Vatican State as a foundation. JRS is present in over 70 countries throughout the world. Its office in Portugal is one of several JRS offices in Europe. (pp. 83, 102)

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Email: jrs-portugal@netcabo.pt;  
jrs-portugal@jrs.net  
Website: <http://www.jesref.org>  
[www.jesuitas.pt/jrs](http://www.jesuitas.pt/jrs)

**SOC • Sindicato de Obreros del Campo***The Farmworkers' Union*

The Sindicato de Obreros del Campo (SOC) has been fighting for nearly 30 years for the rights of Spanish day laborers working in agriculture in Andalusia. As a result of the February 2000 race riots against Moroccan immigrants in El Ejido, the SOC decided to set up an office in the greenhouse region in Almeria, to support and organize the workers, who are mainly from Morocco and sub-Saharan Africa and who are overwhelmingly undocumented. (pp. 16, 30, 45, 50, 55-58, 60, 70, 78, 92, 101)

**CONTACT INFORMATION:**

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Website: <http://www.soc-andalucia.com>

**Sindicato dos Trabalhadores da Construção, Mármore e Madeiras e Materiais de Construção do Sul***Southern Union of Construction, Marble, Wood and Construction Material Workers*

This union represents workers in the Santarém, Lisboa, Setúbal, Alentejo and Algarve districts of Portugal. (pp. 58, 77, 82, 93, 102)

**CONTACT INFORMATION:**

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Website: <http://www.cgtp.pt>

**S.H.I.P. • Stichting Haags Islamitisch Platform***The Hague Islamic Platform*

S.H.I.P. was founded in 1994 as a religious organization for Muslims in The Hague, Netherlands. When the organization started to become confronted with the difficult social realities faced by Muslims in 2001, it reconsidered its position and changed its focus to become more of a social welfare organization. (pp. 35-36, 44, 56)

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Website: <http://www.ship-online.nl>

**SIT • Syndicat interprofessionnel de travailleuses et travailleurs***The Inter-Professional Union of Workers*

The SIT defends the rights of workers in many different sectors and branches in Switzerland, including: agriculture, parks and gardens; construction and maintenance; industry; goods and services; hotel, restaurant and domestic services industries; health care; public services; and retired workers. (pp. 58, 100)

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**T&G • Transport and General Workers' Union**

With over 835,000 members in every type of workplace, the T&G is the UK's biggest general union, and has a long tradition of representing members in the workplace. The T&G organizes workers in the food and agriculture, manufacturing, services and transport sectors. (pp. 42, 44-45, 49, 54, 57-58, 60, 65-66)

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Fax: +44/20/7611.27.08  
Website: <http://www.tgwu.org.uk>

**USL • União dos Sindicatos de Lisboa***Lisbon Trades Council*

The Lisbon Trades Council (USL) is the largest regional CGTP-IN structure and is responsible for leading and coordinating trade union activities within the District of Lisbon. Its main objectives – ensuring links with all activity sectors – are protecting workers' interests, intervening, expressing views, assessing, proposing, and negotiating on social issues which are relevant for those who work in Lisbon. Wages, rights, social security, health, transport and living standards are top priorities for the Lisbon Trades Council. (pp. 15, 47, 50, 56-58, 63-64, 71, 76, 82, 93, 99, 102)



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**UNITED STATES****AFL-CIO • American Federation of Labor – Congress of Industrial Organizations**

The AFL-CIO is the voluntary federation of America's unions, representing more than nine million working women and men in the United States. The AFL-CIO was formed in 1955 by the merger of the American Federation of Labor and the Congress of Industrial Organizations.  
(pp. 15, 42, 48-49, 51, 55-57, 75, 84, 89, 90, 94, 99)

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Website: <http://www.aflcio.org>

**Andolan Organizing South Asian Workers**

The non-profit, membership-based group Andolan was founded in 1998 and organizes and advocates on behalf of low-wage, immigrant South Asian workers. Andolan, which means "movement" in several South Asian languages, seeks to educate workers about their rights, persuade employers to pay a living wage and raise public awareness about abusive industry conditions. All Andolan members are low-wage workers and primarily women; many are undocumented. Andolan's goal is to support and empower working-class communities that face obstacles, including language barriers, discrimination, and immigration status. Most of the members are employed as babysitters, housekeepers, and restaurant workers. Andolan prioritizes the central leadership of its members and strives to break a system of dependency so as to foster worker empowerment.  
(pp. 28-29, 31, 38, 66, 72, 85-86)

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Website: [www.andolan.net](http://www.andolan.net)

**CDM • Centro de los Derechos del Migrante, Inc.***Migrant Rights' Center*

The non-profit organization Centro de los Derechos del Migrante (CDM) aims to bridge the transnational gap between Mexico-based migrant workers and advocates in the United States. The staff from both the U.S. and Mexico will conduct outreach efforts in Mexico by informing workers in major sending communities in Mexico about their workplace rights in the United States. CDM will also connect workers who have experienced problems with their employment in the United States with lawyers, unions or worker groups in the United States that can help them. It will provide on the ground support for advocates in the U.S. who represent Mexico-based migrants but face financial difficulties due to the costs of conducting site visits to the workers in Mexico. In addition, the CDM will facilitate international cooperation around legal and policy issues.  
(p. 88)

**CONTACT INFORMATION:**

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Zacatecas, Zacatecas  
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Fax: +52/492/925-2511  
Email: [rachelmicahjones@yahoo.com](mailto:rachelmicahjones@yahoo.com)  
Website: [www.cdmigrante.org](http://www.cdmigrante.org) (operational in Fall 2005)

*U.S. contact information:*

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Tel: +1/202/258-2922

**CHIRLA • Coalition for Humane Immigrant Rights of Los Angeles**

CHIRLA was founded in 1986 and works to advance the human and civil rights of immigrants and refugees and to foster an environment of positive human and community relations in society. One of CHIRLA's program areas is the Workers' Rights project. Through this project, CHIRLA seeks to educate domestic workers, day laborers and garment workers about their rights and to organize them as a way of fighting against the problems in their industries and against the abuses they face as immigrant workers.  
(pp. 31, 35, 70, 92-93, 95)

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Website: [www.chirla.org](http://www.chirla.org)

**CIW • Coalition of Immokalee Workers**

The Coalition of Immokalee Workers (CIW) is a community-based worker organization that was founded in 1993. Its members are largely Latino, Haitian, and Mayan Indian immigrants working in low-wage jobs throughout the State of Florida. The CIW strives to build its strength as a community on a basis of reflection and analysis, coalition building across ethnic divisions, and an ongoing investment in leadership development. The CIW fights for fair wages, more respect from bosses and the industries where workers are employed, better and cheaper housing, stronger laws and stronger enforcement against those who would violate workers' rights, the right to organize without fear of retaliation, and an end to indentured servitude in the fields. (pp. 7, 19-20, 32, 35, 38-39, 68, 71-72)

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Website: <http://www.ciw-online.org>

**DWU • Domestic Workers United**

Domestic Workers United (DWU) is a group of domestic workers and domestic workers' organizations organizing to build power, raise the level of respect for domestic workers, establish fair labor standards in the domestic work industry, and win legalization for all undocumented workers. To this end, DWU builds leadership among the over 200,000 women working as nannies, companions, and housekeepers in the greater New York metropolitan area, exposes employer and agency abuse, and targets government bodies to implement enforceable policies that will promote dignity and respect for domestic workers. (pp. 35, 47, 62, 66-67, 72, 101)

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Website: [www.domesticworkersunited.org](http://www.domesticworkersunited.org)

**Immigrant Workers Freedom Ride**

<http://www.iwfr.org/>

In Fall 2003, nearly 1,000 documented and undocumented workers and their supporters traveled across the United States to spotlight the need for immigration reform. Workers of dozens of nationalities boarded buses in ten different locations and traveled on different routes, covering a total of 103 cities along the way. The event was sponsored by the American Federation of Labor - Congress of Industrial Organizations (AFL-CIO) and led by the Hotel Employees & Restaurant Employees (HERE). The Immigrant Workers Freedom Ride was modeled after the 1961 Freedom Rides of the U.S. civil rights movement, in which student activists from across the U.S. rode buses to challenge racial segregation in the South. (pp. 15-16, 51, 56, 58, 101)

**Justice for Janitors**

[http://www.seiu.org/building/janitors/about\\_justice\\_for\\_janitors/index.cfm](http://www.seiu.org/building/janitors/about_justice_for_janitors/index.cfm)

The Justice for Janitors campaign was formed in Denver, Colorado in 1985. The campaign is about hard-working janitors uniting for fair working conditions with support from communities. Over the years, Justice for Janitors has worked to provide better wages, basic benefits, and job security for janitors who clean buildings in major cities and suburbs in the United States. (pp. 51-54, 57)

**Migrant Farmworker Justice Project**

The Migrant Farmworker Justice Project is committed to ensuring that the full range of legal advocacy is available to the 300,000 farmworkers who work in Florida's fields and groves, through innovation, law reform, legislative and administrative advocacy, and class actions. The Migrant Farmworker Justice Project is funded by the Florida Bar Foundation and was established in 1996 by the Florida Legal Services, a non-profit organization that provides civil legal assistance to indigent persons who would not otherwise have the means to obtain a lawyer. (pp. 74, 86-88)

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**MIWON • Multi-Ethnic Immigrant Worker Organizing Network**

MIWON was founded in 2000 by several organizations to unite workers from different ethnic groups in several industries and to empower workers. MIWON is made up of the following organizations: The Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA), Korean Immigrant Workers Advocates (KIWA), Pilipino Workers Center (PWC), Garment Worker Center (GWC) and the Instituto de Educación Popular del Sur de California (IDEPSCA). (pp. 16, 29, 37-39, 70, 92, 96)

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**NDLON • National Day Laborer Organizing Network**

The mission of the National Day Laborer Organizing Network (NDLON) is to strengthen and expand the work of local day laborer organizing groups, in order to become more effective and strategic in building leadership, advancing low-wage worker and immigrant rights, and developing successful models for organizing immigrant workers. NDLON fosters healthy, safer and more humane environments for day laborers to obtain employment and raise their families. In this sense, NDLON advances the human, labor, and civil rights of day workers throughout the United States. NDLON is composed of 39 member organizations. (pp. 29, 36-37, 61-62, 68, 70, 86, 101)

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Website: www.ndlon.org

**NELP • National Employment Law Project**

For more than thirty years, the National Employment Law Project (NELP) has provided legal services to campaigners, workers' centers, unions, and organizations that work with low-income workers. Its focus has always been on upholding workers' rights, such as making sure workers receive the minimum wage, that they are safe and healthy on the job, that they have access to workers' compensation, etc. Although NELP had been working on these issues for many years, it wasn't until around 1999 that it officially designated an immigrant worker program within the organization to focus on ending the abusive and discriminatory treatment of low-wage immigrant workers. (pp. 28, 43, 80, 85, 89, 94)

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Litigation Director: cruckelshaus@nelp.org  
Campaigner on the rights of immigrant workers: asugimori@nelp.org  
Website: www.nelp.org

**NILC • National Immigration Law Center**

Since 1979, the National Immigration Law Center (NILC) has been dedicated to protecting and promoting the rights of low-income immigrants and their family members. In the past twenty years, NILC has earned a national reputation in the United States as a leading expert on immigration, public benefits, and employment laws affecting immigrants and refugees. Its extensive knowledge of the complex interplay between immigrants' legal status and their rights under U.S. laws is an essential resource for legal aid programs, community groups, and social service agencies across the country. (pp. 55, 90, 96-97)

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**NNIRR • National Network for Immigrant and Refugee Rights**

The National Network for Immigrant and Refugee Rights (NNIRR) is a national organization composed of local coalitions and immigrant, refugee, community, religious, civil rights and labor organizations and activists. It serves as a forum to share information and analysis, to educate communities and the general public, and to develop and coordinate plans of action on important immigrant and refugee issues. (pp. 32-33, 41, 101)

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Website: www.nnirr.org

**Organización en California de Líderes Campesinas***California Organization of Farmworker Women*

Started in 1992, the Organización en California de Líderes Campesinas organizes female farmworkers throughout the State of California in local groups, to exchange information and to be a support network for each other. (pp. 32, 34, 38-39, 78-79)

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**ROC-NY • Restaurant Opportunities Center of New York**

The Restaurant Opportunities Center of New York (ROC-NY) is dedicated to winning improved conditions for restaurant workers and raising public recognition of restaurant workers' contributions to the city of New York. The organization was formed immediately after the terrorist attacks in New York City on September 11th, 2001, which claimed the lives of many of the workers of the Windows on the World restaurant in the World Trade Center. ROC-NY's immediate efforts were to help the Windows on the World restaurant co-workers and their families who were impacted by the attacks. Early in 2002, ROC-NY shifted its focus to organizing restaurant workers throughout New York City. (pp. 23, 67, 69, 71, 84-85)

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Website: http://www.rocnyc.org

**SEIU • Service Employees International Union**

The Service Employees International Union (SEIU) has a membership of 1.8 million working people and 120,000 retirees in the United States, Canada, and Puerto Rico. SEIU members represent health care, public employees, building services and industry and allied. (pp. 37, 40, 43, 50-51, 53-54, 56-58, 100-101)

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### Sweatshop Watch

Founded in 1995, Sweatshop Watch is a coalition of over thirty labor, community, civil rights, immigrant rights, women's, religious and student organizations, and many individuals, committed to eliminating the exploitation that occurs in sweatshops. Sweatshop Watch serves low-wage workers nationally and globally, with a focus on garment workers in California. Sweatshop Watch believes that workers should earn a living wage in a safe, decent work environment, and that those responsible for the exploitation of sweatshop workers must be held accountable. The workers who labor in sweatshops are its driving force. The organization's decisions, projects, and organizing efforts are informed by the voices, needs, and life experiences of sweatshop workers.

(pp. 20, 24, 29, 31, 64-65, 76, 92, 95-96)

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### The Workplace Project

The Workplace Project is a non-profit organization that fights for the rights of immigrant workers who receive low wages, discrimination and abuse on the job. It provides orientation and information to these workers and promotes the leadership of the growing Latino population, especially on Long Island, New York, where the Latino population now numbers more than 300,000. The Workplace Project was created in 1992 as a response to the exploitation of these immigrant workers, with the goal of providing information and fostering organizing.

(pp. 14, 29, 31-32, 34, 44, 69, 72-73, 75)

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### UCLA Labor Center

The UCLA Center for Labor Research and Education plays a unique role as a bridge between the University and the labor community in southern California. As part of the university, the Labor Center serves as an important source of information about unions and workers to interested scholars and students. Through its extensive connections with unions and workers, the Labor Center also provides Labor with important and clearly defined access to UCLA's resources and programs. An advisory committee comprised of about forty southern California labor and community leaders (representing more than one million members in the public and private sector) provides advice and support for the Center.

(pp. 23, 39-40, 95)

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### Unite for Dignity For Immigrant Workers' Rights

Unite for Dignity is an immigrant workers' rights organization dedicated to building new leaders to fight for improved conditions in workplaces and immigrant communities in South Florida, creating positive change in issues confronting immigrant workers, their families and communities, such as healthcare and immigrant rights. Unite for Dignity was originally formed in 1997 as a project to organize nursing home workers in South Florida. In 2001, Unite for Dignity converted into a non-profit organization to better represent immigrant workers and build stronger community ties. Unite for Dignity and its members continue working to address the needs of immigrant workers in South Florida, and to overcome exploitation and discrimination in the workplace and in the community based on language, cultural barriers, and economic status.

(p. 40)

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This report is an effective contribution to the development of a just and pragmatic policy towards undocumented migrant workers. It touches on issues key to economic growth, as well as dealing with debates on migration and integration.

Every day hundreds of thousands of undocumented workers labor in different sectors of the economy in Europe. Undocumented workers often work and live in inhumane conditions, earning very little or no pay at all, and are insufficiently protected by legislation.

Facing exploitation and abuse, many undocumented workers believe that they have no other option than to accept this situation. Fearing that they may be deported if they speak out, an overwhelming number suffer in silence.

Meanwhile some economic sectors in the European Union are to a considerable extent dependent upon undocumented workers, who

make up a substantial part of their workforce. This dependence may be hidden, not just by migrants' silence, but by sub-contracting chains and employers' complicity.

This report presents detailed information obtained from NGOs, trade unions and other actors working with and advocating for undocumented workers, both in Europe and in the United States. Grouped in ten actions, a range of methods are presented that contribute to the aim of respecting the dignity of undocumented migrants as humans and as workers.

All those concerned with rights and justice will find the pragmatic approach taken by this report useful, be they policy makers, unionists, activists, migrant workers and employers. This report provides expert insight on all issues that should be considered to reach just and pragmatic policies in the fields of migration, economic growth and social inclusion.