

Organising and promoting undocumented migrant workers' rights

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Organised by the ETUI in cooperation with ETUC, PICUM and TUC

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1°. Three reasons for unions to organise and empower undocumented migrant workers

From a human rights perspective it is important for trade unions to enable all workers to be able to claim labour rights as these are universal rights and must not be affected or reduced by immigration status.

Industrially, it is crucial to organise with undocumented workers, to strengthen our collective bargaining power. By organising together with and empowering all workers - including undocumented workers - to claim decent treatment it prevents employers from paying marginalised workers less and contributes to improving pay and conditions for all workers.

Politically, there is a need for unions to build solidarity in the workplace between undocumented and other workers to counter right wing political parties and groups that seek to divide workers, scapegoat migrants for social problems and increase discrimination.

1.1. Organizing undocumented migrant workers including running campaigns

Participants discussed a number of actions and recommendations that unions can take to organise undocumented migrant workers within unions and run campaigns to be able to claim their rights. These are the following:

- Reduce union fees for undocumented workers and explore ways for membership fees to be paid without a bank account;
- Reduce the amount of time members need to have been part of the union before they take legal action on behalf of workers;
- Establish out the best time for undocumented workers to attend meetings - these may be in the evenings or weekends;
- Produce material on workers' rights (including specific information for migrant workers) in languages spoken by undocumented workers;
- Produce material on campaigns the union is running to support them in languages spoken by undocumented workers;
- Collectivise campaigns - identify which issues are affecting both undocumented migrant workers and other workers - such as discrimination, low pay and precarious contracts - to build campaigns that a broad range of workers will support;
- Reduce risks that undocumented workers are exposed through campaigning by involving workers with different residence statuses;
- Involve a broad range of workers in campaigns to increase solidarity between workers. It is crucial for the union to highlight that preventing discrimination and exploitation of undocumented workers improve conditions for all workers;

- Build a media campaign using social media and press. Attention needs to be paid to mitigating risks for undocumented union activists that wish to engage with media;
- Organise campaign days at workplaces and in the local community where the union can communicate information on campaigns - make these days fun, they could involve food, music and creative displays to attract attention;
- Raise campaign demands with politicians - at regional, national and EU level;
- Raise campaign demands with embassies of the countries the undocumented workers are from;
- Organise collective actions, like strikes and sit-ins (see also section 3);
- Use national and international union structures;
- Develop alliances with community groups, NGOs like PICUM;
- Actively reach out to migrant workers at workplaces, housing, community centres etc to discuss what the key issues facing them are;
- Build trust - reassure undocumented workers that the union will not report them to the authorities or take action that will put them at risk. Show that the union will fight for all workers, regardless of immigration status (no worker is 'illegal', all workers are workers with rights);
- Explain how the union can assist undocumented migrants in problems they may be having with their managers or co-workers and that the union can accompany workers to meetings with managers to resolve problems. Explain other supports the union can provide - such as helping them identify support on immigration issues;
- Where possible speak to undocumented migrant workers in a language they are fluent in;
- Explain how the union can support undocumented workers to claim their rights - provide contact details for the local trade union branch and how to join the union.

1.2. Empowering undocumented migrant workers in union structures and campaigns

Participants discussed the importance to support undocumented migrant workers to take more leadership and decision-making roles in union structures, so union-wide policies and activities support undocumented workers' rights.

They also discussed the importance of undocumented migrant workers being supported to lead campaigns (e.g. to address exploitation) so that union campaigns properly address the problems these workers face.

Building solidarity between migrants and other members of the union is crucial to counter right wing political movements seeking to divide workers on the basis of race, ethnicity and immigration status.

Participants suggested the following actions and recommendations to be taken:

- Encourage representation of undocumented workers in union structures;
- Reserve seats on union executive structures for undocumented or other migrant workers;
- Provide more resources to organize sectors where undocumented workers are most likely to be working;
- Support undocumented workers to join relevant union committees (e.g. sectoral committees, or committees for women or black or minority ethnic workers);
- Create specific union committees for migrant workers that can influence union policies and activities;
- Develop social media for union members which profiles the successes undocumented and migrant worker leaders have won for all workers;
- Mentor undocumented workers to build their confidence to take leadership roles;
- Provide training for undocumented workers on their rights and how to defend themselves through the union;
- Provide training on leadership and professional skills;
- Provide language classes for migrant workers;
- Support undocumented workers emotional and physical wellbeing by signposting them to relevant organisations that can offer help with issues they may be having in areas such as accommodation, food, health care and mental health and childcare;
- Provide more resources for campaigning on undocumented workers' rights;
- Organise safe spaces in the union for undocumented workers to meet and plan campaigns;
- Connect undocumented migrants' campaigns with the main campaigns of the union;
- Work with migrant rights' NGOs: join their campaigns, networks, alliances; share demands (especially on migration policy but also in employment, etc.);
- Create social networks of undocumented workers in a safe space to build confidence - organise social events for undocumented workers to get to know each other and learn about how they can get involved in the campaign in a relaxed setting;
- Promote the creation of associations and/or networks supporting undocumented workers' rights;
- Organise information sessions on labour rights and how workers can join a union to claim these rights, undocumented people often think they do not have rights as workers;
- Support self-organised worker collectives (including those outside your union) :
 - Share their messages ;
 - Encourage your union to formally support them e.g. FNV example, working with IMWU;
 - Work with solicitors who can provide legal support if they face legal action;
 - Provide physical spaces for them to meet;
 - Help them get political meetings for their demands;

- Organise trade union meetings or conferences with the workers from their sectors to raise awareness among members.

1.3. Concrete example

The Belgian union centre CSC has a committee of undocumented and other migrant workers in the Brussels Region. These workers pay a reduced solidarity membership fee and can pay the fee in cash or via a money transfer, including by a named contact, if they have no bank account. They have full status in the union centre's decision-making bodies (such as congresses, regional committees) and full access to union legal advice services and training, from the first day of joining the union.

The committee for undocumented and migrant members includes a domestic workers league which campaigns on the issues facing migrant and undocumented women working in the care/domestic sector. It also includes working groups such as the Communic'Action group and the Bureau group which proposes the agenda for the committee. The different groups hold monthly meetings and make proposals to the committee.

Members of the undocumented workers' committee have places on CSC's executive governing body and its General Assemblies.

The committee coordinates political campaigns across workplaces in the Brussels Region. The committee works with civil society groups to campaign for undocumented workers' rights across workplaces and for regularisation. The committee participates in national and international networks (PICUM, ETUC, ETUI and the European and social forum on migration).

The committee regularly holds general assemblies to decide policy which informs the policy of CSC as a whole. The committee has increased the support of non-migrant members of CSC unions for campaigns for undocumented workers' rights, for example, in 2018 the CSC general council passed a resolution to free two undocumented members who were also union representatives that had been detained in a detention centre. Meanwhile, in October 2019, the National Congress of the CSC voted for the regularisation of undocumented workers and their right to file a complaint through art. 13.4 of the EU Sanctions Directive (2009/52/EC).

1.4. Additional resources

PICUM and ETUC leaflet supporting trade unions to promote undocumented workers' rights, available in 21 languages here: <https://www.etuc.org/en/publication/trade-unions-organising-and-promoting-undocumented-migrant-workers-rights-migrant>

TEN WAYS UNIONS CAN PROMOTE UNDOCUMENTED WORKERS' LABOUR RIGHTS

1. **Raise awareness and advocate** for undocumented migrants' rights, and that protecting their rights is an essential component of the trade union agenda to advance human rights, equality and labour standards for all workers, as well as to fight racism and xenophobia.
2. Secure **clear commitment** from the senior levels of your union to support undocumented workers' rights.
3. Draw up specific policies to enable undocumented workers to **join your union**. Waive, or offer a reduced fee, and the option to pay in cash. **Recognise** them as workers, regardless of employment status and the type of work, and issue a membership card.
4. Make it a goal to **organise and recruit** undocumented workers. Do outreach activities (e.g. go to places where undocumented migrants work, target key sectors, distribute leaflets in several languages, hire migrant organisers), and promote their representation at all levels of the union.
5. Offer **information and advice** services to migrants, regardless of status or union membership, through tailored service centres within your union structure.
6. Pursue **mediation**, and if this is unsuccessful, **organise collective actions**, including demonstrations, strikes, media coverage, public protests and/or support filing of **complaints and legal casework** (individual and collective).
7. Ensure that undocumented workers' rights are included in your union's **education and training** programmes, especially for union representatives and negotiators.
8. Include **undocumented workers' rights** in your **collective bargaining agenda and bipartite dialogue** in order to ensure equal treatment and prevent abusive practices.
9. Build common messages with **employers** to advocate laws and policies that improve regulation and accountability, and raise awareness that social partners stand together with undocumented workers.
10. Work in **partnership** with migrants' rights NGOs and community organisations to exchange resources and expertise, and develop joint campaigns, actions, training, and advocacy. They can also help with outreach.

For more information or assistance on (undocumented) migrant workers' rights by the trade union please contact:

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2°. Enforcing undocumented migrant worker's rights through formal complaints mechanisms

Participants discussed how formal complaints mechanisms can be used to enforce undocumented workers' labour rights. The session started with a brief introduction to the [legal framework from PICUM](#).

Efforts to make complaints mechanisms accessible and effective for undocumented workers are necessary both to enable them to access remedy in case of violations, and also to build workers' negotiating power with employers and prevent exploitation. We don't expect all undocumented workers to file formal complaints, but they should have the option to, and the mechanisms should work.

A key starting point for exercising labour rights is knowing them. Undocumented workers have a range of labour rights under international, regional and national legal frameworks. In addition to covering rights at work, for example related to pay, working time, non-discrimination and health and safety, undocumented workers have the right to access effective complaints mechanisms. For more information see also PICUM (2020) "A Worker is A Worker: How to ensure that undocumented migrant workers can access justice".



A Worker is a Worker:
How to Ensure that Undocumented
Migrant Workers Can Access Justice

<https://picum.org/wp-content/uploads/2020/03/A-Worker-is-a-Worker-full-doc.pdf>

A specific case:
Supporting an undocumented worker to exercise his/her labour rights to recover due wages that have not been paid by his/her employer

1. Important measures for unions to take before taking action

- Clarify the situation:
 - Gather information about the workers' administrative status, labour situation, what the problem is, what a resolution might look like;
 - Build trust with the worker;
 - Gather all available proof (of employment relationship, hours and conditions of work, pay, etc.) and calculate what the worker is owed (compared to applicable salary levels). If it might still be possible for the worker to safely gather more evidence, guide them to do so. Check if the employers/ company is registered and understand if there is any chain of sub-contractors;
 - Make sure the worker understands their rights, possible actions, risks and limitations, possible outcomes;
 - Understand what actions the worker wants to take;
- Check if there are any union/ worker representatives in the company who can support. If so, make sure they understand that the employer is exploiting the workers' precarious administrative situation;
- Check if there are other undocumented employees in the company, and if so, consider how to avoid exposing them to harm through any action that will be taken, and see if possible to support them also;
- In some countries, it might be necessary to ask the worker to join the union so the union can provide legal services and act on his behalf.

2. Supports that the union can provide to the worker

- Legal advice ;
- Legal representation throughout any legal/ formal complaints procedures or if not directly provided by the union, liaison to find a trustworthy pro bono lawyer to take the case;
- Interpretation and support to complete documents as needed in local language;
- Emotional support, show that the union is there to support;
- Housing and financial support if needed (e.g. especially if the worker loses their job);
- Support to regularise status, if possible;
- Referrals to other support organisations and NGOs that can also support.

3. Actions that the union can take to resolve the dispute

Mediation

Contact the employer, if the worker wants, to try to mediate and put pressure on the employer to pay compensation without taking a formal complaint.

- First consider risks that the employer will take action against the worker, destroy evidence etc. Discuss how to mitigate and manage risks. In some cases, mediation won't be appropriate. While it is a common fear of undocumented workers (employer may have even threatened them), in several countries, it was uncommon for employers to denounce workers to immigration, especially as the employer risks sanctions ;
- Prepare the worker that the employer might contact them and be angry;
- Make clear the worker is supported by the union, and the union will pursue the case (inc. sanctions);
- Quote current legislation and inform the employer of the law;
- Some call the employer by phone, others send an email or formal letter. Can also try to organise a meeting.

Formal complaints

- Gather all available **proof** of the employment relationship and level of exploitation (see above).
 - In some countries, e.g. France, a declaration from the union can be counted towards proof of the employment relationship for formal complaints procedures;
 - If there are possible witnesses that will provide testimony, contact them to check their willingness to provide supporting evidence;
 - If the worker is still employed, it might be possible to contact the inspection to carry out an inspection of the workforce when the worker is present, but check carefully the risks of immigration enforcement and if the worker is ok with them. In most countries/ cases this isn't an option, but it is in some (e.g. in Belgium, there is an agreement that they will receive an order to leave the territory in 30 days but not be detained, if the inspection is the result of the worker filing a complaint. Some workers are ok to take this risk, depending on their personal circumstances).
- Check if other workers want to join the complaint, in order to file a collective complaint;
- File a complaint to the relevant **labour inspection authority** - if it is possible to do so without the worker facing immigration enforcement. In several countries, trade union participants indicated they could safely support undocumented workers to file a complaint or file a complaint on their behalf (e.g. Spain, France, Belgium, ACAS in the UK);
- If there is enough proof, support the worker to file a complaint to the **employment tribunal or competent civil court**. Normally they do not ask about work permits. There are only very few countries where the court might report the undocumented worker for immigration enforcement, but if

this is the case, see if possible to file as a third party and protect the workers' anonymity (ref: Germany);

- Check if there is an **ombudsperson or other independent body** that might also be able to investigate and intervene in the case (e.g. in Greece this has been an important strategy);
- If there has been **an accident or other work-related health issue**, file for compensation.

Additional political actions the union can take

- Speak with other workers in the sector and raise attention to systematic labour rights issues that need to be addressed, to improve conditions for all in the sector;
- Work together with migrants' rights' NGOs on communications and political campaigns;
- Organise actions to denounce the employer publicly and put pressure on both the employer and the government e.g. sit-in, strike, demonstration, media work (NB. carefully assess risks to undocumented employees, may not be appropriate to include case-specific details);
- Awareness-raising within and outside the union about rights of undocumented workers and need for effective complaints mechanisms;
- Work with inspection authorities to create firewalls and mechanisms that undocumented workers and the union can engage and cooperate with and trust. Show inspection authorities how this cooperation can improve outcomes for them, make their work easier, and how the union will also support increased resources for inspections if we know they protect all workers;
- Develop tools to support workers to file complaints to the union with clear explanations of what will be done with the information. For example, in Bulgaria there is a webpage and mobile app for reporting by workers that is managed by unions. Can organise an inspection based on this without passing on personal information but important clear to worker if could lead to immigration enforcement if they are undocumented and present for the inspection;
- Advocate to immigration authorities:
 - for workers who file a formal complaint to be protected against deportation;
 - regularisation of undocumented workers in general.

3°. Highlighting the situation and political demands of undocumented workers in unions

Participants discussed the different ways in which the unions can support and make visible the positive contributions and demands of undocumented workers to society and the union movement. The importance of working together with migrants' rights and worker organisations and collectives were emphasised throughout the discussion as was the need for campaigns to emphasise the rights all workers have regardless of where they come from.

3.1 Key policy changes needed for undocumented migrants

- Ensuring that all workers are included in employment standards, including in nonstandard forms of employment and under-regulated sectors;
- The need to separate enforcement of immigration laws from employment rights monitoring and enforcement mechanisms so undocumented workers can claim their rights;
- Regularisation for undocumented migrants ;
- Access to citizenship. For example, Greek campaign for citizenship for migrant workers;
- The need for all migrant workers to be able to access stable work permits that promote decent work and social inclusion (for more see e.g. ETUC Resolution, PICUM report designing labour migration policies to promote decent work);
- All employers in a supply chain made responsible for workers' conditions;
- Supply chain transparency and due diligence requirements.

3.2 How to push for policy changes ?

- Organise advocacy campaigns. It is important for these campaigns to be led by migrant workers;
- Speak to politicians such as Members of the Parliament, local government, Ministry of Labour, Members of European Parliament;
- Use your voice and role in social dialogue structures to promote the rights of undocumented workers, migrant workers and all workers (general and specific together);
- Respond to government consultations and legal processes;
- Draw on good practice in other countries;
- Make support for political campaigns for undocumented workers rights a priority of unions;
- Build up an evidence base about workers in key sectors (including undocumented) and specifically about undocumented workers, to support demands.

3.3 How to reach a broader public ?

- Run social/creative campaign events. eg. arts festivals in Greece show undocumented workers as citizens whose human rights must be respected;
- Use social media to expose injustices by telling personal stories and to raise awareness. For example, campaigns with short videos, photo exhibitions. In Belgium, ‘Vos toilettes propres, nos propres papiers!’, a campaign ran by CSC shows that domestic workers rights are human rights and will improve everyone's rights;
- Tag politicians directly on social media can also be a way to reach their constituents and put pressure on them publicly on an issue;
- Contact the press, national and - local- media and work with journalists who are migrants or have been sympathetic to migrants in their coverage. Building relationships with journalists can help promote reporting and stories that support trade union campaigns. Sometimes local press can be easier to access first ;
- Organise public demonstrations, symbolic actions, protests and strikes to make undocumented workers and their contribution visible and build solidarity;
- Use key/special days such as labour day as an opportunity to raise awareness;
- Connect with feminist campaigns highlight the contribution of migrant women, such as domestic and care work.

3.4 Support/resources needed

Participants discussed that within trade unions the following support would be useful:

- Political support from the higher structures and the federations representing the sector(s);
- Financial and human resources support to put in place activities;
- Printing flyers/ guides for trade union branches to raise awareness about how they can defend the rights of undocumented workers. For more information see “Accueil des travailleuses et travailleurs « Sans papiers » dans les organisations de la CGT” <https://www.cgt.fr/livret-migrants>
- Support campaigns that bring local and migrant workers together to build solidarity within the union.



Outside trade unions participants discussed that the following support would be useful:

- Support from associations, migrants' and womens' rights organisations, broad range of NGOs, self-organised groups, community and diaspora organisations;
- Support from:
 - Embassies ;

- Academic researchers to provide information about the situation facing undocumented workers;
- Politicians, Members of Parliament ;
- Journalists. For example, Germany's FairMobility project is sharing stories of abuse with the media;
- Work with unions in other countries, a wider union movement;
- Financial support from the European Union.