

Defending Undocumented Migrant workers

The experience of OR.C.A.



OR.C.A. = Organisation for undocumented migrant workers

- Since 2005
- Mission = Bringing Labour rights of undocumented workers in practice
- Activities:
 - Inform and formation
 - Personal advice and guidance
 - Policy work
- Networking: OR.C.A.'s activating role



Undeclared work and undocumented work

- **Undeclared work** = No taxes / social security
- **Undocumented ('illegal') work** = A foreigner without proper work authorization:
 - No work permit/ work authorization (employee)
 - No professional card (independent)

Basic principle :

Labour rights (protection of workers) must always be respected, regardless of the validity of the contract. (Sanction Directive)

- *Also for undeclared work*
- *Also for undocumented work*
- *Only for employees*

Basic principle:

- Only the employer is punishable for undocumented work.
- The employee can be returned to his own country because of his status in Belgium, but he will not be punished for his employment!

What rights?

- Minimum wage and wage protection
- No arbitrary dismissal
- Compensation for work accidents
- Respect for working hours
- Paid holidays, holidays
- ...

Most common abuse

- no minimum wage
- Irregular, incomplete or not payed at all
- Dismissal without respect for the rules
- No respect for the legal working hours
- No insurance for work accidents
- Bogus self employed
- Employees forced to use false papers
- Threats (with police, physical,...)
- ...

Bogus self employed

- What is bogus self employed?
 - Officially working as a self employed in reality working as a worker
- Why use system of bogus self employed?
 - Cheaper for employer
 - Acces to residence stay in Belgium for worker

Bogus self employed

- What are the risks?
 - No labor rights
 - Debts with social security
 - Hard to get out of the bogus self employed system



Why defending labor rights of undocumented workers

- A worker is a worker
- Defending labor rights of undocumented migrants is defending rights of own workers
- Employers have to feel the consequences of exploiting workers
- Failing policy for last 40 years



How to enforce rights?

- Negotiation
- Trough inspection:
 - Complaint (even anonymously)
 - Trough control of the workplace (reporting undocumented workers)
- In court
- By reporting work accident
- Procedure trafficking



Obstacles to the enforcement of rights

- Lack of knowledge about rights: among workers but also supervisors, lawyers, trade unionists,...
- No active policies to enforce rights in practice

Obstacles: the employee

- Economic situation little bargaining power against employers: rather bad job than no job
- Fear
 - migration control
 - for the employer
- Complex networks of employment: personal relationships with employers

Obstacles: official procedures

- Evidence
- cost
- Length of procedure
- Immigration control:
 - Evidence is lost because of evictions and rights are not enforced
 - Full story is not told to protect other workers



solutions?

- Inform and activate:
 - Right guide, website
 - formations
 - Radio broadcasts
- Informal solutions: mediation
- Active enforcement of rights and defining obstacles
- Damage Control?



Long-term solutions: addressing root causes

- Improve Economic bargaining power of workers:
 - Development in country of origin
 - Legal opportunities for migration
 - Chain analysis and focused action
- Addressing legal vulnerability and focused action:
 - Disconnect migration of workers protection
 - Addressing pain points: proof, procedure cost, responsibility for employers at the top of the chain, fake independence



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