PICUM’s Ten Year Anniversary Workshop

Advocating for the Human Rights of Undocumented Migrants: Strategies, Successes and Opportunities

Brussels, Friday 24th June 2011
PICUM, the Platform for International Cooperation on Undocumented Migrants, held a workshop for its members in Brussels, Belgium, on 24 June 2011, to discuss strategies, successes and opportunities to advocate for the human rights of undocumented migrants.

This workshop marked PICUM’s ten-year anniversary and was attended by an unprecedented number of PICUM member organisations and individuals, who took the occasion to strengthen the PICUM network by actively participating and sharing experiences.

The workshop lasted one full day. The morning session saw the participation of high-level policy makers and experts and was divided in two sessions: 1) What is the potential of the United Nations and the Council of Europe in addressing undocumented migrants’ human rights?, and 2) Exploring developments within the European Union concerning the fundamental rights of undocumented migrants.

The afternoon session was divided in four parallel working groups: 1) Advocating for fair working conditions of undocumented migrants, 2) Strategies to promote empowerment of undocumented women, 3) Countering the social exclusion of undocumented families and children and 4) Surmounting barriers in access to healthcare services.

March 2012
Opening Remarks

Don Flynn, Chair of the Platform for International Cooperation on Undocumented Migrants (PICUM) opened the PICUM Workshop, “Advocating for the Human Rights of Undocumented Migrants: Strategies, Successes and Opportunities” and welcomed participants. He started by highlighting that this event celebrated the special occasion of PICUM’s ten year anniversary. Mr. Flynn reflected on the beginnings of PICUM and the conversation that a number of organisations had had regarding the need to start a Europe-wide network so that people that were in contact with undocumented migrants could discuss with each other and share their ideas and experiences. He added that only judging from the attendance list the network grew a lot and benefited from new members doing grassroots work across the European Union. Lastly Mr. Flynn asked all attendees to remember the real experts who should be at the conference, undocumented migrants themselves. He explained that there were members of PICUM that had wished that they could be in attendance of the event but were unable to take the risk of crossing the border and having their identity papers checked.

Michele LeVoy, Director of PICUM, described the platform’s early beginnings and provided an overview of its achievements in advocating for the rights of undocumented migrants.

A mission of grassroots visionaries, PICUM was formed by a small group of NGOs who met at civil society events in Germany and the Netherlands held in response to the Europeanisation of migration and asylum policies. At these meetings, mainstream organisations working with refugees and asylum seekers were reluctant to include the needs and experiences of undocumented migrants in their common European message. As a result, in 1996, several NGOs working specifically with undocumented migrants began to discuss the need for a European initiative to protect their rights. Within two years, organisations involved in the “PICUM initiative” worked together to map the social situation of irregular migrants in three EU Member States, offering proposals to ensure that their basic rights would no longer be ignored at the EU level.

In 1999, the European Council met in Tampere, Finland, at which it agreed to develop common EU policies on issues related to asylum and migration. The so-called “fight against illegal immigration” was named as a key priority at the Tampere meeting, with heavy emphasis on restricting entry and facilitating return. At this point those involved in the PICUM initiative identified the real need to increase their presence and impact at the European policy level. In 2000, several foundations from the Netherlands and Belgium provided some funding for PICUM to hire a fulltime staff person, and PICUM’s first General Assembly was held, gathering its fifteen NGO members. On 18th October 2001, PICUM was officially recognised as an organisation under Belgian law.
Ms. LeVoy presented an overview of the five main elements of PICUM’s approach:

- **Human Rights Framework** - PICUM considers the international human rights framework as a core element grounding its approach. This is important as it defines the route for PICUM’s advocacy towards the United Nations, the Council of Europe, and the European Union institutions;

- **Thematic priorities based on member’s needs** - if PICUM’s members identify something as a trend in their practical experience, PICUM incorporates this into its policy work;

- **Prioritising evidence** - there is a huge amount of evidence about the violations of undocumented migrants’ rights and this expertise rests with those working with these migrants on the ground. PICUM transfers this knowledge to various policy levels and pushes for an evidence-based approach to migration policy formation;

- **Building partnerships with a wide array of actors** - PICUM works on the issue in collaboration with many like-minded actors; NGOs, trade unions, local authorities, faith communities and professional bodies. By building partnerships, this also helps PICUM bring the concerns of the undocumented into the mainstream, for example, by building partnerships with trade unions PICUM can also mainstream the concerns of undocumented migrant workers into the labour rights movement;

- **Volunteering** - Notably, much of PICUM’s work is done by committed individuals who are often working on the issue without any resources. PICUM also benefits from the support and commitment of volunteers, including translators and interns.

Moving to a consideration of PICUM’s main thematic work areas, Ms. LeVoy highlighted activities and achievements in relation to access to healthcare, fair working conditions, undocumented children and families, undocumented women and finally, the criminalisation of undocumented migrants, before identifying several future opportunities.

**Access to healthcare** was the first thematic issue PICUM worked on as its founders felt that undocumented migrants’ urgent need to access healthcare was a key priority. PICUM held its first meeting in 2001, at which seventeen medical and NGO professionals from across Europe gathered to discuss the experiences of irregular migrants in relation to accessing healthcare. In 2007, PICUM released the first report analysing the legal entitlements of undocumented migrants across Europe. Identifying good practices existing at local authority, regional, legislative, service provision or civil society level, this report served as a good partnership model and also influenced national developments.

For instance in Sweden, a huge four year campaign had recently managed to initiate an improvement in access to healthcare for undocumented pregnant women and children. PICUM’s support was helpful in informing this debate, enabling civil society and health professionals to show the laws, practices and procedures existing in other EU Member States. Also, the Dutch government had consulted PICUM in advance of changing its laws on access to healthcare for undocumented migrants. More recently, PICUM’s multifaceted approach to the issue was adopted by the EU Fundamental Rights Agency (FRA) in their healthcare study as part of the “Fundamental Rights Situation of Irregular Migrants in the EU” project which, due for finalisation in November 2011, will transfer PICUM’s analysis to the 27 Member States of the European Union.
PICUM’s work and expertise on the issue has been positively received by professional medical bodies as well as NGOs. PICUM’s 2007 report was referenced in “The Lancet” medical journal, and spurred a partnership with Médecins du Monde with whom PICUM held a joint hearing in the European Parliament in December 2010. On 8th March 2011, the European Parliament adopted a Resolution on “Reducing health inequalities in the EU” in which it calls on Member States to tackle health inequalities in accessing healthcare for undocumented migrants.

Since the beginnings of PICUM, the issue of fair working conditions has been a very crucial topic. PICUM realised that it was not only an important issue for PICUM when the organisation first held an event on the labour rights of undocumented migrants in 2003, receiving around 300 participants. PICUM began looking at the situation by first identifying who the undocumented workers were, what they were doing, which sectors they worked in and who PICUM could potentially work with on the topic.

PICUM then saw that it was not enough to look at the “who”, “what” and “where” but it was important to address “how”. For example, how, as an organisation, do you address the situation of undocumented workers not being paid. The solution resulted in the writing of PICUM’s “Ten Ways to Protect an Undocumented Migrant Worker” which was published in 2005. The report addressed the important “how” question and attempted to answer how organisations, social workers, and workers themselves could intervene in accounts and cases of exploitation and abuse. Ms. LeVoy asserted that this document has been used a great deal in the field and has not only been translated into Spanish, but the Organisation for Security and Cooperation in Europe (OSCE) has requested to translate it into Russian also.

The report has also acted as a bridge for PICUM to reach out and work with other organisations and NGOs. For example, with anti-trafficking bodies and as well, it has allowed for partnerships with trade unions. PICUM has launched joint statements with the European Trade Union Confederation (ETUC) on topics such as the Employer Sanctions Directive, and has even taken part in a steering committee of the ETUC for a project on undocumented workers.

The third issue that Ms. LeVoy highlighted was undocumented children and families. PICUM noted that there was a gap of information when it came to the topic of undocumented children, as most other organisations and policies focused specifically on unaccompanied children. PICUM held a major event in 2009 and produced a report on “Undocumented Children in Europe: Invisible Victims of Immigration Restrictions” which served as a catalyst for other activities. PICUM is also a member of the Child’s Rights Action Group, a formal EU network that works on children’s rights, in which PICUM is constantly raising the issue of undocumented children.

PICUM is now addressing the specific concerns and needs of undocumented women in its work. PICUM members requested a deeper examination of access to sexual and reproductive healthcare for irregular migrant women, an examination of their specific needs in terms of workplace exploitation, and finally, on the issue of violence, to find out what was happening across Europe to undocumented woman who want to access a shelter, or get help from the police. This has been a relatively new area for PICUM and this work has facilitated contact with a number of new partners and enabled the network to provide input at a number of policy debates and civil society discussions.

Criminalisation of undocumented migrants was the fourth issue that Ms. LeVoy addressed, noting that across Europe continued actions criminalise migrants simply because of their irregular status. To counteract this trend, PICUM actively promotes the use of fair, accurate, and non-discriminatory terminology concerning migrants such as “undocumented” or “irregular”. As a result of its efforts, many civil society networks working in related fields have been more ready to take-on undocumented migrants’ concerns, while many policy-makers have also taken on PICUM’s recommendation. For example, the European Parliament has recommended not using “illegal” and the EU Fundamental Rights Agency (FRA) has also emphasised the
importance of correct terminology. The criminalisation of migrants has led to the fining, imprisonment and denunciation of individuals and organisations for providing support to those without papers. In particular, Ms. LeVoy noted a very worrying development currently underway in Cyprus against PICUM member KISA, and encouraged participants to sign the petition which PICUM was circulating at the conference to gather support for this particular NGO.

Looking forward to identify future opportunities for PICUM, Ms. LeVoy noted that one of the networks key priorities was to strengthen the capacity of its membership and to intervene and engage at the European and international policy levels. New thematic working groups are to be established to enable the membership to address and respond to issues in a more systematic and proactive way, while PICUM will also work to facilitate more strategic exchanges among its members to foster real changes on the ground. In closing, she emphasised that PICUM’s membership was indeed its most valuable asset.
Advocating for the Human Rights of Undocumented Migrants: Strategies, Successes and Opportunities

First Panel

What is the potential of the United Nations and the Council of Europe in addressing undocumented migrants’ human rights?

As an organisation, PICUM aims to have direct contact with the organisations that work with undocumented migrants, taking the evidence which these organisations gather at the local and national level and using this information in the various levels of European and international advocacy. The next panel was focused specifically on this advocacy and tasked with discussing what potential the United Nations and the Council of Europe had in addressing undocumented migrants’ human rights. Reyes Castillo, Asociación Comisión Católica Española de Migraciones (ACCEM) and PICUM Board Member, chaired the panel.

The first to address the participants was Tineke Strik, Member of the Parliamentary Assembly of the Council of Europe (PACE). Ms. Strik has been a member of PACE since 2008 and works on the Committee of Migration, Refugees and Population. Her experience includes working with the Dutch Ministry Council and the Dutch Ministry of Justice. She is also an assistant professor of migration law at the Centre for Migration Law at the Radboud University Nijmegen.

Ms. Strik started by congratulating PICUM for its accomplishments as well as the practical and effective approach the network has taken in advocating for undocumented migrants’ rights in Europe. She was impressed that the organisation was able to do so much in only ten years, particularly in political climates that were not the most welcoming towards migrants.

Before discussing areas of cooperation between NGOs and the Council of Europe, Ms. Strik began by giving a short introduction into the Council of Europe and the work of PACE. Since the Council of Europe consisted of 47 Member States, there was always a need to find agreement and a broad range of support from a number of different groups as national legislations and national interests often played a role. The work of the Committee of Migration, Refugees and Population began focusing more concretely on the rights of undocumented when in 2006 a report titled “Human Rights of Irregular Migrants” was put forth which presented a resolution calling a minimum level of rights to be guaranteed in law and in practice so that they may lead a dignified life and avoid exploitation. This report very much set the agenda for the Committee on Migration and PACE. It not only dealt with the topic of admission but also addressed what happens to people that are in the territory of the EU, no matter their status. The Committee of Migration also focuses on the intensified border controls that many EU Member States are implementing in countries of transit and origin. Ms. Strik stated that it was a great concern of the committee that often Member States are first and foremost concerned with preventing migrants from entering their territory, focused on protecting borders and employing highly questionable “pushback policies”.

Ms. Strik noted that the committee’s work was very well supported by NGOs as well as international entities such as UNHCR and she felt that there were a number of areas where the three could further cooperate in strengthening the rights of undocumented migrants. The first area she addressed was terminology. In her work with politicians it was clear that migration was a very politically sensitive issue but it was still important for them to use correct terminology, such as “undocumented” or “irregular”. When talking about migrants, all too often politicians move into “protection mode” and are less interested in discussing rights.

She also highlighted the importance of instituting a better cooperation with political entities at the European Level, for example the EU Fundamental Rights Agency (FRA). At the Council of Europe level, when they make recommendations they are targeted at the Committee of Ministers (from the Council of Europe’s 47 Member States) and a duty of the Committee of Ministers is that they must reply with what they plan to do with the recommendation. She described that when the issue of undocumented migrants is raised their standard response is that the European Social Charter is not applicable to persons without documents. The Committee is very alert to the issue and always rejects proposals. So with this in mind, Ms. Strik warned that it is important to not only target the Committee of Ministers but to find other authorities.

In addition, national parliamentarians play a potentially important role in the recommendations and resolutions produced by the committee as there is a need to take the resolution and to use it at home. Unfortunately there were politicians in PACE that would return to their home country and say completely different points and policies than what they had said and voted on at PACE. Ms. Strik used the example of the Council of Europe’s Convention on Preventing and Combating Violence against Women and Domestic Violence, in which there were attempts to include text which related to undocumented women, but in practice it proved near impossible to include the text in the Convention, and in the end it failed. However, it was still possible to have the application of the Convention for all women regardless of immigration status.

A new development that Ms. Strik found worrisome was that the Committee on Migration used to include people that were committed to the issue of human rights but now it seems that a number of right-wing parties are starting to join the committee, driving their own anti-rights and anti-migration agenda. It was the sentiment of some right-wing parties that NGOs and left-wing parties were too heavily involved in the committee and that NGO’s were driving the agenda. Ms. Strik wanted to highlight that there were committed politicians on the committee but the political balance was starting to marginalise the smaller more progressive parties.

Ms. Strik then outlined what the committee was doing to ensure that governments are reminded, and do not remain distanced, from the realities of their State duties and rights. The committee always emphasises that States do have the right to control borders, and that they do have the right to return persons to their home country, however the person must be able to return safely and in a safe way, and for those that cannot be returned, they have the right to be treated well. Regarding readmission agreements the committee asserts that it is only admissible to send people back to transit countries if they have the ability to rebuild their life there, but in Ms. Strik’s opinion this is rarely possible because many transit countries do not want to receive irregular migrants. The Council of Europe states that if migrants cannot be guaranteed their basic rights in the transit countries, then the person should not be transferred and they should be offered basic social rights in the host country. The Committee of Ministers was not very welcoming to this recommendation but we saw that the European Commission at the same time took the same conclusions. Ms. Strik stressed the importance of these types of recommendations and the fact that they were shared by two European institutions.

The Committee on Migration also advocates for regularisation as it is seen as the most effective way to deal with the rights of undocumented migrants, since once regularised migrants are less likely to be exploited and are instantly able to enjoy full access
to rights. The committee dealt with regularisation in a report in 2007 titled “Regularisation programmes for irregular migrants” which recognised that regularisation was not a panacea, but urged States to consider it as an option to safeguard the rights of irregular migrants who are in a vulnerable situation. Also highlighted were those undocumented migrants who could not be returned to their country of origin. For these individuals it is necessary that Member States of the Council of Europe offer some possibility for them to regularise their situation and integrate into society, otherwise they are forced to live in a legal limbo. A few years ago Ms. Strik had advocated for a new establishment of EU norms that would grant at least the minimum access to social rights for all persons that were living in the EU, however she confessed that such a strategy would now be almost impossible as many politicians were reluctant to speak out in favour of immigration.

With this political reality in mind, she suggested that it was better to try to strategically widen the scope of access for undocumented migrants to the most basic of rights. There was a need to use all energy available to improve practices already done and to bring about improvements in accessing rights. She then outlined thematic areas where the Committee on Migration was focusing, and a number of rights in international treaties where at least in theory undocumented migrants had access. However when it comes to national treaties the implementation is more scattered.

The first thematic area that Ms. Strik discussed was undocumented children and that the Convention on the Rights of the Child should always be used as the guiding principle regarding access to rights. The right to education is typically seen as the most important yet there are still differences in practice in a number of Member States, for example some States use school as a way of detecting undocumented families, some heads of school are discretionary about who they let in, and there are also administrative and cost barriers for families. As well, technical training and higher education remained an issue for those undocumented students that were interested in attending programmes after the compulsory education age. Advocating for the rights of children has always been an easier entry-point since they are one of the most vulnerable groups. Ms. Strik suggested that it could also act as an entry-point for other vulnerable groups, such as single and pregnant women, as they too are potentially in need of assistance from the State, for example the right to shelter.

The second thematic area was healthcare. The European Committee on Social Rights in the Council of Europe has stated clearly in the European Social Charter that healthcare should not be restricted for medical situations which involve a threat to life. This has been one positive step in the right direction that essentially calls for a broadening of the scope of access regarding emergency care.

The right to housing was the third thematic area and Ms. Strik demonstrated with the example of Defence of Children in the Netherlands who had launched a claim in regards to the right of housing for undocumented children against the Netherlands in the Committee on Social Rights. In the end, the committee was clear that it was necessary that undocumented people and especially children have the right to shelter and as well special assistance as any other solution would run counter to respecting their human dignity.

Detention was the fourth thematic area, with a specific emphasis on the fact that people have the right to not be detained. Ms. Strik reported that more and more countries were moving against the detention of children and it was a subject which the

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Committee on Migration had spoken out against, as well as the UN Commissioner on Human Rights. Recently, the Netherlands and the United Kingdom changed their practice on the detention of children and Ms. Strik believed that it was due to the influence and pressure from organisations which spoke out against it, showing that such pressure can be an effective action. In general further steps are needed in addressing detention, for example guidelines are still missing and the Council of Europe could be encouraged to establish some, by building on the work of the Committee Against Torture (CAT), the Commissioner on Human Rights and the Parliamentary Assembly. In fact the Assembly has been pushing for this but with little success as the Council of Ministers does not enthusiastically support the initiative. Ms. Strik suggested that PICUM could play a provisional role in strengthening the argument that guidelines are needed. There is also a need to look at alternatives to detention.

If politicians were not willing or prepared to admit that rights such as housing, education and healthcare are fundamental rights and also accessible for undocumented migrants, then she suggested addressing such issues in the courts. There was an ever-growing jurisprudence and in the end, although a verdict in a particular case is specific towards the person in the case, it can result in the implementation of a policy in the Member State. Since the court usually bases its decisions on UN treaties or the European Charter, it could potentially be used in other EU Member States, making such court decisions potentially very significant.

Ms. Strik noted that the European Court of Human Rights, the European Court of Justice, and the European Committee on Social Rights should not be discredited and should be used as tools by advocates. It was important to reach out to lawyers and to provide them with information, arguments, background and practices that would help support an argument that would further rights for undocumented migrants. Possible results could be an explanation from the courts or the committee on how particular international treaties and provisions should be explained or even a preliminary ruling on a particular case. She stated that one decision in Luxembourg or Strasbourg could have a real impact throughout Europe and she suggested that PICUM should explore the possibility further; to realise the limits but then, also, to broaden the application of the law for undocumented migrants.

Ms. Strik had a number of suggestions for PICUM when looking toward its work plan in the years ahead. First, she suggested that PICUM obtain a participatory status at the European Committee on Human Rights and then launch a claim, as Defence for Children has done in the past, when they launched their claim on the right to shelter for undocumented children. If PICUM were to move forward with a claim, Ms. Strik stressed the importance of having accurate information and having a strong and relevant claim because if not, it could prove to be counterproductive.

She thought that it was good that PICUM had already established relationships with national and European organisations and Ms. Strik suggested that PICUM move the same way to establish relationships with politicians because it was just as important to also have politicians at the national level, exchanging information amongst themselves. She mentioned that in the fall of 2011, the Council of Europe would have a hearing on undocumented children and suggested that PICUM become involved in the presentation and as well, to help and identify politicians at the national level in order to set up a contact network so that they could share good practices with each other. The politicians could come from the National Assembly or outside, but the contact network would be for politicians that are working on the issue of migration and they could learn from each other, exchanging examples of what works and what does not. The Committee of Migration’s position could also be strengthened in this process and PICUM could provide these politicians with the tools which would help strengthen their positions and arguments at the national level regarding work with undocumented migrants. Such a practice would bring the work away from the European level but make it more practical for the politicians at the national level. The information that PICUM is able to
provide, sourced from the grassroots level, is very practical and important in helping convince legislators and organisations why it is important to have a change in policy regarding undocumented migrants.

In closing, Ms. Strik emphasised that there was a need for better European norms and that more effective practices needed to be identified in order to widen the legal space for undocumented migrants and their rights. The work of PICUM could be made more visible by creating cooperation with lawyers and politicians. It is important to strengthen the awareness that all rights, at least at the minimum, are shared by all persons.

The next panellist was Anne Weber, representing the office of the Council of Europe Commissioner for Human Rights. She further expanded on potential openings for advocacy and cooperation between PICUM and the Parliamentary Assembly of the Council of Europe (PACE), arguing that the institution that was not only very important for its work on undocumented migrants but also because the representatives were members of national senates and delegations of the European Union.

Explaining that the Council of Europe had a rather complex structure, Ms. Weber highlighted those that could be targeted for issues relating to undocumented migrants’ rights. She first drew attention to the European Social Charter, as it guaranteed fundamental rights and freedoms and had a monitoring procedure for collective complaints. There were still some limitations with the Charter, for example the “a la carte” system of acceptance meant that States could choose not to ratify particular provisions. The collective complaints procedure itself had only been ratified by fourteen Member States and also, the appendix of the Charter had limited scope for foreigners, restricted only to those “nationals of other parties lawfully resident or working regularly within the territory of party concerned”.

Ms. Weber explained that the scope of application was interpreted extensively by the European Committee of Social Rights, particularly in the decisions 14/2003 against France and 47/2008 against the Netherlands regarding their treatment of undocumented migrants. The Committee concluded that the appendix should not have detrimental effects when the rights of vulnerable groups are at risk as this ran counter to the respect of human dignity. For instance in the Dutch case, Defence for Children International vs The Netherlands, the Committee decided that undocumented children should be protected from homelessness.

Identifying the potential opportunities with the committees, Ms. Weber noted the importance of raising awareness about the Fundamental Rights Treaty and using its standards in the daily work of protecting undocumented rights. She asserted that was essential that organisations working in EU Member States that have not ratified the Treaty should lobby for ratification. NGOs are entitled to submit collective complaints, while in Finland, national NGOs could also lodge collective complaints, and elsewhere it is the responsibility of European NGOs.

The European Convention on Human Rights (ECHR) also provided opportunities due to the scope of its applicability “to all within the States jurisdiction”, thus including undocumented migrants. The European Court of Human Rights (ECtHR) which examines complaints concerning violations of the Charter frequently affirms contracting States’ right “to control the entry, residence and expulsion of aliens”. Despite this, there are still two interesting provisions existing in the legislation which could be used; Article Three on the prohibition of torture and “inhuman or degrading treatment or punishment” and Article Eight which concerns respect for “private and family life”.

Article Three, the prohibition of torture, is an absolute protection. It concerns “removal from the territory” and non-refoulement, noting risk of torture in cases of forced return, and secondly, “living conditions”. Notably, the court had recently accepted its applicability in cases involving the forced return of migrants between Member States of the European Union. Article Eight, the right to respect for family life, also pertained to those who would be separated
from their family due to deportation or denied family reunification.

Other opportunities exist concerning residence permits and adequate housing. The Committee on the Prevention of Torture (CPT) was useful in situations where migrants were being detained, as they assessed treatment of those deprived of liberty. While their work was largely confidential, it was notable that they also visited locations where foreign nationals were detained. It was possible to send them information about the detention of migrants in certain countries, locations and conditions, and this could provide a sufficient basis for an investigative mission.

The last organisation highlighted by Ms. Weber was the Office of Commissioner for Human Rights of the Council of Europe. It is an independent and non-judicial institution established in 1999 which had a broad mission of promoting awareness and respect of human rights in the 47 Member States of the Council of Europe. While unable to deal with individual complaints, it was possible to alert the Commissioner to general systematic violations. For example, during Thomas Hammarberg’s term, his office did a number of country visits, reports and recommendations relating to the human rights of irregular migrants, such as thematic papers on the “Human Rights of Irregular Migrants in Europe” and “Criminalisation of Migration in Europe”.

The last presentation of the session was given by Pablo Espiniella, of the United Nations Office of the High Commissioner for Human Rights (OHCHR), who shared the international perspective of his Brussels-based office, which represents human rights concerns and mainstreaming throughout the entire United Nations institutions, but is also responsible for upholding the UN mechanisms in relation to the development of EU policy.

Mr. Espiniella began by thanking PICUM for the excellent work the organisation has done over the past ten years, whilst he underscored that the anniversary indicated that work was still very much needed on the issue. He stated that undocumented migrants are a key priority for the OHCHR, and their situation in a number of countries highlights serious human rights concerns within the EU. Migration and in particular, undocumented migrants has been identified by the UN High Commissioner, Ms. Navanethem Pillay, as one of the six priorities of human rights concerns which need to be addressed. Mr. Espiniella summarised that his presentation would focus on three main fields; the activities of Ms. Pillay in her role as UN High Commissioner regarding the issue; what the UN mechanisms offer in protecting the rights of undocumented migrants; and the activities of the small regional office in Brussels.

OHCHR is concerned with a range of issues that affect undocumented migrants: prolonged detention; fair working conditions, such as unequal pay and unsafe conditions; vulnerable undocumented migrants groups, specifically women and children; as well as working specifically on the ILO Convention for domestic work, ensuring that the concerns of domestic workers were integrated into the Convention. Mr. Espiniella noted that the Commissioner felt that the rights of undocumented migrants were largely forgotten by many leaders. He demonstrated the Commissioner’s commitment to including undocumented migrants in the international agenda by noting statements she made on various occasions which drew the attention of other leaders. For example, the Human Rights Council in Geneva was opened by Ms. Pillay where she expressed her concern over the violations of workers, both documented and undocumented, since human rights
standards are applicable to all migrant workers, regardless of status.

The OHCHR's second pillar of work is in regards to monitoring the UN mechanisms and human rights committees and ensuring that EU Member States are doing what they have committed to do, and to see what more can be done. As an example, Mr. Espinilla highlighted the clear lack of ratification in the EU regarding the UN Convention on the Protection of Migrant Workers and their Families. The OHCHR has been vocal about the importance of ratification because they assert that there needs to be coherence between the internal and external policy of the EU when it comes to promoting human rights. He noted that when no EU Member State ratifies the UN Convention on Migrant Workers, it only made it more difficult for the EU to talk about supporting human rights and encouraging other nations to ratify other particular human rights instruments. In an effort to encourage ratification in the EU, the OHCHR created a document that went through the various arguments of why the Convention should be ratified, countering the arguments which state that there was no need for such a Convention.

Mr. Espinilla explained how the distinction between regular and irregular migrants is in fact not so distinct. He explained that it is a situation that can continually change as some people arrive in a country documented, then become undocumented, but then later are able to regularise their situation and become documented. He asserted however that there are developments that are taking place at the European Union and legislation-making level that should be highlighted as positive steps, including, for example, the actions taken by the Committee on Migrant Workers in trying to reach an agreement on the transferability of pensions of migrant workers. Once a country signs the Convention, there are a number of elements that would ensure that the rights of undocumented migrants are observed. For example, there is a special rapporteur that would do country visits, assess the human rights situation facing undocumented migrants in each Member State, and report back to the Committee. In November 2011, the Committee plans on holding a day of general discussion regarding undocumented migrants. The day will discuss the concerns that some Member States have regarding the Convention and provide an opportunity for other organisations to demonstrate that the Convention is merely compiling the rights afforded to migrants in a number of other Conventions into one more comprehensive C.

The third point addressed by Mr. Espinella was the work of the OHCHR regional office. One aspect of the work is to try to engage with the EU Institutions and ensure that they consider international human rights standards when drafting and harmonising EU legislation. Many Member States have neglected to take into consideration international Conventions which they are already a party of, resulting in national legislation which does not match with international legislation. As well, he felt that there was a clear gap in Europe in regards to knowledge of human rights and as a result, grassroots organisations would be challenged to identify how the gap between the national, international and local level could be filled. At this point in time there is an ever increasing amount of responsibilities being presented to local authorities and municipalities, whilst at the same time their understanding of the concepts involved has proved to be limited, leading Mr. Espinilla to argue that this is an area of NGO outreach work that should be strengthened.

Following the presentations from the panel, Ms. Castillo opened the floor for questions from the participants. One participant raised the issue of returning seriously ill undocumented migrants to their country of origin where, often unable to access adequate healthcare, they face certain suffering and death. Referring to a 2008 decision of the European
Court of Human Rights that the UK’s deportation of an HIV-positive Ugandan woman did not constitute inhuman or degrading treatment, she asked the panel to explain how mechanisms of the court and EU Institutions could be used to prevent such decisions.

Ms. Weber noted that the judgment was specific to the case and that strict criterion was applied and the case law did not provide States with the freedom to return all seriously ill undocumented migrants. She cautioned that there would most likely never be a decision in a court that would say “anyone seriously ill would not be returned to X country” and that is why it is important to specify that the applicant, the specific person in the case, would die if returned as the criteria applied is often quite strict. She said that there was an opportunity to draft general standards and suggested that the PACE could help to draft such a report, and these recommendations could be used by the court. Ms. Strik agreed, and suggested the possibility of using Article Three in terms of indirect violations, and taking a collective complaint to the European Committee on Social Rights (ECSR) on grounds of violations of social rights. Doing such an action would be new and there is not yet any jurisprudence, but she thought that it was an idea that was worth exploring.

Mr. Espiniella highlighted how at the UN level, a number of UN Special Rapporteurs (UNSR) have taken cases involving the return of migrants with HIV/AIDS into consideration, and colleagues in the UN Refugee Agency (UNHCR) have dealt with cases involving individuals from Kosovo. He stated that the main purpose, at least in terms of legal analyses, was how to demonstrate that the factor of their return was the issue which determined their death. To organisations that were going to work more closely with the UNSR, he suggested to always follow up on the cases with the UNSR.
Exploring developments within the European Union concerning the fundamental rights of undocumented migrants

George Joseph, from Caritas Sweden and PICUM Board Member, opened the second panel of the conference, which explored developments in the EU specifically regarding the rights of undocumented migrants. He noted the difficulty of highlighting developments in legislation over the past ten years as there has been few positive developments. The focus has typically been on criminalisation, prevention, control and return, rather than on fundamental rights.

He then gave the floor to the panel’s first speaker, Jean Lambert, who served as a Member of the European Parliament (MEP) for almost twelve years and was on the Committee for Employment and Social Affairs and Civil Liberties. Ms. Lambert started by congratulating PICUM on its ten year anniversary and its numerous achievements over the years. She noted that the developments in the European Parliament (EP) were a sign that PICUM’s work was having an effect. She gave the example of the Seasonal Workers Directive which was being taken forward by Claude Moraes MEP, who had picked up on a particularly important proposal from advocates which would give undocumented migrants doing seasonal work the opportunity to apply, for a two year transitional period, for a seasonal worker permit. It can be viewed as a very ambitious proposal from the European Parliament because it would be legislation that allows for individuals to change or regularise their work status. There is a chance that the proposal will not be supported in the co-legislation process. Ms. Lambert emphasised the value of contacting members of the LIBE Committee and providing arguments for why the proposal is valuable and should be supported in the European Parliament, as well as raising the wider issues as they relate to undocumented migrants.

Ms. Lambert commented that there was still more work to be done on the issue of undocumented migrants in the EP and gave the example of a debate that took place in the Committee on Employment and Social Affairs that was concerning the ILO Convention on Domestic Workers. An MEP had suggested that a text be included which would recognise that a number of domestic workers were undocumented and in particularly vulnerable situations, for example employed as in-house workers, making it more difficult to reach them and make them aware of their rights, or having language issues, etc. Unfortunately, there was not consensus in the Committee, and thus it was not included in the final resolution which was passed by the EP in May 2011. Even such a small recognition would have been an important step but Ms. Lambert said that it was not possible in the current EP, partly because there was not enough time to make the arguments strong enough. She felt that the current situation of non-recognition of the situation of undocumented migrants was truly disturbing as people were making the choice to essentially ignore virtual slavery, rather than acknowledge the existence and rights of undocumented migrants.
The battle surrounding the issue of language when discussing migrants, “irregular”/“undocumented” and not “illegal”, may seem to be being lost but Ms. Lambert encouraged advocates to continue the fight. She highlighted that the augments over terminology were in fact about perceptions and the basic values of tolerance, solidarity, mutual respect and the fight against discrimination and xenophobia. Ms. Lambert noted that it certainly did not help to have terminology such as “illegal” being used in legislation, such as the Employers Sanction Directive, as it is then used to frame the discussion. Also, public and political perceptions are formed by the media, so in Europe, migration and migrants are typically seen as people arriving in boats, leaving viewers to assume that is typically how migrants arrive in Europe. Such images skew the debate and leave people unaware that the majority of migrants become irregular for different reasons.

Ms. Lambert noted the importance, and the responsibility, of the State in regards to ensuring that people with papers are able to stay documented, as well as dealing with people who are without papers. She highlighted that often people become undocumented due to the inefficiency of Member States’ bureaucracy and oftentimes applications for renewal permits are not dealt with in time. She cited the example of applications being left aside due to inconsistencies in the information provided, with the result that people become undocumented. A recent report from the EP has introduced a requirement for Member States to keep people informed about the status of their application and to inform the individual if any problems arise.

Another issue that Ms. Lambert believed needed to be addressed was how legal and application structures were actually creating irregularity, particularly in regards to people whose application for asylum was denied, but who are unable to return to their country of origin. She noted that the EP commissioned a study on the issue but that it was not a very strong document and has since dropped-off the agenda. As well, the first draft of the Stockholm Programme included proposals on EU standards and implementing mechanisms for the regularisation of non-removable persons, but the text was later removed. Ms. Lambert stressed the need to look at the issue again, and at regularisation more generally, involving an honest address of the myths that surround the topics. There was a need to turn the focus away from mass regularisations and begin discussing regularisation not as a one-off event but as something that is continuous, so that people may regularise their status.

Besides addressing the rights of undocumented migrants to the obvious EP Committees, such as civil liberties, and the typical organisations that are working on migration, Ms. Lambert also discussed the importance of reaching out to broader networks. For example, there are amendments which are being considered in the Employment Committee in regards to the Anti-Poverty Platform and a resolution would soon be reached regarding homelessness and the best interest of the child. Advocate organisations received a lot of success in the EP when they worked with the Committee on the Environment, Public Health and Food Safety (ENVI) regarding health inequalities. This resulted in a resolution on access to healthcare in March 2011, which called on Member States to ensure that the most vulnerable, including undocumented migrants, had equitable access to healthcare.

Ms. Lambert endorsed the value of describing the situation of undocumented migrants in terms of the anti-poverty framework, since this places them alongside those citizens who also live in poverty. This framework, without bringing into the discussion immigration status, instead looks at undocumented migrants simply as individuals with entitlements and human rights.

In closing, Ms. Lambert stressed the need for wider political coherence on the issues facing undocumented migrants, originating from the relevant EP Committees and European Commission’s Directorate General and departments at the national level. She would like to see that ministers in charge of immigration would also be communicating with other ministers such as health and employment. Such interaction would help avoid the occurrence
where people are considered as statistics rather than people with wider rights and dignity.

Before introducing the next speaker, Mr. Joseph drew attention to the issue of losing the language battle regarding the usage of terminology such as “illegal” and suggested that perhaps losing such a battle reflected the current political climate and failure of the political leaders to lead public opinion. Mr. Joseph then introduced Martina Huber, from the Fundamental Rights Agency (FRA).

Ms. Huber began her speech by saying that she was glad to have the opportunity to present the preliminary findings of the FRA project on undocumented migrants, to which PICUM contributed extensively, particularly in the distribution of surveys. She praised PICUM for its support and said that FRA was finalising the study that would then be disseminated in the Member States.

The study is a comparative analysis on the fundamental rights situation of irregular migrants in the EU Member States, constituting the most comprehensive review to date. Two other reports are on non-removable persons. A fourth report is on detention practices, while two case studies focused on healthcare and domestic work.

The analysis is based on three surveys to Member States, local authorities and civil society, and a number of interviews coordinated by PICUM. The data was collected in 2010 by PICUM and other expert organisations that were contracted by FRA. Researchers distinguished two groups of migrants; those who are undetected and live in hiding, and those who cannot return for different reasons.

Concerning the authority’s discretion on who can be returned, Ms. Huber said that it is often a matter of technical obstacles. Sometimes there are no flights, or there is no way to return a person for other reasons, and most of the time it is not the fault of the undocumented migrants. This increases the obligation of the States to ensure that the fundamental rights of non-returnable migrants are guaranteed. She also pointed out that, at least, the Return Directive does make reference to minimum safeguards.

In relation to those people who can’t be returned, she said that there is a degree of discretion in deciding on which basis an undocumented migrant can obtain a temporary permit of stay or a toleration status, as in the case of Germany. This might also be subjected to conditions, such as the length of stay. This discretion leads to unpredictable and contradictory situations in which the same types of people might face different treatments. For example, a person who is sick can, at the same time, be considered removable but have no access to healthcare.

For those migrants who slip back into full irregularity, the ways out of “limbo” are difficult and diverse among Member States. In the ten countries that have a toleration status, four have mechanisms to end this type of limbo. While on a European Union level, there are no mechanisms or policies that tackle this “limbo” situation.

Researchers made reference to certain international human rights norms that apply to everyone, and also included references to EU primary law that does not exclude undocumented migrants. With regards to secondary EU law, references that could be applied were found and used in the report. The EU Charter on Fundamental Rights applies when EU law is implemented.

Ms. Huber noted that there is an obvious discrepancy between law and practice, and the situation changes considerably from country to country. In Sweden, for example, undocumented migrants have
to pay even for emergency care, while France and Belgium provide a much higher level of access. There is very little awareness about entitlements among migrants and healthcare providers, as well as among the authorities. It is unclear what laws are implicitly covering rights of undocumented migrants. Even where their rights are spelt out, there are other obstacles in practice, for example complicated reimbursement procedures. Healthcare is available in emergency situations in nineteen Member States. In twelve of these, undocumented migrants would get a bill.

Ms. Huber then turned to talk about education and said that legal uncertainty predominates in this field. In general, authorities and undocumented migrants have little knowledge on this issue and regulations may be only implicitly covered by the law. She mentioned some obstacles, such as the requirement to show documentation to enrol after a diploma, and the obligations to report undocumented students to which some educators are subject in some Member States.

On the issue of fair working conditions for undocumented migrants, Ms. Huber reported the example of many workers’ difficulty to claim back unfair pay. To prove a work relationship, they must be able to demonstrate the identity of the employer, which is often difficult. Similar obstacles appear when they claim compensation for work accidents. As for access to justice, according to the FRA interviews, undocumented migrants would prefer to avoid any sort of dispute due to fear of being arrested or deported. This is also why migrants often end up in highly exploitative situations.

Ms. Huber highlighted how complex the situation is with the issues of healthcare, education, work and housing; issues all linked one to the other. She added that FRA was planning to publicly discuss these issues and present the findings of its study in November at its annual conference in Warsaw, Poland. She invited the present organisations to make suggestions for the agenda of the event.

The final speaker for the session on policy was Ms. Sian Jones from the European Anti-Poverty Network (EAPN), an organisation which PICUM is a member of and which works at both the European and national levels. She began by wishing PICUM a “Happy Birthday” and explained that her presentation would pick up on an issue that was raised during Ms. Lambert’s presentation regarding mainstreaming undocumented migrants’ issues into the wider social policy debate. Her presentation also highlighted the context, policy drivers, opportunities and the risks at the EU level in entering into such a debate.

She began by introducing the EAPN, an independent network of NGOs fighting against poverty and social exclusion which places an emphasis on working with and for people experiencing poverty and including all groups, even undocumented migrants. EAPN currently has 30 national networks, with new networks joining from Serbia, Macedonia, Iceland and 23 European NGOs. EAPN started in 1990 and celebrated its twentieth anniversary in December 2011. It resulted from European anti-poverty programmes which began in the 1980’s to develop and drive a European social inclusion strategy at the EU level. It was a key actor in getting the Open Method of Coordination for Social Inclusion, a social inclusion agenda through the Lisbon Treaty, and now, in the Europe 2020 Strategy. She shared that the EAPN also received funding from PROGRESS, but that the future of the funding was uncertain.

The EAPN has a broad rights-based approach to promote dignity for all with freedom from discrimination and Ms. Jones stated that although the organisation does not specialise in migration, it still worked directly with its members in mainstreaming the issue and the rights-based approach through all policy areas. Regarding migration specifically, this meant working to guarantee access to rights, resources and services to migrants and their families regardless of legal status. Another focus is the participation of migrants themselves. She informed participants that EAPN was trying to build consensus across the network about the approach to migration but admitted that it was not always easy and that it took time.
Undocumented migrants were an issue that was increasingly becoming a priority in the network and being raised by a number of national members, particularly from networks in Cyprus, Malta and other Mediterranean countries. She mentioned that EAPN had a conference in Cyprus in 2010 during which undocumented migrants were a key concern. Ms. Jones highlighted examples where the EAPN was trying to build capacity and alliances on the issue. For example, during the European Year Against Poverty in 2010, EAPN worked with PICUM to hold a multi-stakeholder meeting and were also part of the European Parliament hearing on access to healthcare. She stressed the value of their participation in such events, particularly as it allowed for ways to mainstream undocumented migrants into their work.

Ms. Jones continued to outline the EU policy framework, highlighting the Lisbon Council objective, set in 2000, to make a decisive impact on the eradication of poverty and social exclusion, and the Open Method of Coordination as the key instrument. She explained that this is a soft coordination frame which sets common objectives, develops national action plans and strategies to reach those objectives, and reviews the outcomes together, as well as having instruments for peer review, with the aim of building consensus across Europe on how to tackle these issues. Ms. Jones felt that as an advocacy tool, the Open Method of Coordination was not yet strong enough and although the instrument did have strengths, for example in terms of governance, it did not yet have the necessary political will and backing.

One of EAPN’s main narratives highlights this statistic by saying, despite ten years of economic growth and high employment, poverty and exclusion has not reduced, and has even in some cases increased, so economic growth and jobs do not necessarily reduce poverty. During the EAPN’s General Assembly in Lisbon, members expressed anger about the fiscal austerity measures being implemented at the national level and the EU’s role, and the impact that they will have on the increase of poverty and social exclusion, and of xenophobia, with migrants and other ethnic minorities being used as scapegoats. Ms. Jones argued that such actions undermined social cohesion and the whole European social model, and she questioned whether Europe 2020 should be viewed as an opportunity or a risk.

Focusing further on Europe 2020, Ms. Jones discussed how the strategy aimed for “smart, sustainable and inclusive growth”. A few key aspects that she highlighted for the participants were: the target to reduce poverty and social exclusion by 20 million by 2020, a guideline and a flagship platform on poverty and social exclusion, and a horizontal priority for funding. She also detailed some of the opportunities that the platform presents to discuss migration issues.

Ms. Jones then brought the discussion back to the issue of the social inclusion of undocumented migrants, and emphasised that the soft Open Method of Coordination (OMC) framework was crucial to PICUM’s work, because the common objectives made explicit reference to accessing rights, resources and services, with no distinction based on legal status, and explicitly recognises undocumented migrants as a vulnerable group. For example the problem of homelessness among undocumented migrants was mentioned in the joint report of the OMC. EAPN had lobbied very hard for the OMC, and she noted that the European Council confirmed that it would continue. She stressed the importance of the common objectives of the OMC, especially in the current negative political climate and more negative context of Europe 2020. She explained that the Europe 2020 includes a general poverty target, but no sub-targets, no positive mention of migration, and an explicit reference in Guideline Ten to “legal migrants only”. Therefore, Ms. Jones recommended using the social inclusion agenda for the issues of undocumented migrants and their social rights. She pointed out that there is good rhetoric on fundamental rights and combating exclusion, but that the reality is different, and the focus is on employment, from which undocumented migrants are excluded (the employment guidelines focus only on legal migrants).

Ms. Jones also drew participants’ attention to some of the initiatives coming out of the Anti-Poverty
Migration is an area which has been highlighted for future initiatives, but a lot of work remains to be done to push it forward.

Before closing, Ms. Jones identified some possible next steps for strengthening the rights of undocumented migrants. She emphasised the importance of working together to reconfirm the rights-based approach, using the OMC, and to mainstream the issues, including making the link with discrimination across all fields. She highlighted the danger of the Europe 2020’s move to focus only on regular migrants, and the need to ensure undocumented migrants as a specific target group. She suggested making alliances on an integrated, multi-dimensional approach, and building consensus on strategies for fighting for access to rights, resources and services for undocumented migrants. Physical mobilisation on the national level in defence of rights was also considered important, particularly in view of the physical attacks on undocumented migrants that have been occurring in some EU countries. Finally, she informed participants that EAPN would like to take these issues forward, and to do so, needed more information from PICUM. EAPN was restructuring in order to allow more input from the grassroots level and increase bottom-up approaches, and a task force on migration including undocumented migration was being discussed.

As well, the panellists responded to a statement on the EU Return’s Directive. Ms. Lambert agreed that certainly there needed to be an evaluation of the Return Directive by reviewing the process and report on what is happening now, so that people realise what has changed as a result of the Directive, regarding for example periods of detention, re-entry bans, etc. And when making an evaluation, it is important that it contains a human element as well as evidence, to which Ms. Jones agreed.

The last question focused on detention and how could migrants be empowered to claim their rights when the threat of being known to the authorities and detention was always a possibility. Ms. Lambert highlighted that it was important to advocate for a disconnection between access to services and immigration control. As well, reporting duties should be stopped. Ms. Lambert acknowledged the difficulty and reluctance of undocumented migrants in coming forward in, for example, work place violations, and that it was important to push for measures that would allow third parties to raise a case, or delinking inspection of labour standards from immigration. She also noted the importance of working with trade unions on such issues.

Following the morning panels and lunch, the afternoon was dedicated to four simultaneous workshop sessions. The participants were divided into smaller groups and attended one of the four workshops on advocating for fair working conditions of undocumented migrants; strategies to promote empowerment of undocumented women; countering the social exclusion of undocumented families with children; or surmounting barriers in access to healthcare services. The intention of the interactive workshops was to identify challenges and barriers experienced by the participants in their campaign work and successful strategies. Each workshop had two speakers who were tasked to start the discussion by giving a short presentation which highlighted the particular issue and their work on the topic.

Following the presentations from the panel, Mr. Joseph opened the floor for questions from the participants. Ms. Huber was questioned about the analysis that the FRA did in regards to assessing the rights of not only undocumented migrants but as well asylum seekers, etc. in order to contextualise the outcome. She stated that the FRA preferred to provide data for comparisons but such information was not always systematically gathered in all Members States and so it was difficult to have comparable data, for example, with asylum seekers, non-returnable persons, etc.
Advocating for fair working conditions of undocumented migrants

Didier Vanderslycke, from Kerkwerk Multiculturral Samenleven and a PICUM Board Member, served as moderator of the workshop. After a short round of introductions from the workshop participants, he gave the floor to the first presenter, Ksenia Naranovich from Funacja Rozwoju Oprocz Granic (FROG), who discussed the regularisation campaign that the organisation ran in Poland. She explained that since Polish legislation did not provide any rights to undocumented migrants, the only solution was to call for a regularisation of all the undocumented in the country. FROG took a number of steps, first, by organising a massive campaign with the collection of signatures on a petition which was then sent to the President. They also engaged in lobbying and focused their attention on Polish Members of Parliament (MPs) and government officials. They also chose a symbol for the campaign, which was a green apple since 80% of the apples in Poland are collected by undocumented migrants mostly coming from Ukraine or Belarus. It helped that the campaign was widely covered in the media.

Ms. Naranovich had good news to report on the campaign as the bill, known as the "Bill on regularisation of the stay of certain foreign nationals on Polish territory", was adopted on 22 June 2011. Included in the provisions adopted was that undocumented migrants in Poland would be able to regularise their stay. The basic requirement for providing a temporary residence permit was uninterrupted residence in Poland since at least 20 December 2007. The regularisation also covered failed asylum seekers who received an expulsion order before 1st January 2010, as well as foreigners who were expecting to obtain their refugee status on 1st January 2010.

This campaign differed to previous campaigns in Poland as the permission for temporary residence would be granted for two years, unlike previous campaigns where the duration never exceeded more than one year. Holders of such temporary residence permits would be entitled to work without a working permit and able to sign employment contracts on a general basis.

Although Ms. Naranovich recognised the success of the campaign she still worried about how many people the campaign would actually benefit. She said that between 50,000 and 450,000 undocumented migrants were estimated to be living in Poland and since the previous regularisation only targeted 6,000 people in total, she worried that the recently adopted regularisation bill might not be enough.

The second presenter was Mikel Araguás from Andalucía Acoge in Spain, where the organisation works on the promotion of multiculturalism and the integration of migrants in Andalusia. They have 21 field offices which welcomes more than 21,000 persons every year. He opened his presentation by discussing the situation in Spain before 2008 where three elements were continually influencing one another: irregular migration, economy and legislation. In 2008 another element was added, the economic crisis. The economic crisis proved to be a crucial element that would effect and change the situation of migrants and in particular undocumented migrants heavily.

The economic crisis triggered massive unemployment of more than 30% in Andalusia, and turned public opinion against immigrants. Mr. Araguás noted that many people started to believe that uncontrolled migration had caused the crisis. In
the area of legislation, there was a clear rise in the public discourse for more restrictive immigration policies, although irregular work was favoured in Spanish legislation. For example, employers who used undocumented migrants ran the risk of being fined, but the harsher penalty was given to the undocumented migrant as they risked deportation. So despite the crisis, irregular work was still stable at around 20 to 25%, yet still associated with the problems caused by immigration. With all of these factors, the number of undocumented migrants was still increasing as many documented migrants were unable to renew their residence permit due to their unemployment. As well, the number of undocumented remained stable since there were so many people that employed irregular workers.

In order to best influence and counter the developments that were taking place in Spain, Mr. Araguás said that Andalucía Acoge had developed some guidelines to target their work, the first being on the individual level of the migrant. The organisation’s work with undocumented migrants included Personalised Itineraries of Insertion (“IPIs”) and training in order to strengthen their capabilities, as well as awareness-raising towards employers and other key actors from society. Andalucía Acoge also advocates for the rights of undocumented migrants at the political level, with the objective of influencing legislation on foreigners, irregular work and on domestic work. Mr. Araguás informed the participants on the campaign “Empleada, ni sirvienta ni criada” (“Employee, not Servant nor Maid”) which was focused on the rights of domestic workers and provided support and training to them as well as raised awareness among key actors and advocates for policy changes.

Mr. Vanderslycke summarised the two presentations: whether to adopt a sectorial approach when defending the rights of migrants; the question of prioritising regularisation or focus on fair working conditions for undocumented workers; the issue of detained people working in prisons; and tensions undocumented migrants faced between various groups, such as documented and undocumented workers.

One of the themes discussed was whether it was best for organisations to adopt a sectorial approach when defending the rights of undocumented migrants, for example focusing specifically on agriculture, care workers, domestic workers, etc.

A participant from the Netherlands suggested that an analysis should be done on the types of work, and the position of undocumented migrants in the labour market, as well as looking at what makes them more vulnerable. She used the example of agricultural workers and the often poor working conditions of the undocumented in that sector, suggesting that supermarkets selling the food which the migrants produced should be held responsible. Ms. Naranovich agreed and underlined that their logo, a green apple, in the regularisation campaign in Poland was a clear link to the work of migrants in the agricultural sector. Seasonal work is a large industry in Poland, just as it is in other countries so it is an easy sector to target. A participant from Spain suggested that PICUM could provide some further research on the situation of undocumented migrants in selected EU countries that worked in agriculture. Other participants from Belgium and
the Netherlands believed that a focus on specific sectors, such as domestic workers, could help an NGO be more efficient and direct in their advocacy efforts, and recently adopted legislation like the ILO Convention on Domestic Work would only strengthen their arguments.

Participants from the US and Belgium felt that organising a defence of undocumented worker’s rights according to the sector in which they worked would not be useful as it would simply divide workers. There was a risk in having legislation that focused primarily on one sector of the economy as it could potentially discriminate against other sectors, so in the end, it was better to have general laws for everyone.

A representative from Belgium suggested that it was first necessary to note the objectives of the organisation; if the objective was to organise undocumented workers, then a focused strategy on specific sectors would be advisable. But if the objective was to inform the workers of their rights, then a more general and global strategy was better. In regards to what the strategy of PICUM should be, another participant from Belgium insisted that PICUM was not a trade union and so it was not advisable to draft minimum conditions and working standards. Instead, a possible strategy for PICUM would be to define and put into place a global strategy on the rights of migrant workers in general.

The second theme discussed was whether or not it was better for organisations to prioritise regularisation campaigns or to focus on fair working condition campaigns for undocumented workers. Some participants felt that although regularisation was the best option for undocumented migrants, advocating only for regularisation represented a sort of trap as it reduced migrants’ rights to only one issue. They believed that advocating for fair working conditions should be done irrespective of legal status. Another participant disagreed and believed that the two were actually not contradictory and that regularisation would be able to offer an immediate protection for someone that was undocumented. It was also suggested that trade unions should foster a dialogue between documented and undocumented workers.

One of the presenters from the panel, Mr. Araguás, explained that in Andalucía his organisation was trying to establish a norm in terms of migrants’ rights, but the organisation also remained realistic in terms of possible achievements and found that aiming for small improvements in the migrants’ situation was more feasible.

The discussion turned to focus on labour inspectors and whether or not the participants have cooperated with them in the protection of migrants’ rights. Mr. Araguás explained that social inspection services in Spain were understaffed and often called employers before every inspection while another participant said that there were good practices that existed in France. A participant from Belgium criticised the Belgian inspection services because they found the services were more concerned to receive the taxes from the employer, who hired the undocumented worker, and not about protecting the rights of the migrant.

Before closing the discussion on this theme, Mr. Vanderslycke took a vote from the participants on two options: PICUM having a campaign on regularisation of undocumented migrants, or PICUM having a campaign on fair working conditions. Option two, fair working conditions, was a unanimous decision. A participant from Spain insisted that mainstreaming PICUM’s position on fair working conditions would have more impact.

The third theme of discussion was the working conditions of migrants that were in detention centres. A participant from the UK whose organisation worked with people in detention shared that many of the prisoners they met with were employed at very low wages, sometimes one sixth of the normal salary, and the employment was sometimes with external companies. Ms. Kadri Soova, Advocacy Officer for PICUM pointed out that some of her former research work on prisoners in Estonia showed that this type of work was difficult to define as forced work because the prisoners were actually willing to work,
even with low wages. Other participants disagreed and said that undocumented migrants who were in detention should not be considered as prisoners and were in fact not even authorised to work.

For the final topic of discussion, moderator Mr. Vanderslycke picked up on an issue that was mentioned during the presentation of Mr. Araguás, which discussed tensions that undocumented migrants faced among various communities, for example, acts of violence between documented and undocumented workers. It was said that in Spain, a common practice of companies was to hire undocumented workers for five or six years and then to dismiss them for no apparent reason. The undocumented workers had no right to appeal and often had no sympathy or support in the workforce of documented workers. If they complained, sometimes they would face violence.

Participants then shared examples seen in their own work of violence which had targeted undocumented migrants. One participant noted that in Greece there were many Afghan women and men that were physically assaulted by fascist groups that operated at night. He said that many of the victims were undocumented domestic workers. In relation to domestic workers, another participant noted that in Belgium they often had issues with workers that were accompanying ambassadors and diplomats. Many of the workers were in exploitative conditions but were unable to take action against the employer because of their diplomatic immunity. Another participant shared a situation that took place in Poland in 2004, when Polish agricultural workers were replaced by Turkish ones. The result was increased tensions between the communities.

Mr. Vanderslycke concluded the workshop by thanking the speakers and the participants for some very interesting presentations and discussions. He felt that the discussion would certainly add value to the discussion regarding PICUM’s upcoming strategies.
Strategies to promote empowerment of undocumented women

Edel McGinley, from Migrants Rights Centre Ireland (MRCI) and PICUM Board Member, served as the moderator for the workshop which focused on strategies to promote empowerment of undocumented women. Before moving to the presenters, she provided the context for the discussion by suggesting that participants look at empowerment as a process and to see where power and equality fit into that process. She believed that one of the challenges was how to promote the participation of women and at the same time challenge women’s inequality in the social, cultural and political spheres. The participation of undocumented women in this process is crucial towards their own empowerment.

The first speaker in the workshop was Nazek Ramadan, from Migrant Voice, who shared the organisation’s experience with empowering migrants in the UK. She noted that the organisation preferred for the migrants to speak in their own words and since she was unable to bring any of the undocumented women with whom she works, because of their inability to travel, she integrated video and audio recordings of migrants’ testimonies throughout her presentation.

Ms. Ramadan explained that Migrant Voice aimed to transform how undocumented migrants were seen and heard in the media. They wanted to shift from being disempowered and marginalised victims without a voice to being the creative and expressive architects of their own media with their own voice, content and messages. She noted that they did this through various media outlets such as a newspaper which they produced and sent to all candidates before the general election in the Parliament.

On why it was important for migrant women to share their stories, one of the members of Migrant Voice had said, “If I don’t tell my story I am helpless. If I can’t tell my story nobody will see me.” Ms. Ramadan shared that the women were desperate for support and needed to talk. Raising awareness of the issue and letting the public know what they were experiencing was a perfect outlet. Ms. Ramadan said that when asking members how they thought the organisation was helping in empowering them, the members replied that the simple act of treating them like they were other human beings was already empowering them. It also helped members to talk to other people who were in similar situations to them and to receive advice; it was all a part of the process of learning to move forward.

Ms. Ramadan said that it was important to let the women speak and to make them feel respected, believed and listened to. At Migrant Voice there was no judgment given and anyone was welcome. As they were a migrant organisation, they had migrants’ interests at heart. It was also important to protect people’s identity, to respect their privacy and confidentiality. There are many ways of sharing the stories of people without exposing their identity, as many of them are afraid that they might be detained or deported. There are also many different ways to empower people. Not only could people share their stories, but at Migrant Voice it was also possible to volunteer at the organisation or help in other ways. In the end, ownership of their story was essential.

Ms. Ramadan closed by sharing the story of the woman who was speaking in the various video and audio testimonies throughout her presentation. The woman had fled her home country where she was imprisoned and tortured. She was even put in the hospital as a result of the torture, where a nurse took pity on her and helped her escape. The UK Home Office did not believe her story and then refused her asylum claim. Since she simply could not return, she became undocumented. For her and for many other people like her, the option of returning simply did not exist. The story ends well, as the woman just recently received her status. Not all stories, however, have such a happy ending. Ms. Ramadan said they had heard of many cases of people committing suicide because they were forced to return to their country of origin.

The next speaker was Petra Snelders from RESPECT, a transnational network of migrant domestic workers in Europe, which included
migrant domestic worker organisations but also human rights organisations, trade unions and other NGOs. She explained that the objective of the organisation was to improve the overall economic, social and legal position of the growing number of migrant domestic workers in Europe, regardless of their immigration status.

Ms. Snelders provided a snapshot of the situation of domestic work today by stating that 90% of the domestic workers in Europe are women and most of them are undocumented or living in fairly insecure immigration situations. She provided the example of au pairs in the UK where the domestic worker’s residence permit is dependent on their employer. She believes that global and regional developments also influenced the sector of domestic work where for example in Europe, with a changing social economy, an increasing number of households are dependent on migrant domestic workers. Without them, many of the employers would be unable to work and this was especially the case for women, who want or need to work outside the home.

Ms. Snelders highlighted the double standard that existed in labour policy where on the one hand there was significant employment of migrant domestic workers in the private household but on the other hand there was the denial of their immigration and labour rights. As a result, there were a number of undocumented migrant domestic workers.

When talking about strategies of empowerment, Ms. Snelders stressed that it was important to have a framework, as in a strong legislation, in place. In the last decade, there were several successful campaigns that were undertaken in the UK, Spain, Italy and Greece by undocumented domestic workers and their supporters and legislation was actually changed. The changes did not come easily and were usually achieved from the bottom-up. Through their own political campaigns, migrant domestic workers ensured that working conditions made it onto both the public and political agenda. They started bringing the debate to trade unions, national governments, European institutions and international organisations.
From RESPECT’s perspective, domestic migrant workers’ working conditions in Europe are determined by both structural vulnerability and violation of their human rights, and this is central to RESPECT’s campaign. Ensuring the migrant workers’ protection and providing them with immigration status related to their work are essential in Ms. Snelders’s opinion. To highlight the latter, the panellist recalled that women are particularly vulnerable, as they lack status in several countries. It is notable that although many employers acknowledge that domestic workers are performing an important role both economically and socially to society at large, the fact that many of them are undocumented underlies the unequal power relationship between employee and employer. Ms. Snelders also claimed that this unbalanced situation results in employers abusing their workers very often.

Regarding the campaign’s strategies for women, Ms. Snelders remarked that her organisation works on that issue, and stressed that when talking about empowering migrant domestic workers and/or women, it is important to have an organisation providing information, advice and discussion, as well as working towards the recognition of the situation of migrant domestic workers as being a structural challenge. In doing so, domestic migrant workers would know that they are not alone and that their cases are not isolated ones. The panellist also pointed at financial empowerment and financial security as having a relevant role to play in empowerment, and provided the example of undocumented women unable to open a bank account; she also stressed that a system helping women to support each other should be put in place.

Ms. Snelders moved then to give insight into RESPECT’s work on the ILO Convention on Domestic Workers 2011. She firstly noted that the Convention has been adopted but not ratified, and does not include any specific provisions on undocumented workers, which represents a big challenge. She moved then to explain that when the ILO decided to develop a Convention or at least some standards on domestic work in 2009, RESPECT gathered and worked together with affiliated organisations and migrants workers. They met to raise awareness of what the Convention was, and drafted comments which they sent to ILO. They worked closely with migrants and finally went to the meeting in Geneva. Unfortunately, undocumented workers were not able to get fully involved at that point, since, as they cannot cross borders, they could not go to Geneva.

Ms. Snelders concluded by sharing the worrying experience of migrant domestic workers being hunted in a village in Amsterdam, to raise awareness of migrants’ visibility as being an important but also dangerous question. In that village, migrant domestic workers were followed when they walked to work, and then arrested simply for being “black people in white people’s neighbourhoods”. As a result, these domestic workers faced deportation. Ms. Snelders also highlighted that police are using materials from academics on the situation of undocumented migrant workers to get it open to discussion and to justify the migrants’ apprehension. The panellist closed by suggesting the need to further discuss these dilemmas.
Countering the social exclusion of undocumented families and children

PICUM board member Fanny Dethloff from BAG Asyl in der Kirche welcomed the participants and gave the floor to the first speaker, Alice Beldman, from the Dutch organisation ASKV.

Ms. Beldman started her presentation by introducing ASKV, an organisation that supports refused asylum seekers who are unable to return. It provides assistance in accessing medical care, education, housing and legal assistance. ASKV is also active in lobbying and campaigning for the collective rights of refused asylum seekers.

She presented four guidelines for successful campaigning by giving an example of one of ASKV’s campaigns, namely the “bus campaigns” undertaken over the last ten years. “Bus campaigns” started in 2001, when according to the new Aliens Act refused asylum seekers and certain categories of asylum seekers were no longer given access to state provided refugee centres. Both local politicians and support organisations were, as a consequence, confronted with a large number of homeless asylum seekers, who were forced to survive on the streets without any access to housing. Among them were many women and children. In order to draw attention to this situation, ASKV rented a bus and toured the country during a period of one week with some of the homeless asylum seekers. They explained their situation in different cities to different audiences.

The first guideline is sharing the impact and consequences of national policies with local politicians who can put pressure on national politicians. ASKV introduced local politicians to the homeless asylum seekers who participated in the bus campaign tour, to confront them with this vulnerable group and make them take responsibility. They also put pressure on the national government to provide a sustainable solution. Now some of the refugee centres have been reopened to some of these specific groups.

The second guideline is making sure that the campaign has one clear message and making clear agreements with partners as to the aim of the campaign. This also requires appointing a spokesperson. In the case of the bus campaigns, agreeing on a strong common message turned out to be difficult. ASKV tried to get as many organisations as possible on board for the campaign. This necessarily led to more opinions about the goal of the campaign. Smaller organisations tended to bring in more idealistic goals whilst bigger organisations aimed for more realistic ones.

Involving independent experts who can provide strong arguments and data to strengthen the message of the campaign was the third guideline. Alice noted that policy-makers are likely to find evidence more trustworthy from independent experts than a group of “left wing campaigners”. To this end ASKV organised an expert meeting where experts joined local politicians and representatives of the campaign. Following the meeting, ASKV informed the Secretary of State about the outcome of the meeting, providing the independent experts’ arguments and statistics.

The fourth guideline concerns the importance of including representatives of the group you are campaigning for. They can present strong cases in support of your message. In the case of ASKV’s bus campaign, asylum seekers were present on the bus. This was important to give the group they were campaigning for a face. Strong cases should be prepared carefully and in collaboration with the lawyers of the persons involved, asylum seekers in this case, to make sure that their legal procedure would not suffer as a result of any publicity they may receive.

Although the bus campaign was very successful, Ms. Beldman concluded that the climate in the Netherlands was harsh at the moment; it was difficult to house refused asylum seekers and many vulnerable groups were still expelled from the refugee centres, including mentally ill people.
Together with other organisations, ASKV is also campaigning against criminalisation and for the regularisation of undocumented migrants in the Netherlands. In particular, the organisation was trying to change the rule in the current regularisation procedure, according to which people can only be regularised if their stay in Europe is exclusively limited to the Netherlands. If they left the country for any period of time, they would no longer eligible for regularisation.

At the end of her presentation, Ms. Beldman was asked to provide more information about the number of undocumented migrants who have mental health issues. She explained that as part of her project, shelter can only be provided for around 12 people. Once in the shelter these people have access to mental healthcare. She added that ASKV was starting to evaluate how many people are affected by this problem on the streets of Amsterdam.

Ms. Dethloff asked the second panellist, Mr. Doros Polykarpou from Action for Equality, Support and Antiracism (KISA), in Cyprus, to take the floor. Mr. Polykarpou began his presentation by explaining the reason for the petition that his organisation was asking all participants to sign. He said that KISA had been criminalised by the Cypriot authorities over several years. The latest incident happened during the 13th Rainbow Festival, the largest annual multicultural festival in Cyprus, in Larnaca on 5 November 2010, when the festival was attacked by right-wing groups that were participating in a parallel racist march. The mayor of the city, the head of the representation of the European Commission in Cyprus and police were present at the moment of the clashes. The only people arrested and charged that night were five young refugees, some of them under age, and two Cypriots, all Festival participants. Doros was also charged for “rioting” which carries a 3-year prison sentence if found guilty.

Mr. Polykarpou asked participants to sign the petition which asks the Cypriot government and its authorities to terminate the criminalisation of KISA and consequently of him personally, and to drop its prosecution. He underlined the importance of having launched this campaign in order to gain solidarity and put pressure on the Cypriot authorities to stop their criminalising acts.

Mr. Polykarpou went on to introduce KISA. Established in 1998, the organisation initially focused its actions on campaigning and lobbying work, but very soon this was overtaken by the necessity to directly offer advice and services to refugees and migrants. Today KISA is the only NGO in Cyprus providing services not only to refugees but also undocumented migrants and victims of trafficking or discrimination. The only other organisation active in Cyprus is an NGO funded by the UNHCR, which works solely with asylum seekers and refugees.

Migrants only started coming to Cyprus after 1991. In Mr. Polykarpo’s view, Cyprus is today a country of immigration, with over 30% of the inhabitants without Cypriot nationality. However, his opinion is not shared by many people who still refer to immigrants with the term “temporary employees”.

KISA’s aim is to raise awareness about the presence of migrants in the country and build a more open society. The biggest challenge the organisation faces is financial; to maintain the services it offers, pay permanent staff etc. He explained that national authorities were preventing KISA from receiving funding from national sources, which includes European Union funds that are allocated by national authorities. Therefore, direct grants from European sources are KISA’s only source of funding.

Mr. Polykarpou outlined the main profiles of undocumented migrants in Cyprus. They are refused asylum seekers who are no longer catered for by the asylum system and who may also be “un-returnable”. He gave an example of a group of Iranian nationals, not recognised by the Iranian embassy and therefore without travel documents. He said they were living in a limbo situation, as are many other migrants in Cyprus.
Mr. Polycarpou also explained that people often become undocumented after legally residing in Cyprus for several years, because work permits are linked to a particular employer and residence permits are linked to work permits. Therefore, if an employment contract is ended by the employer, the related residence permit also immediately becomes invalid. When this happens, most of the people concerned leave Cyprus, because they know that their chances of being regularised are very low. He said that this migration model is similar to the Middle East’s.

Another issue raised by Mr. Polycarpou was private agencies that recruit people to work in Europe. About 14,000 Vietnamese women working in Cyprus entered the country and job market with the help of such agencies. These women usually pay around 6000 or 7000 US dollars to the agent, but they then only earn around 300 euro a month, which means that for the first two years of their employment, they are basically working for the agent.

A third group of undocumented migrants are visa over-stayers. Because the authorities do not consider Cyprus a country of immigration, they do not renew visas after 4 years and do not have procedures to apply for permanent residence. Therefore, many migrants stay in Cyprus although they are unable to renew their visas.

Coming to the more specific issue of undocumented families and children, Mr. Polycarpou said that one of the most vulnerable groups of undocumented migrants in Cyprus is single mothers with children. There are many children in Cyprus who are 12-14 years old and without a birth certificate. They experience difficulties in accessing the national healthcare system. They are usually granted access to education. They can register with schools without being asked to provide documents proving their status. However, he said that authorities were considering introducing a requirement to provide residence permits when registering with schools. If this regulation came into force, many children would most probably be withdrawn from school, because their parents would be afraid of being detected.

Mr. Polycarpou concluded by saying that KISA’s strategy on undocumented families is to try to use children’s rights to regularise their parents. He said that the topic of undocumented children and their parents was often easier to address when speaking to officials than the topic of undocumented migration as a whole. KISA has good relations with the Cypriot Ombudsman for Children and Mr Polycarpou highlighted the importance of combining forces with others and networking in order to initiate change. KISA aims to improve the situation of migrants in Cyprus through advocacy and awareness-raising in Cypriot society. Unfortunately, it was not yet possible to work on this on a long term basis but rather on a case by case basis.

Ms. Dethloff noted how it was difficult, if structures were lacking, to carry out awareness-raising activities whilst at the same time being directly involved in service provision all the time. She stressed the importance of giving testimony about what is happening on the ground. She also raised the issue of private employment agencies, which she thought represented a new form of modern slavery. She suggested that NGOs look closely into their mandates and working methods.

Ms. Dethloff then asked the participants about the estimated number of undocumented migrants in the countries in which they were working. The official estimate in Germany was 500,000 out of a population of 80 million, but it was not considered to be very reliable due to the different laws of each region. The Netherlands had around 100,000 undocumented migrants, with a total population of 17 million. The total number of undocumented migrants in Cyprus was 50,000–70,000 out of a total population of 900,000 inhabitants. And in Norway, where population is five million there were an estimated 20,000–35,000 undocumented migrants.
As a first point of discussion, Ms. Dethloff asked participants to describe the situation concerning access to education for undocumented children in their countries. In the Netherlands, undocumented children were allowed to go to school until high school, and were registered in the schools. In Italy, undocumented children could attend schools but there was a trend of separating migrant children (not only undocumented) in different classes. Ms. Dethloff said that in Germany undocumented children have no access to education in practice. She mentioned that Germany had only recently fully ratified the Convention on the Rights of the Child, lifting its reservation regarding migrant children. In Romania children could only attend schools if they had attended one compulsory year of kindergarten. Education is provided in reception centres, but is inaccessible outside of the centres due to fear that enrolment in schools will lead to detection. In Norway, undocumented children could access education and also healthcare. Mr. Bertelsen, from the Norwegian Organisation for Asylum Seekers (NOAS), also added that until recently migrants who had paid taxes were able to obtain work after becoming undocumented, based on their tax certificates, as employers did not crosscheck work permits. However, the immigration authorities had discovered this practice and regulations were expected to change. If this happened, undocumented migrants living outside of the camps for asylum seekers (where they were allowed to stay) were expected not to be able to afford it anymore.

Ms. Dethloff added an example about a German campaign criticizing the conditions in refugee camps and also their location outside of cities, where there was no access to legal aid or counseling. Undocumented migrants did not have access to these camps in any German federal state and usually managed to find a place to stay thanks to the help of their community. Ms. Dethloff added that the infrastructural setting in Germany sometimes portrays a contradictory message. In some buildings, reception centres are located on the ground floor and detention centres on the second floor.

Anika Depraetere, from Meeting, in Brussels explained that in Belgium, undocumented families with children had had access to housing since 2004, but due to the on-going reception crisis there were not even enough places to shelter asylum seekers, which meant that in practice the right to housing of both undocumented migrants and asylum seekers was often denied. If the case was taken to court, the right would be recognised, but often neither the undocumented families nor the lawyers were informed about this possibility. Another problem was that Fedasil (the authority responsible for reception) did not always execute the decision of the court. A new law passed in 2011 by the Belgian government introduced an obligation on undocumented families who are provided with shelter to enter into a 3 month programme to find a solution to their situation. The new law included the possibility of obtaining a residence permit, but in practice authorities were encouraging voluntary return. She concluded by adding that, though it was not allowed, there were still cases where children were detained. On the same issue, Mr. Polykarpou reported that in Cyprus some husbands left their families in order to protect them from detention.

In Cyprus undocumented women with Cypriot children (e.g. a Filipino woman with a Cypriot husband) cannot be deported because they have a Cypriot child. This was also the case in Belgium, the Netherlands and Germany.

Participants inquired whether there were possibilities for regularisation if both parents are third
country nationals. Mr. Polykarpou drew the participants’ attention to a recent decision by the Court of Justice of the EU in the “Zambrano case” which ruled that a third country national parent of a dependent child who is a national of a Member State must be granted the right to reside and work in that Member State in order to protect the right of the child to live in Europe.

After the first part dedicated to sharing information on the situation in different countries, Ms. Dethloff emphasised the role of NGOs working on migration issues in informing the public and policy makers about the situation on the ground. She asked participants to recommend strategies for regularisation campaigns they found useful in their work.

Mr. Bertelsen, from NOAS, informed participants about the difficulties her organisation was having in finding one common message for their regularisation campaign in Norway, and deciding on the target group. They faced a dilemma over whether to be practical or ideological – whether to demand regularisation for a small group for whom success was likely, and risk excluding others, or for a larger target group but risk failure of the campaign.

Ms. Beldman shared similar difficulties experienced in the Netherlands in the context of working on campaigns with other organisations who have different aims and priorities. In their regularisation campaign, the more radical NGOs asked for regularisation of all undocumented migrants while the big refugee organisations lobbied for a more selective regularisation. No compromise was found between the NGOs and politicians were lobbied from different angles, to the extent that those lobbying for the more select group nearly undermined the strategy of those lobbying for a more comprehensive regularisation. It also had a negative impact on relations generally between the stakeholders. Alice noted that it may therefore be better to have separate campaigns where there are different aims, but to communicate throughout, and work together later in the process to find a compromise.

Ms. Dethloff commented how more selective regularisations can also help to open doors towards regularisations with a broader focus. The platform working on regularisation in Germany is called “Kein Mensch ist Illegal” (No one is illegal) and it is supported by “Pro Asyl” lawyers, which is one of the biggest refugee organisations in Germany.

A good example from the Netherlands was the campaign and strategic litigation on the right to housing for undocumented families with children carried out by Defence for Children International - Netherlands. Changes to the regulations regarding reception centres meant that many refused asylum seekers were evicted and forced to live on the streets pending return to their country of origin. Defence for Children Netherlands lodged a complaint with the European Committee on Social Rights, which decided in October 2009 that the policy was in violation of the European Social Charter and the Convention on the Rights of the Child. Defence for Children Netherlands started a campaign on the right to housing immediately after this decision to sensitise the public. Consequently the Minister for Immigration proposed separating children from their families in order to place them in welfare institutions. The Hague Court declared in January 2011 that this would violate the right to family life, against which the Minister for Immigration lodged an appeal. At the time of the workshop, undocumented migrants whose asylum applications had been rejected and were living in reception centres were not being evicted and forced to live on the streets, but it was impossible to gain access to housing for those undocumented migrants currently living on the streets who had previously been evicted from shelters due to their failed asylum applications.

Participants agreed that public campaigns on a national level and strategic litigation in European and national courts were a good combination. Ms. Dethloff asked the participants to share the details of such cases and good practices with PICUM so that other members would also know.
It was also suggested that lobbying for national action plans on children to include all children regardless of their status could be another strategy. Ms. Dethloff suggested looking at opportunities at the European level as well. The European Action Plan on children’s rights was also mentioned. It was noted, however, that many action plans are not actually implemented.

Another strategy mentioned was the use of the media to sensitise the wider public (and to sensitise media professionals to do so). Films were highlighted as a powerful tool to facilitate, for example, the communication of testimonies. In Ms. Beldman’s experience children’s voices usually have a big impact on politicians and the wider public, but at the same time, she raised concerns over the filming of undocumented children. They are often unaware of their situation, and can be quite afraid. There are also legal issues and potential repercussions result from publicly revealing their identity.

Participants agreed that filming young adults who were undocumented as children was a good way of avoiding these issues. For example, Ms. Dethloff shared details of a film project at a German university where adults spoke about their past experiences as irregular children, and the outcome of the project was very positive.

The potential for sensitising politicians to the issues by bringing them into direct contact with individual undocumented migrants was also discussed. At the same time, Mr. Polykarpou emphasised the importance of statistics to demonstrate the extent of the problem. Ms. Beldman noted that high numbers can also scare politicians away, since they feel unable to deal with the problem, so approaching them with individual cases can be strategic and successful. It was agreed that this strategy could be useful if complemented by other strategies that would aim at a more structural change.

Participants also agreed on the need for guardianship systems and longitudinal research documenting what happens to the undocumented over a longer period of time. Ms. Dethloff highlighted how through these guardianship systems, civil society actors are helping children to claim their rights, but how unfortunately such systems only exist for unaccompanied children. Barbara mentioned that such guardianship systems also exist in other European countries such as Austria (Connecting People) and France (RESF). Fanny raised the issue of women leaving their children so that they become unaccompanied and can access unaccompanied minor schemes.

Lilana Keith, from PICUM, summarised the conclusions from the workshop, highlighting that some useful strategies had been discussed. Important points raised included the following:

- NGOs are important actors in giving testimony about what is happening on the ground
- It is important that the people concerned are represented in every campaign or action
- Legal strategies, using key cases and strategic litigation, are a useful tool
- Local governments can be important actors in influencing national policies – by linking the local and the national and demonstrating the impact of national policies on local realities, local politicians and authorities can be mobilised
- Independent expert evidence and research can lend more credibility to the messages being communicated
Public campaigns need to have one clear message.

It is important to monitor the individual cases that are presented in campaigns and follow-up to see what happens in the long term.

Partnerships, networking and sharing experiences and best practices among NGOs are valuable.

A key issue that was identified was the importance of using a combination of strategies. While pursuing individual cases can be successful, it is important to also always keep the bigger aim of structural change in mind. This is very relevant when considering children’s rights. It may be easier to secure rights for undocumented children than for all undocumented migrants, but then their rights can be used to also secure rights for their parents in the long term.

Fanny reiterated that the PICUM platform should be used to collect and share best practices. She also restated her proposal that PICUM set up some kind of rapid response system, for situations such as the one being experienced by Mr. Polykarpou in Cyprus. It would be helpful if there was a process by which PICUM members could ask for help if they need the support of the network. Quick petitions and signature actions could be organised.
Surmounting barriers in access to healthcare services

Michele LeVoy, PICUM’s director, welcomed everyone to the workshop and explained that two members of PICUM, one from the north and one from the south for the purposes of geographical balance, would be giving a short presentation on examples of advocacy strategies and share best practices to launch the discussion.

The first speaker was Pierfranco Olivani, from NAGA, in Italy, who highlighted the main legislative developments in the field of access to healthcare in Italy in the last twenty years.

The first time the law explicitly recognised the right to healthcare for irregular migrants was in 1986. In 1995 a new law focused on basic healthcare services and emergency care, and, amongst other things, prohibited doctors from denouncing an undocumented patient. According to the principle of equal treatment, an undocumented migrant had to pay exactly what a citizen would pay for healthcare. In 1998, a general act on immigration mentioned access to services for undocumented migrants and basically copied the law of 1995.

The most important change of the new law of 2008 was that healthcare became a competence of the regional authorities and some regions, like Lombardy, chose not to implement the national law. This is why, even today, undocumented migrants in this region had only access to emergency care but not to basic healthcare, for which they had to rely on the voluntary sector.

The “security package” of 2009 contained two dangerous provisions: first, the proposal to abolish the rule that an irregular migrant cannot be denounced and, second, the inclusion of a “crime of clandestinity”. The first proposal faced great resistance from civil society and so in the end the proposal was blocked. As for the second, in Italy, undocumented migrants can now be fined for irregular status between €5000-€10,000, as irregularity has gone from being an administrative offence to becoming a crime. The Court of Justice of the EU (528 April 2011, C61/11PPU) blocked this provision a few months before the workshop. Following this court decision, many people were released from prison.

At the end of his presentation, Mr. Olivani briefly explained the work of his organisation. NAGA is an association of volunteer doctors and lawyers that provides a variety of services, such as: healthcare services, legal aid, support to victims of trafficking and prostitution and a 24 hour emergency number. Healthcare services are their focus with 9,000 to 10,000 visits by undocumented migrants received every year.

Before presenting the second speaker, Ms. LeVoy emphasised the development seen in Italy at the national level with the problems in relation to the 2008-2009 law on denunciation and the fact that the proposal was blocked. Ms. LeVoy stressed that for PICUM this was an important example of legislative change and the impact that civil society can have. Concerning Sweden, Ms. LeVoy remarked that it was important to show the perspective in a country where access is very limited compared to, for example, Italy, as in Sweden, the right to access is just for emergency healthcare. Ms. LeVoy also noted that at the time of the workshop changes were on the agenda and that the workshop represented a good opportunity to talk about it.
Nadja Barenthin Lindblad, from Rosengrenska, in Sweden, was the second speaker. She described Rosengrenska as a small organisation that started in 1998 and its aim is to eventually cease operation, once all individuals, including undocumented migrants, have access to healthcare. The second aim is to supply medical care and lastly to raise awareness on the obstacles faced by undocumented migrants seeking healthcare.

In 2007, Paul Hunter, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, published a report criticising Sweden on the issue of access to healthcare for undocumented migrants and asylum seekers. The report noted the Swedish law as inconsistent with international human rights law. Civil society had been making the same argument for years but now that the UN was saying it, Swedish politicians finally became interested in the issue. Following the release of this report, Rosengrenska launched the right to healthcare initiative together with a small group of other organisations. The number grew with time and Ms. Lindblad said that there were now about 40 organisations from various sectors - humanitarian, religious, trade unions and healthcare professionals - participating in the initiative. Rosengrenska started working with health professionals, doctors, nurses and therapists to spread info about the right to healthcare.

In 2009, all professional healthcare organisations issued a joint statement on the right to healthcare for undocumented migrants and asylum seekers. These organisations drew up their own ethical statement, spread information on the issue in their own newsletters and through educational programmes for the students at university. They went into universities and delivered lectures to trainee nurses and doctors. A lot of work was carried out on the right to health initiative and in 2010 the Swedish government appointed a commission to conduct an investigation and included the conditions for asylum seekers within the commission’s terms of reference.

Ms. Lindblad reported that the investigation presented in May 2011, got good media coverage and politicians reacted positively. Therefore there were good reasons to believe that by 2013 free access to healthcare would be extended to undocumented migrant including free dental care for people under nineteen. She added that the report was then in the news but that civil society had to stay vigilant even when it ceases to be a news item.

George Joseph, from Caritas Sweden added that the report was going to be sent out to the stakeholders for comments. He explained that the investigation committee was set up by the Ministry of Healthcare, but that it was not accepted by the Minister for Migration. He further stated that he had met with the Minister for Migration who said that he would not participate in the commentary of the report, because he first needed to discuss it at the political level. The Minister said that the majority did not want to extend access to healthcare to all categories of undocumented migrants but only to those known to the authorities, such as rejected asylum seekers. Taking into consideration this opinion and the upcoming elections, Mr. Joseph declared that he did not think that they could expect to have a new law by 2013. Nonetheless, he said that the campaign must continue.

Ms. Lindblad noted that this had become an important issue for everyone working in healthcare. The panellist contended that it is not the job of a nurse to check for papers and passport. Apart from being unethical, this would also amount to bad working conditions. Ms. Lindblad concluded by saying that the right to health initiative is bringing together professionals and ordinary people, and these people are growing into a vast network.

The Swedish campaign combining also the forces of healthcare professionals was highlighted by Mr. Joseph as the first campaign with such a wide spectrum. If you are a regular migrant, he continued, Sweden is a great country, because it is forward looking and has a humane labour migration policy.
Unfortunately this is not the case for undocumented migrants, who are mistreated and used as a tool in the political debate.

Ms. LeVoy opened the floor for questions on the two presentations, but also invited the participants to talk about specific challenges of the healthcare issue; the strategies to overcome obstacles; different geographical case studies; and other groups with special needs, such as women and children.

The first question came from Dominique Habiya, from Enfants du Monde – Droits de l’Homme, in France, who asked why, despite the difficulties in Sweden, she met many unaccompanied Afghan children that would have had the possibility of obtaining a regular status in France, but still preferred Sweden as a final destination.

Mr. Joseph replied that this is due to different factors. Sweden is known to be the “land of human rights” with a generous migration policy. Being in Sweden is safe for children. It is better to be there than other parts of Europe. And it is true that the Swedish reception system is the most humane in Europe as asylum seekers are provided with housing, access to certain rights and do not end up destitute. Unaccompanied minors have access to healthcare but they are treated according to Dublin II Regulation and sent back to where they first arrived in Europe. At the same time there is huge pressure, the highest in the European context with over 3000 unaccompanied minors recorded last year. The Swedish government is in discussions with the Afghan government on a programme to return undocumented children to Afghanistan and discourage those who want to leave from doing so.

Mr. Joseph said that the strategy of the healthcare initiative was evidence based and involved healthcare professionals because the government could not avoid listening to them. Sweden is very keen to keep its image as a country with the highest standards for human rights and authorities do not want to hear that this is not true. Therefore, it was important to focus on the human rights issue rather than migration. Trying to demonstrate that extending healthcare to undocumented migrants would actually save money instead of costing more, was also something that helped to convince politicians.

Mr. Olivani thought that the most important element of a campaign is hope, but he also mentioned that strong networks that bring together different entities are also essential. In Lombardy, for example, the network is made up of Catholics and lay persons, professionals and volunteers, journalists and trade unionists etc. Every month they try to organise roundtables to discuss how to work together. Concerning strategy, he also highlighted that the scientific argument can be useful. Denying access to healthcare to part of the population would mean exposing the wider society to unforeseeable risks of contagion. Fear of tuberculosis, for example, is working particularly well at the political level in Italy, where the Ministries of Health and Immigration, but also anti-immigration parties, are in favour of financing in-depth studies on migrant communities.

Rosalind Bragg, from Maternity Action in the UK, a voluntary maternity-focused organisation that works closely with healthcare professionals, explained that the UK has very specific rules concerning maternity care, in comparison to other healthcare services. Despite the recognition of rights and access to care in theory, the practice shows that patients are requested to pay first before receiving secondary care that falls outside emergency services, such as maternity care. As a result, many do not seek healthcare due to the charging of fees.

Ms. Bragg stressed that being a mother involves taking fragmented care in different places, in order to avoid getting caught. Ms. Bragg described how Maternity Action involved other organisations to provide guidelines and training to health professionals, and also produced information for women and a training package for midwives to make them aware of what the rules are.
Mr. Joseph pointed out that Martina Huber’s presentation showed that access to healthcare in the UK was much better than how Ms. Bragg was describing it. Ms. Huber replied by saying that her map was showing very broad categorisation, as it is difficult to map out theory and practice. For example, in Germany it is possible to access more than just emergency care but an approval from social affairs is required.

Ms. Bragg answered the question of what happens when women need pre-natal care by saying that usually women receive care if they arrive at the hospital when in labour. Unless there are serious issues, there is no access to free pre-natal care. Maternity Action gives basic advice and stays in contact with midwives. At the moment, what people do is turn up at the hospital only when in labour.

Luigi Leonori, from SMES, in Belgium, said he found the final aim of Rosengranska, to close once the law will be aligned to the respect of human rights, very appealing. Coming to the field of work of his organisation, he added that the issue of mental health is rarely debated. Nobody knows, for example what the psychological consequences of a perilous journey to Europe on a boat are.

Ms. LeVoy said that there are shortages of information on the issue of mental health, but it is an issue affecting those coming by boat and also those who live in fear in Europe. Neither PICUM nor the Fundamental Rights Agency have yet studied the issue.

Juliette Poirson, from Médecins du Monde (MDM), said that her organisation is present in 10 countries and provides healthcare services for those who cannot access public centres. She pointed out that there is a need to carry out an evaluation at European level to support advocacy work and to gain credibility. Comparing the situation in different countries can be interesting and at the same time dangerous due to the risk of downgrading the level of rights in some countries while trying to find a balance across the EU. When MDM organised with PICUM a hearing at the European Parliament on access to healthcare for pregnant women and children, the reason for targeting these two groups was to catch the interest of the larger parties, especially right-wing parties. The hearing was a success and another unexpected success was the declaration of the healthcare professionals for non-discriminatory access to healthcare which garnered a lot of signatures. Ms. Poirson said she was convinced that there is potential for action in Europe and that she was looking forward to discussing strategies further.
Maria Virginia Neto, from PROSAUDESC, in Portugal, said that right now in her country only undocumented children under twelve and pregnant women can access healthcare. Several attempts to persuade politicians to widen the scope of the law did not succeed and the situation is getting worse. PROSAUDESC tried to set up medical appointments directly with doctors but then follow-up care was a problem. Ms. Neto said that advocacy at national level in Portugal would be needed and that a conference co-organised with other PICUM members in Portugal would help to raise awareness.

Debora Guidetti, from the European Programme on Integration and Migration said that it was clear that there was a gap between legislation and implementation, and asked the other participants if they knew of good practices to tackle this problem. She added that the argument of public health mentioned by Mr. Olivani was very interesting and that she wished to know more about it.

Mr. Olivani said that public health was indeed a crucial argument. NAGA first addressed the Minister for Health, who was himself a doctor, and he made a speech on public health in the parliament, saying that undocumented migrants were more at risk because of their marginalisation.

Nikki Kalman, from ASKV in the Netherlands, said that her organisation was working on the issue of mental health with a special project that will last three years, at the end of which it will present a report that hopefully will attract interest from the government.

The need to have health professionals on board, as shown by the cases of Sweden and Italy, was stressed by Ms. Hibberd, from the Hackney Migrant Centre in United Kingdom. However, she was concerned that General Practitioners would not be allowed by their managers to get involved in the discussion on undocumented migrants’ access to healthcare, resulting in their lack of collaboration.

Mr. Luigi Leonori, from SMES, in Belgium, noted that Italy has sanctioned a period of detention which may last 18 months; and contended that the media, the general public and politicians should work together to firstly, advocate for the migrants’ wellbeing and, secondly, raise awareness of the positive impacts of migration.

Ms. LeVoy then asked the participants to assess the usefulness of PICUM working groups on healthcare, and to make suggestions on the content and working methods of upcoming workshops, in accordance with their interests and needs. In particular, she asked for the panellists’ feedback on whether the workshops should deal with advocacy initiatives, training sessions or other specific items.

Following Ms. LeVoy’s inquiry, Ms. Penteker from Flüchtlingsrat Niedersachsen/IPPNW, in Germany, stressed the lack of data on the number of migrants accessing healthcare services, especially in big cities, and the lack of interest from politicians. The participant remarked that traumatised people are eligible for a residence permit and housing in camps or shared facilities. Nonetheless, such living conditions and loss of abilities further undermine migrants’ health, even those arriving in good health. To conclude, Ms. Penteker commented on the migrants’ referral to NGOs, such as the Refugee Council, where therapy services are provided, but questioned the effectiveness of the therapy when migrants are compelled to live in camps or shared facilities.

In responding to Ms. LeVoy’s query on how many people are actually accessing services, Mr. Konstantinos Prearis, from i-RED, contended that when discussing the number of migrants accessing services emphasis should be placed on policy implementation and lack of facilities. The panellist further explained that half of Greece’s northern border facilities are being used as detention centres, and that access to healthcare services other than emergency care is not guaranteed.
The debate on whether to include a degree of discretion to healthcare professionals was then introduced by Ms. Huber, who highlighted the fact that healthcare professionals perform good practices in Austria at the local level, although they are afraid to admit it as this would result in national authorities forcing them to stop. She further acknowledged that there is a better understanding of access to healthcare for undocumented migrants at the local level.

Ms. Guidetti, from EPIM, raised the question of how to make use of available tools to improve the daily work; and asked whether this should be peer pressure targeting healthcare professionals or national pressure via the European Declaration of health professionals towards non-discriminatory access to healthcare.

In responding to Ms. Guidetti, Ms. Poirson, from Dokters van de Wereld/MDM, suggested that creating a network of organisations working on healthcare would provide an opportunity to disseminate good practices and relevant decisions on court cases. The network would be helpful in terms of promoting jurisprudence from the local to the national level. Ms. Poirson also expressed the willingness of MDM to work in cooperation with PICUM, and praised the idea of PICUM members joining efforts to tackle deportation of seriously ill people.

Following Ms. Poirson’s contribution, Mr. Pierfranco Olivani agreed on the importance of developing a network, particularly at the international level. According to his experience, networking is challenging when it comes to bringing organisations of different sizes to work together, due to disagreements on where the focus should be on. He noted that finding a common position on specific issues such as deportation of seriously ill people, was easier. In closing, the panellist congratulated PICUM for bringing both big and small organisations together.

Ms. Barenthin concluded by noting that in Sweden they often refer migrants to hospitals, where health workers volunteer to provide them with care; but also contended that, despite the support from the health workers who are very knowledgeable on how the system works, Rosengrenśka needed to strengthen its contacts beyond the healthcare field.

To conclude, Ms. LeVoy thanked the last two speakers for their final thoughts, and summarised the key issues discussed, namely: strategies used at both local and national level to tackle barriers in either law or practice; identification of areas that require further discussion and work, such as access to mental healthcare services, the situation of children and pre-natal and maternal care; and strategies that might be used to evaluate the organisations’ work.

On a final note, Ms. LeVoy asked the panellists to reflect on how to use the EU level tools to make progress in their work. In particular, she mentioned the Resolution on ‘Reducing health inequalities in the EU’; the European Declaration of health professionals towards non-discriminatory access to healthcare, with more than 3 million people falling under the declaration; and the FRA report on ‘Fundamental rights of migrants in an irregular situation in the European Union’.
Advocating for the Human Rights of Undocumented Migrants: Strategies, Successes and Opportunities

Closing Plenary Session

Feedback from Rapporteurs regarding the Workshops

Just as he opened the day’s discussion, Mr. Flynn closed the conference by offering inspiring comments which highlighted the strength of the PICUM network and the quality of the intense and fruitful discussions which took place throughout the day.

He believed the conference represented the perfect way for PICUM to celebrate its 10th anniversary and for those that were new to PICUM activities it was an excellent introduction in showing how the organisation operated. PICUM was more than a network of organisations as it included people that were working at the grassroots level which allowed for information to be brought directly to PICUM so that suggestions could be made on what the organisation should be working on and solid messages could be formulated. He felt that PICUM always worked on such a direct level with its members but the big difference to today compared to ten years ago was the sheer richness of information that was being introduced.

Mr. Flynn recalled the early days of the organisation when work was very tentative and starting at the basic level, such as how to best develop methodologies and establish relationships with migrant communities. He believed that PICUM had already met many of its earlier aspirations. He used the example of the PICUM newsletter which had changed dramatically over the years and the vast amount of information and topics that are covered, allowing for the conversation on undocumented migrants to extend globally, to for example, South East Asia, the Americas and Africa.

With the work of PICUM growing in importance, he highlighted the challenge that PICUM could potentially face in terms of how it best works with all of the information that the organisation has gathered, for example where PICUM might best take that information and how to use it to bring about change. Mr. Flynn discussed how the conference sessions from the day would feed into solutions for such questions, for example the discussion on the European institutions and the UN institutions and how PICUM could increase its advocacy.

Of course, in relation to advocacy and working at the political level, it is necessary to acknowledge the political climate in Europe regarding migration. Mr. Flynn noted that it was unfortunate that few politicians, save for Ms. Lambert, spoke positively about migration and that at the moment, Europe provided a dismal future as the political classes seemed to be growing less intelligent. As a consequence of increased nationalism across Europe he stressed that participants needed to anticipate a few grim years ahead and that it may be a difficult environment when advocating on migration.

Despite the bleak prediction, Mr. Flynn stressed that people should not lose heart but should continue to be confident and press ahead in their work as the current climate was simply an episode in history. It only calls on advocates to be able to offer better explanations about why migration is important, to increase networks that we work in, and soon, we will start to win arguments. PICUM has just celebrated its ten year anniversary and it is likely the organisation has another ten years ahead of itself. PICUM can look towards progress over that period and further build the network that was established and work to attract more people and organisations in that wish to push for change and more informed dialogue.

Mr. Flynn ended by saying that there was a role for everyone that had similar goals to PICUM and that the organisation’s door was always open, from taking part in the working groups to applying to become a Board Member.

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