Undocumented migrants Equal access to labour and social rights?

DECENT WORK FOR ALL:
A KEY FOR EFFECTIVE INDUSTRIAL RELATIONS
BRIEFING ON THE SITUATION IN SWEDEN
“Undocumented migrants face even greater difficulties in entering the labour market and becoming integrated in society. Their situation makes them particularly vulnerable to many forms of exploitation – long hours, harsh working conditions, low pay or no pay. They feel powerless to do anything to improve their situation, because they feel they have no rights.”

**Overview**

Migrant workers in Sweden are over-represented in atypical work contracts and low-paid jobs, according to research for the European Working Conditions Observatory (EWCO). When compared with native Swedes, migrant workers more often have temporary employment, have fewer possibilities to find work that matches their level of formal education and have higher unemployment and lower salaries. This is the situation for legal migrants. Undocumented migrants face even greater difficulties in entering the labour market and becoming integrated in society. Their situation makes them particularly vulnerable to many forms of exploitation – long hours, harsh working conditions, low pay or no pay. They feel powerless to do anything to improve their situation, because they feel they have no rights.

This briefing focuses on the example of workers in Stockholm’s laundries and the work of the Swedish Trade Union Centre for Undocumented Migrants to help defend those workers’ rights. The laundries concerned are contracted by companies that can well afford to pay decent wages, yet who choose to turn a blind eye to what is happening, and fail to make the necessary checks.

**Theory**

**The legislation**

**International**

At the international level the rights of migrant workers are protected by the

- United Nations Conventions
  - 1990 ILO Conventions on the Protection of the Rights of All Migrant Workers and Members of Their Families
  - The Universal Declaration of Human Rights
- International Labour Organisation Conventions
  - Migration for Employment Convention (Revised), 1949 (No. 97)
  - Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)

Furthermore, the ILO’s Committee on the Freedom of Association (CFA), has on repeated occasions ruled that undocumented migrant workers are also entitled to fundamental trade union rights, enshrined in Convention 87 on Freedom of Association and the Right to Organise.

Sweden is one of only four EU member states to have ratified ILO Convention no 143 on migrant workers, which contains rights that apply to all migrant workers, regardless of legal status. The UN Convention also recognises the need to protect undocumented migrants in view of their particularly vulnerable position.

**European**

On the European level, there have been a number of initiatives on labour migration, sending a very mixed message. The so-called Blue Card Directive provides a framework for the entry and employment of highly qualified migrant workers who are welcomed...
and provided with rights. At the same time, the draft of the not yet adopted directive on seasonal work is aimed at less skilled workers who will only be allowed to enter the European Union temporarily and with far fewer rights and guarantees.

The much debated Employers’ Sanctions Directive may provide some opportunities to strengthen the position of undeclared migrants. Article 6, for example, contains provisions regarding back pay and Article 8 on subcontracting could make it easier to go after the real culprits in the all too common situations when undocumented migrants find themselves on the far end of complicated subcontracting schemes. The implementation process could also provide an opportunity to raise the issue of the application of labour law to undocumented migrant workers in the various national contexts.

National law and regulations in Sweden

Migrant workers that have regular status have the same social, economic and education rights, as well as some political rights, as nationals. The 2008 immigration laws opened up the labour market to foreign workers of all skill levels without quotas. There are concerns however that its provisions give too much power to individual firms and could undermine the system of strong workers’ rights. The law is less clear about undocumented migrant and their rights. The 2008 laws include the possibility for former asylum seekers who have a job to apply for a work permit without having to leave Sweden, although in reality that possibility is very limited in scope.

Practice

Undocumented migrants in Sweden’s laundries

Many undocumented migrants suffer unacceptable exploitation. They work long hours under difficult and sometimes dangerous conditions for wages of just a few euros a day, if they are paid at all. There is no regard for the principles of decent work and fair labour standards. An investigation by researchers into the use of undocumented migrants as black market labour in Stockholm’s laundries revealed multiple abuses.

Meet Ana

37-year-old Ana Mammadova is an undocumented migrant who lives with her husband and three children in one small room. She has no social security number, work or residence permit. She explains that she left Azerbaijan for political reasons. She would prefer to have legal status and pay taxes, but for the last four years she has worked on and off in the Swedish black labour market. She has worked in several laundries all over Stockholm. Sometimes for just a few hours and sometimes many hours. Sometimes for 25 or 30 SEK, but never more 35 SEK (about € 3.80) an hour.

Ana’s 11-year old child takes care of the younger siblings when both parents are working. When Ana is at home she takes the children with her and stays out all day so that they don’t make any noise in the house, because she is frightened the neighbours might report them. Going back to Azerbaijan is not an alternative, nor is continuing to live the way she does now. The only hope she has is to be accepted by Swedish society. Meanwhile she has no alternative than to contribute to a black labour market where hotels and restaurants are free to pay poverty wages and impose appalling working conditions. “We don’t have any breaks. We drink water and work at the same time. We can’t complain. You see if I only stop and talk to somebody the boss points at the door: “If you don’t want to do this, if you don’t like it there’s the door. There are plenty of others who want to work.”

In October 2007 SOLIDAR issued a first assessment of the draft initiative taken back then by the European Commission (see Confrontations Europe, Monthly Bulletin N° 31, October 2007, p. 1). SOLIDAR was critical about this proposal as we considered it as a step towards a common European policy that promotes different sets of rights for different groups of people. It was a consequence of the so called Policy Plan on Legal Migration that was agreed by the end of 2005. There it was decided that the EU would go on building a common migration policy using a sectoral approach (although it actually does not refer to sectors in strict sense) and selective approach. The proposal of October 2007 in SOLIDAR’s view, however, was more to follow a fragmented approach and wondered why the Blue Card initiative came first instead of tackling the hot and burning issue of the admission of seasonal and more general low skilled workers in Europe. SOLIDAR recalled a list of pending issues left aside in the proposal such as brain drain, over-qualification and brain waste, discrimination, individual rights vs. state concerns. Moreover, there were also still a set of more practical and unsettled issues like recognition of qualifications and free movement of workers within the EU that in SOLIDAR’s view needed to be tackled.

Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals


Information from an article published in “Dagens Arbete” # 9, 2008. Text and research: Marie Edholm, Mikael Färnbo, Anna Tiberg; research: Marcus Johansson; translation from Swedish to English: Peter Warner (ABF)

Not her real name.
Interviews with undocumented migrants revealed that many laundries use black (undeclared) labour at very low wages. These workers are particularly vulnerable as they don’t have any rights and are at the mercy of the employer.

“We suspect that black labour in the laundry business is extensive”, explains Lennart Berg, who heads a project to prevent crimes at the authority for Economic Crimes. “It’s a business where it’s relatively easy to get black labour because the work doesn’t have any special formal demands. You don’t have to speak the language or have any skilled training. It makes it easier to exploit this group of exposed people.”

More than half of all laundries in Stockholm lack any collective bargaining, which makes it difficult for the trade unions to control them. Workers can be called in at any time. Many of them are only permitted to work a few hours per month, during periods of high demand. Rogue laundries also try to hide these “black” activities under the cover of legitimate activities, such as working for a public sector customer. They avoid breaking the rules themselves, but employ sub-contractors with black labour.

Night clubs and restaurants in central Stockholm have been sending their dirty tablecloths to the Tegnér Laundry in Tumba for years. The newspaper “Dagens Arbete” has looked into the laundry’s activities for a number of years. Some time ago the company changed owners. The details below concern the former owners, as the information relating to the current owners is not yet publicly available.

An examination of the laundry’s water consumption indicated that between a half and one ton of laundry was being washed per day. A comparable laundry would require between seven and ten employees to manage that volume of work. But the social charges that the employer paid to the Tax Agency amounted to the equivalent of between two and three and a half people being paid a salary, assuming they were being paid a minimum wage. To do the work, they must also have been employing people on the back market.

An employee describes working conditions at the laundry. “It was disgusting. There were no proper dressing rooms and no cupboards. Everywhere in the kitchen there were food scraps and snuff. Everything had been thrown on the floor. And when you opened the cabinets cockroaches started to run about. Most of the laundry had to be folded by hand. Clothes to work in and gloves were not available. In the tubs you only had cold water to wash in. It was winter and cold. Employees had to work like animals, and some fell ill.” Yet the night clubs and restaurants who used the laundry charge their customers extortionate prices (drink prices average 100 SEK each (about €10), with a bottle of Dom Perignon champagne costing up to 150,000 SEK (about €16,295), enjoy a high turnover and are clearly well off enough to provide decent conditions and real wages.

Sweden’s Unemployment Agency – supplying free labour to rogue laundries

Sweden’s Unemployment Agency sent eight unemployed workers to the Tegnér Laundry for work experience, effectively providing them with free labour. But after only one week at the laundry two women protested against the working environment. Oili Mononen, responsible for the introduction of trainees in the municipality, decided to visit the laundry. “The restroom looked more like stores and the corridors were full of old junk. I wouldn’t have liked to work there. There was no hot water and cockroaches all over the place. The others were afraid when they heard about it. I decided not use that laundry.”

Kent Almqvist, head of the Unemployment Agency branch in Haninge, says that employees should be monitored, including visits to the workplace, and that the local trade union and the Tax Agency should be invited to give a second opinion. He agreed
that it would be wrong for the Agency to use tax money to subsidise activities at an enterprise that used black labour and paid only 35 SEK an hour (about €4). Yet neither he nor anyone else at the Agency was able to confirm if the necessary checks were made, or whether the Agency had been supplying employees to the laundry since traineeships began in 1993. According to a court ruling such information is protected by the Secrets Act. This makes it almost impossible for the public to control how much tax money is given away by the Unemployment Agencies to rogue employers or how job seekers have been exposed to terrible working conditions. A person who is looking for work and says no to an offer can be disqualified for or get reduced unemployment benefits. As legal counsel Kurt Junesjö points out, the use of the Secrets Act in this case removes public accountability, allowing the Unemployment Agency to handle large sums of money completely without control.

The role of trade unions

The Swedish trade unions believe that trade union intervention on behalf of irregular migrants is both necessary and natural. Samuel Engblom, legal advisor to the Swedish Confederation for Professional Employees (TCO), points out that there is an evident self-interest in fighting undercutting. If undocumented migrants are paid below the standards set by collective agreements or minimum wage legislation, work longer hours and under worse health and safety conditions, other workers will see their wages and conditions threatened, as employers prefer the cheaper and more vulnerable undocumented migrants.

There are two common arguments against trade union intervention on behalf of undocumented migrants, however.

The first is that intervention on behalf of undocumented migrants amounts to defending undocumented migration and work without a work permit. Most trade unions support the idea that migration should be regulated, and that work permits should be conditioned, in order to make sure that employers do not import labour in order to pay lower wages or offer worse working conditions. In some cases, there are also labour market tests, aimed at preventing labour migration in sectors where unemployment is high, supported by trade unions. The answer is to be very clear about the primary role of a trade union – to defend workers' interests in the relationship between them and their employer. Trade unions are not migration authorities. If the migration status of a person has the effect that they are denied labour rights and trade union assistance, exploitation will only worsen, producing exactly the result that labour migration regulation is supposed to prevent.

The second argument has to do with the fact that the work of undocumented migrants tends to be undeclared – in the informal sector. Fighting tax fraud and undeclared work is a priority for many trade unions, especially in industries such as construction and restaurants where undeclared work is more common. Employees who chose to take all or part of their pay in cash without declaring it, are commonly seen as crooks, cheating not only the state but their fellow workers as well. However, an undocumented migrant is not failing to declare their wages out of a desire to supplement their income. These low wages are their only income, and they are in the informal economy out of necessity. Trade union intervention on their behalf should of course include demanding tax and social security payments from the employer.

The key to striking a balance between the arguments for and against trade union intervention is the principle of equal treatment. Labour migrants must enjoy the same wages, working hours, occupational health and safety, insurance cover and collective rights as employees who are citizens or permanent residents of the country where the work is carried out. This should not only be provided for in anti-discrimination legislation

“We are workers without rights”

Not all industrial laundry gets to the laundries. Once a week 43-year-old Chinbat Najmne\textsuperscript{11} drags the sacks from a restaurant through town to the laundry of a friend. This takes at least four hours. In return he gets 100 SEK (about €10) and some washing powder. He is one of tens of thousands undocumented migrants trying to make a living in Sweden. He knows he’s being exploited. He also knows he has no other choice. Chinbat Najmne isn’t angry with the restaurant owner because 100 SEK (about €10) a week is good money for those who are not in a position to demand anything at all. Chinbat Najmne can only state the facts: “We are like merchandise in shop. But we have fewer rights than the merchandise because we lack a price tag. We can be worth to SEK (about €1) one day, a meal the next or we can be worth nothing at all.”

The month is soon at the end. So far Chinbat Najmne have earned 1,100 SEK (about €120) on his different jobs. February was the worst because he only had 700 SEK (about €75) to live on. To go back to the Bangladesh he fled from is out of the question. He doesn’t know today how he is going to get food for tomorrow. The only solution he sees to his situation is to get a permanent visa. “Only the politicians can change this. We hope they will make us legitimate. That’s the only way we can get the rights we lack. We are also workers, workers without any rights.”

\textsuperscript{11} Not his real name
which deals only with discrimination ex-post) but should be a condition for the granting of a work permit – and as such controlled ex-ante.

In this context, it is important to bear in mind that equal treatment is something more than just fulfilling minimum standards. An application for a work permit where the employer offers the legal minimum wage or the lowest amount found in the applicable collective agreement should not be granted, if that departs from the normal wage for an employee with the same skills and the same experience performing the same kind of work. Equal pay for work of equal value is the request and objective to be achieved.

Making equal treatment a condition for work permits also requires the inclusion of the social partners in the process of granting work permits. Only trade unions and employers are capable of verifying that the wages and conditions offered to migrant workers are at the level required.

Good practice

The Swedish Trade Union Centre for Undocumented Migrants

In 2008, a number of Swedish trade union organisations,[12] together with an organisation for undocumented migrants, joined to form the Swedish Trade Union Centre for Undocumented Migrants. The purpose was to inform undocumented migrants about their rights in the labour market and if they so wished represent them vis-à-vis their employers.

In addition to the network of trade union organisations, the centre consists of a physical centre, open one afternoon and evening every week and staffed by trade union ombudsmen and officials from the participating organisations. It also provides a phone service giving information and helping irregular migrants get in contact with a trade union.

Initially, the centre had many visitors. A great number came out of curiosity, or rather were looking for hope. Their questions concerned their migration status more than labour matters. The trade unionists staffing the centre had to be extremely prudent not to raise any false hopes concerning the possibilities of obtaining residence or work permits, and to stick to their expertise in labour matters.

Another, smaller, group of visitors sought information about their rights in the workplace. Often, they described their situation, without revealing the identity of their employer, asking for an assessment. Only a handful, however, chose to take the next step, and ask for trade union assistance in taking action against their employer. This is not unusual. The extremely vulnerable situation of undocumented migrant workers makes it very difficult for them to claim their rights. Firstly, many fear that a dispute will make the employer report them and their whereabouts to the authorities which could result in expulsion. Secondly, they would be sure to lose their jobs and run the risk of being blacklisted by employers in the often tight-knit networks that provide jobs for undocumented migrants.

The centre has also played a role in spreading information about the 2008 Swedish labour migration reform. The reform included the possibility for former asylum seekers who had a job to apply for a work permit without having to leave Sweden, which raised the hopes of many undocumented migrants. In most cases, their hopes were shattered as the possibility to change track from asylum seeker to labour migrant is very limited in scope.

Currently, the trade union organisations behind the centre are in the process of reassessing the strategy of the centre. The objective is to make working with undocumented migrants an integrated part of trade union activities on the local level.

[12] The Swedish Trade Union Centre of Undocumented Migrants was set up by the TCO, the blue collar federation LO and federations and trade unions that are members of the LO, TCO and SACO confederations.
Summary

“For a trade unionist, the exploitation suffered by many undocumented migrants in Europe today is shameful. Wages amounting, if paid, to a few Euros a day, earned through long hours of work under difficult and sometimes dangerous conditions does not amount to decent work, fair labour standards, or any other expression we use to describe the minimum standards under which no one, nowhere should work.” Samuel Engblom, Legal Advisor, TCO

It is extremely difficult for undocumented migrants to avoid the kind of exploitation described in the “Practice” section above, because they feel they have no choice. The work provided by the laundries requires no special skills and no language knowledge, meaning that unscrupulous employers are happy to seek out vulnerable workers and pay them poverty wages, with no regard for proper working conditions. Seemingly respectable laundries, including those with public contracts, may in reality sub-contract to the rogue laundries, turning a blind eye to their employment practices. Wealthy clients, too, appear happy to pay low or “competitive” prices to get their tablecloths cleaned, without worrying about how those low prices are achieved. Even Sweden’s Unemployment Agency appears to be failing to investigate the employment practices of laundries it sends its trainees to to obtain or increase their work experience, effectively subsidising the rogue employers. For the trade unions, it is often difficult to monitor what is happening, given that there is no collective bargaining in over half of Stockholm’s laundries.

Most undocumented migrants have fled an impossible situation in their home countries in search of a better life in a country they believed could provide that. They would prefer to be legitimate members of society, making their contribution through tax and social charges like anyone else. Ideally, the answer would lie in changing the migration status of the workers concerned – currently difficult under national law – and in strictly applying the principle of equal treatment for all workers, regardless of their status.

For the trade unions, labour migration poses both practical and political challenges. These particularly vulnerable workers tend to be present in sectors where trade unions are particularly weak, such as agriculture, hotels and restaurants, domestic work and, as seen above, laundries. In addition, these workers are, due to their precarious situation, less likely to contact, join or call for the help of trade unions if they have trouble with their employer. A conflict with the employer can mean that they lose their job, which carries the double penalty of not being able to support themselves and their families (as they tend to stand outside unemployment insurance and other social security systems) and the risk of expulsion. As many depend on informal networks to find jobs, being perceived as a troublemaker can also result in blacklisting. This means that trade unions must be innovative, and find new ways to approach, earn the confidence of, and defend the interests of migrant workers.

On the political level, trade unions must be careful not to ever imply that the problem is the migrant worker or her nationality. Statements such as “British jobs for British workers”, “Italian jobs for Italians” or “Go home” should not be part of the trade union vocabulary.

What trade unions can do, and what the Trade Union Centre for Undocumented Migrants is seeking to do, is inform those migrants about the rights they do have. At a broader level, trade unions should act to make the question of migrant workers an issue of decent work and of equal treatment – regardless of country of origin and legal status.

Recommendations

To the European Union

• The European Commission should make sure that the Member States correctly implement the principle of equal treatment.

• Member States should commit themselves to comprehensive reforms of their systems for labour migration, starting with the principle of equal treatment.

• Member States immigration laws should cover all sectors of the economy and not be limited to workers with certain skills or a certain educational level. This could also have the effect of reducing irregular migration, as the possibilities for working in Europe legally are opened up.

• Member States must address the issue of the migrant workers who are already in their territories, not excluding irregular migrant workers from the possibilities of obtaining a work permit.

• The Employers’ Sanctions Directive currently being implemented in the Member States could provide some opportunities to strengthen the position of undocumented migrants. For example, Article 6 which contains provisions regarding back pay and Article 8 on subcontracting could make it easier to go after the real culprits in the all too common situations when undocumented migrants find themselves at the far end of complicated subcontracting schemes. The implementation process could also provide an opportunity to raise the issue of the application of labour law to undocumented migrant workers in the various national contexts.

To Trade Unions

• Trade unions have to be innovative, and find new ways to approach, earn the confidence of, and defend the interests of migrant workers, taking inspiration from examples provided, for example, by the Italian trade unions in the construction industry.

• On the political level, trade unions must be careful not to imply that the problem is the migrant worker or her nationality. Statements such as “British jobs for British workers”, “Italian jobs for Italians” or “Go home” should not be part of the trade union vocabulary.

• Trade unions should act to make labour migration an issue of decent work and of equal treatment – regardless of country of origin and legal status.