

"TOMATOES - AT WHAT PRICE?"

Ensuring fair wages and working conditions for undocumented migrant workers in Europe: Are fair trade strategies the answer?

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14-02-2011

1.- INTRODUCTION AND BACKGROUND

Addressing the issue of irregular immigration in the EU on the basis of tighter border security, criminalisation and repression, is a mistaken approach, which can lead us to waste the potential benefits of immigration in social, economic and development terms, in addition to fuelling racism and xenophobia. If we truly wish to avoid this kind of situation, Europe must move beyond the concept of the "legal and administrative status" of its immigrant population and uphold the human and labour rights of all workers, regardless of their status. The pressing need to migrate experienced by some populations and the absence of legal avenues to do so are the main reasons which will continue to drive irregular immigration, and this is why we must set up coordinated and effective mechanisms to prevent the exploitation of these groups of workers who are in a particularly vulnerable situation. To this end, we must develop appropriate welfare policies, enforce labour standards, promote social integration, and give priority to prevention and the fight against exploitation by strengthening the channels for regular migration and enabling undocumented immigrants to achieve legal status.

According to a report published by the European Commission's CLANDESTINO Project (2009)¹, "keeping the geographical space of the EU15 constant, the aggregate estimates indicate that the irregular migrant population has declined considerably in the EU15, with an estimated 3.1 to 5.3 million in 2002 and 1.8 to 3.3 million in 2008. Rules of thumb do not indicate this effect but point to an increase of the irregular foreign resident population. Looking at the enlarged EU27 in 2008, the aggregate results in that estimate are not much higher than the estimate for the EU15. It is estimated that about 1.9 to 3.8 million irregular foreign immigrants reside in the territory of the EU27 in 2008." However, the media have indicated that the latest estimates put the number of irregular migrants in Europe at between 4.5 and 8 million. Yet, there are serious difficulties in obtaining accurate data, as well as estimation methodology problems that should be solved as soon as possible. If we wish to develop effective strategies for this population, we need to have a more accurate idea of what we are talking about, both in quantitative and qualitative terms.

¹ http://clandestino.eliamep.gr/wp-content/uploads/2010/03/clandestino-final-report_-november-20091.pdf

The European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX) has published an interesting report² on the levels of both legal and illegal migration into the EU. According to this report, the fact that illegal migration increased between the second and third quarters of 2010 is almost exclusively the result of increased migration pressure in Greece. The report also mentions an increase in the number of asylum applications in the EU: asylum applications submitted by nationals of Serbia and FYROM also more than doubled in the EU compared to the previous quarter, following visa liberalisation for these nationalities at the beginning of 2010. More recently, on 14 January last, the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament published an EU policy document³ in which it urged the Commission to develop a permanent monitoring system for all FRONTEX activities linked to managing migration flows.

Beyond the issue of border controls, Europe needs to find a balance between the need to maintain certain restrictions to safeguard the European area and the need to protect the fundamental rights that characterise our welfare state. On 15 December 2010, the European Parliament published a Resolution⁴ on the situation of fundamental rights in the European Union (2009) and their effective implementation following the entry into force of the Treaty of Lisbon. In addressing this issue, the European Parliament stressed the need to protect human rights and fundamental freedoms as an essential condition for the consolidation of the European area of freedom, security and justice, and it reaffirmed its commitment to the Charter of Fundamental Rights as an essential means of strengthening the EU as a community of shared values and protecting human rights in the EU.

That links exist between the formal and informal economies and the presence of illegally employed workers is fairly obvious. In this context, Directive 2009/52/EC of the European Parliament and of the Council⁵ of 18 June 2009, providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, is particularly relevant but, so far, a lack of resources and inadequate coordination between labour inspectorates in the European area have drastically limited the Directive's effectiveness in practice. Applying the law to irregular migrant workers implies enforcing it also on irregular employers. Finding a balance between workforce demand and supply at European level is one of the challenges that we have to meet to solve the issue of irregular migrants, and for this purpose we need an instrument or mechanism to overcome imbalances in the labour market.

One major aim of this Project is to draw up proposals to achieve decent working conditions for irregular migrant workers – comparable to those that apply to other workers – as well as fair wages and access to social protection systems. Furthermore, the Project aims to propose alternative development policies, based on fair trade

² http://www.frontex.europa.eu/situation_at_the_external_border/art22.html

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<http://www.europarl.europa.eu/activities/committees/draftOpinionsCom.do?language=EN&body=LIBE>

⁴ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0483+0+DOC+XML+V0//EN&language=EN>

⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:168:0024:0032:EN:PDF>

strategies that could be developed jointly with other organisations. These strategies should inform the ETUC's future policies and back-up its commitment to safeguarding the labour and social rights of undocumented migrants and combating exploitation. Being a "regular" or "irregular" worker is not a permanent legal status. In fact, some legal immigrants end up being illegal when their work permits expire, while other immigrants become legal as a result of changes in their residence status and/or employment status. The European trade union movement must campaign for regularisation as the best means of preventing "rights-based segregation" and the continuing existence of different statuses for workers within the EU.

2.- LABOUR RIGHTS AND WORKING CONDITIONS

Migrant workers and posted workers are in similar situations in that they enjoy fewer rights in the host country and are socially much more vulnerable – and the situation is even worse in the case of undocumented immigrants. It is an objective of the ETUC to uphold the rights of these groups of workers, also in view of the fact that these rights are recognised by numerous international treaties⁶ and laws which are not always recognised or observed in practice. The ETUC must monitor developments and promote – through institutional participation – the inclusion of these rights in public policies, in addition to promoting compliance by means of collective bargaining and the trade union activities of its member organisations.

Our immigration is essentially economic in nature. Ensuring respect for migrant workers' labour and social rights should top the agendas of the EU as well as of European governments, trade unions and social organisations. Europe must at the same time meet the requirements of its traditional "welfare state model" and ensure respect for human rights. However, although the latter are considered basic and inalienable rights, they are no longer "absolute" in that they are eroded by the freedom to conduct business, the requirements of competitiveness, the re-emergence of racism and xenophobia as a result of unemployment, inequalities and the lack of genuine integration of the immigrant population, and an inability to manage and take on board the new, diversified collective identity of the European population. As part of this picture, the segmentation of the labour market into different categories of workers governed by a maze of Directives – aimed at facilitating mobility and enabling companies to cut labour costs – deprives migrant workers of their fundamental rights and fosters labour and social dumping among European countries.

It is the legal status of the individual worker in the host country which, basically, determines the level of rights which he or she enjoys. Looking at the broader picture,

⁶ *International Pact on Civil and Political Rights, International Pact on Economic Social and Cultural Rights, International Convention on the Protection of the Rights of All Migrant Workers and their Families, International Convention on the Elimination of all Forms of racial Discrimination Racial, Convention on the Elimination of all Forms of Discrimination against Women, Convention on the Rights of the Child, ILO Convention on Migration for Employment, ILO Convention relating to the Status of Refugees, etc.*

however, it is apparent that national as well as supranational policies relating to migrant workers have suffered a setback over the past twenty years. The economic downturn and the fact that the migrant workforce has functioned in a globalised context have led to harsher conditions for migrants and a generalised curtailment of workers' rights. However, their status as undocumented migrants should not deprive them of their human dignity or their rights, as highlighted in the Declaration adopted by the Global Migration Group (GMM)⁷ in September 2010. The GMM is an inter-institutional group which brings together 14 bodies (12 UN bodies plus the World Bank and the International Migration Organisation) to promote the implementation of the international instruments and standards applicable to migration and to foster the adoption of more coherent, broader and more effectively coordinated approaches to international migration. In this connection, it should be noted that, if we look at the world map, we find that most of the countries which have ratified the international conventions established to assist or protect migrants are "sending (home) countries" and only a very few are "receiving (host) countries"⁸.

This is why the ETUC must continue to call for the Convention on the Protection of the Rights of All Migrant Workers and their Families ⁹ to be fully ratified by all governments as a matter of urgency, and it must also demand a review of the situation as regards proper transposition of the EU Directives on non-discrimination into national legislation (i.e. Directives 2000/43/EC, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, and 2000/78/EC, establishing a general framework for equal treatment in employment and occupation). In practice, the complexity of national legislations or their non-conformity with EU provisions, as well as a lack of appropriate infrastructures and the specificities of national labour markets, combined with the current economic crisis, have prevented or delayed consideration of these issues, in spite of the fact that they are of the utmost importance if we wish to ensure that the rights of migrant workers are effectively protected.

When a person arrives in the host country as an undocumented immigrant or becomes an "irregular immigrant", his or her precarious employment situation often leads to poverty resulting from the lack of material and financial resources as well as the lack of social status, and social exclusion. Furthermore, these circumstances can give rise to so-called "aporphobia" (an attitude of rejection towards the poor) among the native population, with potentially very dangerous consequences which are interrelated with other issues such as public safety, cultural identity and competition for limited resources. In this way, depending on their legal status, people find themselves on either side of a dividing line, as far as the enjoyment of rights is concerned: more rights for

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<http://www.globalmigrationgroup.org/pdf/GMG%20Joint%20Statement%20Adopted%2030%20Sept%202010.pdf>

⁸ <http://www.december18.net/article/world-map>

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[http://www.unhcr.ch/tbs/doc.nsf/c12563e7005d936d4125611e00445ea9/a0d5b166ec404486c1256fe0004ad28a/\\$FILE/G0540821.pdf](http://www.unhcr.ch/tbs/doc.nsf/c12563e7005d936d4125611e00445ea9/a0d5b166ec404486c1256fe0004ad28a/$FILE/G0540821.pdf)

No EU Member State has as yet ratified this Convention. Only one candidate country (Turkey) and four other European countries (Albania, Bosnia-Herzegovina, Montenegro and Serbia) have done so.

native people; fewer rights for "regular" immigrants and even fewer rights for "irregular" immigrants.

One key issue is the establishment of some sort of "census" or "register" in which, regardless of the migrant person's administrative status, his or her actual presence in a locality or territory can be recorded. Such a register is the only way to make sure that immigrants can enjoy a minimum set of rights, and it can also help public authorities to plan welfare and resource-allocation policies.

Some specific cases:

In Germany, immigrants are required to register at the local town hall soon after arrival and to provide various details, including their full name, gender and religion. This registration is used as the basis for personal taxation purposes. But only EU nationals or persons who have a legal tourist's visa may register. Unless the person is registered, no further administrative procedure is possible since proof of registration will be requested at every step, and public authorities have an obligation to report any illegal immigrant to the police in order for the latter to proceed to expulsion. However, all immigrants are entitled to urgent medical care and may be able to access education on an unofficial basis.

In Italy, having no papers is an offence, punishable by a fine of €5,000 to €10,000. In addition to expulsion from the country, undocumented immigrants face the risk of imprisonment. Marriage with illegal immigrants is prohibited and nobody can register in the municipal register unless he or she has a residence permit, which is required to obtain a medical card and enrol in a school, and also entitles the holder to a few other basic rights.

In France, the census is a statistical tool which provides for universal registration of all people living in the country, wherever they live and regardless of their legal status. Confidentiality is guaranteed. Healthcare is universal, but irregular immigrants are only entitled to emergency care, although they are required to enrol their children in school. If it is established that an immigrant is in the country illegally, he or she will be expelled.

In the UK there is no identity document and no municipal register as such. Any document that proves a person is living in the country may be used in lieu of an ID card. It is up to the public authorities to establish the immigrant's legal status and decide whether or not to grant admission.

In Spain, immigrants may enrol in the "municipal register", whether or not they are registered as regular immigrants with the Ministry of the Interior. This registration entitles them to urgent medical care and comprehensive healthcare for pregnant women and minors, free compulsory education for all children aged 6 to 16, and some basic social services, depending on the Autonomous Community concerned. Immigrants enrolled in the municipal register also have the right to freedom of assembly and association as well as trade union rights.

In general, in the EU: irregular immigrants have practically no rights; they must work in the hidden economy; they only receive medical care in the event of an emergency and they are forced to keep a low profile, withdrawing into a "shadow existence". Those who

are included in a census will be able to access the healthcare system and education, but they are still forced to work in the hidden economy; and of course, there is always the threat of expulsion, which will discourage these workers from using services out of fear of being expelled. Yet, effectively implementing universal human rights implies disregarding a person's legal status and attaching paramount importance to meeting his or her basic needs and preventing social exclusion.

But why do we have undocumented immigrants in the first place? Because the various Ministries of the Interior refuse to give them any papers – it is as simple as that, as A. Unzurrunzaga pointed out in "La construcción social del inmigrante irregular" (The social construction of an irregular immigrant) ¹⁰(2002), where he refers to an article in "Le Monde" concerning an interview with Nicholas Sarkozy when he was the French Minister of the Interior. This way of looking at things flows from a logic where the world is divided into States and "areas" bound by borders, and people enjoy certain rights or are refused certain rights depending on whether they "belong" to the State or area in question. A person is not entitled to any rights by virtue of being a person, but only as a result of "belonging" to a given territory – and undoubtedly this state of affairs runs counter to the declared intentions and provisions of many international treaties that have been ratified by the States concerned. One major problem is that this non-compliance cannot be reported to any supranational body, so that we are left with the contradiction involved in being entitled to leave a particular country but not being entitled to enter another country (as a general rule).

As far as working conditions and employment relations are concerned, the numerous ILO Conventions relating to migrant workers (which have been ratified by European countries) state that all workers are entitled to equal conditions and that, while national labour laws may limit these rights, workers' fundamental rights should in no case be curtailed. The latest ILO report on this issue, "International labour migration: a rights-based approach" ¹¹, is particularly relevant in this connection, given that it puts forward proposals to develop and implement migration policies and practices based on rights, and highlights current problems in terms of the lack of decent work, inadequate protection and non-payment of wages, unsafe workplaces, lack of social protection, lack of trade union rights and labour rights in general, discrimination and xenophobia. According to Ibrahim Awad, chief of the ILO's International Migration Branch, "international migration is primarily a labour market, employment and decent work issue, and less a security and asylum-seeker/refugee issue." "The challenge is to govern migration in such a way that it can serve as a force for growth and prosperity in both origin and destination countries, while protecting and benefiting migrant workers themselves," he stated.

In light of the above, and speaking from a legal point of view, all the conditions laid down in the collective agreements applicable in different countries should be complied with, and even though workers might be in an irregular situation, they should receive

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http://www.mugak.eu/ef_etp_files/view/Agustin_Unzurrunzaga_La_construccion_del_inmigrante_irregular.pdf?revision_id=10125&package_id=10109

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http://www.ilo.org/public/english/protection/migrant/download/rights_based_approach.pdf

the wages agreed in the convention. The same applies to working hours, leave and holidays. This, however, is not what happens in most instances. Although a worker might be able to bring his/her case before a labour court, in view of the difficulties involved in proving that an employment relationship exists and submitting documentary evidence/testimonies, it is most likely that the claim will be dismissed. This in turn entails the threat of expulsion on the grounds of illegal residence, or the worker might even be convicted for a serious offence so that, in addition to not having access to social protection systems or to any financial compensation, he or she shall be the subject of an expulsion order and banned from the Schengen Area for a period ranging from three to ten years.

A recent study conducted by CC.OO's 1st May Foundation¹² and entitled "La integración laboral de las personas inmigrantes en España" (Immigrants' integration into employment in Spain), proposes a system of indicators to analyse the integration of immigrants into employment. In the case of irregular immigrants, serious methodological difficulties prevent these workers from being included in the general systems designed to determine the level of social integration, given that the municipal register is an essential tool to be able to reach an approximate estimate of the level of integration. However, the above-mentioned study does provide some useful indicators to estimate the approximate number of irregular immigrants:

Indicators of the approximate numbers of immigrants residing illegally:

Approximate ratio of irregular immigration to the immigrant population as a whole

Definition:

No. of immigrants residing in the country – No. of immigrants with a residence permit
No. of immigrants residing in the country x 100

Source: Statistical analysis of the Municipal Population Register¹³

Frequency: Annual

Data disaggregation possible by: Place of residence, gender, age and nationality

Source: "Anuario Estadístico de Inmigración" (Immigration statistical yearbook)

Frequency: Annual and quarterly

Data disaggregation possible by: Gender, age group, nationality, residence status, place of residence.

Remarks:

The reliability of this indicator is only relative, given the methodological differences between registers. There are discrepancies between the two registers, possibly due to the fact that the family members of immigrants were not included in the figures for residents.

Indicators of approximate numbers of irregular workers

Approximate ratio of irregular immigrant workers to total number of immigrant workers

Definition:

No. of employed immigrants (EPA)¹⁴ – No. of immigrants registered with the Social Security Department

¹² <http://www.1mayo.ccoo.es/nova/files/1018/Informe20.pdf>

¹³ Register, used in Spain, which only includes foreigners who hold a passport.

¹⁴ Encuesta de Población Activa (EPA – Labour Force Survey)

No. of employed immigrants (EPA) x 100

Source: EPA (Micro-data).

Frequency: Quarterly

Data disaggregation possible by: Statistical definition of "immigrant", nationality (10 most significant nationalities), age group, gender

Source: Social Security Statistics

Frequency: Monthly plus yearly compilations

Data disaggregation possible by: Gender, age group, nationality

Remarks: The reliability of this indicator is only relative, given the methodological differences between registers.

A record of the details of immigrants who reside *de facto* in a country, combined with an estimate of the number of immigrants who have a residence permit, may allow us to reach an approximate estimate (albeit with certain limitations) of the number of irregular immigrants. However, without a record of these basic details it will be very difficult to evaluate social integration into society or employment with any degree of accuracy.

The above-mentioned study proposes a number of quantitative variables and indicators to evaluate immigrants' employment situation on the basis of a comparison with data relating to the native workforce. Again, in the case of undocumented workers, these indicators cannot be applied, from which it is apparent that **regularisation is the only possible means of evaluating the employment situation of these groups of workers and ensuring equal rights**. The variables concerning the employment conditions are the following:

Employment variables and indicators

Comparison between immigrant and native populations

- A. Worker. Activity indicator
- B. Occupation in the labour market. Employment indicator
- C. Professional status. Salary indicator
- D. Concentration in specific sectors. Weighted indicator of breakdown of employment by sector
- E. Concentration in specific occupations. Weighted indicator and indicators of breakdown of employment by occupation
- F. Duration/temporary employment. Temporary employment indicator
- G. Differences in the extent of part-time employment. Part-time employment indicator
- H. Comparison between levels of overqualification. Overqualification indicator
- I. Salary/Wage differences. Pay gap indicator
- J. Differences in working hours. Indicator of above-average working hours
- K. Comparison between levels of long working hours. Indicator of working hours above legally established limit
- L. Differences in occupational accident rates. Occupational accident indicator
- M. Differences in participation in further training activities. Further training indicator
- N. Comparison between unemployment levels. Unemployment indicator
- O. Weighted comparison between long-term unemployment rates. Long-term unemployment indicator
- P. Comparison between job demand rates. Job demand indicator

Q. Comparison between recipients of unemployment benefit. Unemployment benefit indicator

R. Difference in recruitment levels. Recruitment indicator

S. Differences in participation in vocational/professional training activities. Vocational training indicator.

Regularised access to the labour market is the only means of ensuring equity in immigrants' working conditions, wages and access to civil rights and welfare benefits. Back in 1999, in the Report from the Director-General, the ILO defined "decent work" in terms of adequate employment, social protection, welfare rights and social dialogue. Since the year 2000¹⁵, the EU has been focusing on the quality of employment, and this issue has been included in its Social Agenda. The EU set itself the priority objectives¹⁶ of achieving full employment and strengthening social cohesion and integration, but the current global crisis (originally a financial crisis but now also an employment crisis) has had a highly negative impact on working conditions and the segmentation of the labour market. In this context, undocumented migrant workers, handicapped by their legal status, are victims of job insecurity, all kinds of abuses, and serious discrimination. Although the Employment Strategy promoted measures to encourage the integration of immigrants in the labour market – and these measures were included in the National Action Programmes for Employment and national Reform Plans – the issue of undocumented immigrants has not, to date, been effectively addressed, while the subordination of employment to (liberalised) market rules and economic competitiveness has resulted in the expansion and further segmentation of the hidden economy and an increase in irregular employment.

3.- ENSURING EQUITY

In order to achieve equity, we need to describe and map out the qualitative and quantitative characteristics of the labour market as it exists in the real world. The European Commission has pointed out the importance of creating a multidimensional and common measuring system by developing indicators to effectively evaluate labour-market policies, developments and trends. The Migrant Integration Policy Index (MIPEX)¹⁷ structures the 140 indicators for integration policies into six policy areas: labour market access, family reunion, long-term residence, political participation, access to nationality, and anti-discrimination. In addition, there are policy areas relating specifically to the labour market: access to the labour market, job security and employment-related rights.

Structural indicators relating to employment in the EU¹⁸

- Employment rate by gender
- Employment rate of older workers by gender
- Average exit age from the labour force by gender
- Gender pay gap

¹⁵ *Lisbon Summit and Council of Nice (2000)*

¹⁶ *Employment Policy Guidelines (2003)*

¹⁷ <http://www.integrationindex.eu/>

¹⁸ *Eurostat, 2009*

- Tax wedge on labour costs
- Tax rate on low wage earners by marginal effective tax rates on employment incomes
- Implicit tax rate on labour
- Life-long learning by gender
- Serious accidents at work by gender
- Fatal accidents at work by gender
- Unemployment rate by gender

Proposed common indicators for integration in the labour market and employment, in the short term:

- Employment rate
- Employment rate among immigrants
- Unemployment rate among immigrants
- Income level (and/or pay level) of immigrants
- Number and types of employment contracts among immigrants
- Sectors for the insertion of immigrants in the labour market
- Percentage of immigrants who are self-employed or employers
- Accidents at work in comparison with native workers.

(These indicators should be interpreted comparatively in relation to the native population by age group and gender and, possibly, by group of origin. For some indicators, reference should be made specifically to the so-called "second generation" or descendants.)

If we lack tools that can be generalised to the EU as a whole to gain a genuine, comparative understanding of regular immigration, this is even truer in the case of undocumented immigrants. There is a dire lack of data and reliable information on them, so that their evaluation, in both quantitative and qualitative terms, is left to subjective judgment.

The latest Summit on equality, organised in Brussels by the Belgian Presidency of the EU, focused on the fight against discrimination and the need to promote equality in employment, but this goal cannot be achieved unless we take undocumented immigrants into account and raise employers' awareness of equity and diversity issues. As is also apparent from an ETUC Resolution¹⁹ on equal treatment and non-discrimination for migrant workers, adopted by the ETUC Executive Committee on 1-2 December, European trade unions are addressing this issue, but there are some major obstacles that stand in the way of achieving equality between all workers. This is strongly impacting labour markets, leading to social dumping, particularly as a result of loopholes in our current legal framework.

The ETUC's lobbying activities against the proposed Directive on a single application procedure for a single permit for third-country nationals (COM-2007-638) had a positive impact on the first plenary vote at the European Parliament on 14 December 2010. However, we must continue to exert all the necessary pressure to ensure the proposed Directive is not adopted. The Directive aims to establish a uniform framework

¹⁹ <http://www.etuc.org/a/7954>

of rights for third-country nationals living in the EU, but it excludes major groups of immigrants, particularly the most disadvantaged who are facing the most difficult conditions, including temporary workers, posted workers, those transferred by companies from third countries and workers of service-providing companies under a contract, as well as certain groups of trainees. The Directive would therefore establish significant differences between the rights enjoyed by European workers and those enjoyed by workers from third countries, thus further segmenting our labour market, enshrining a lower level of social and labour rights for immigrant workers, and contravening the UN Convention on the Protection of the Rights of All Migrant Workers and their Families as well as the Council of Europe's own Convention on migrant workers which establishes certain rights for them as regards working conditions, social security and housing.

However, the biggest hurdle in the way of equal rights for undocumented immigrants is the hidden economy, which exerts a strong downward pressure on working conditions and, essentially, exploits this group of workers through irregular employment, particularly in certain sectors, including domestic work, fashion, textiles and shoemaking, agriculture and the service sector. The plight of undocumented workers is the worst of all possible situations in the broad spectrum of precariousness and job insecurity. Furthermore, it is a form of unfair competition between employers, has a major negative impact on European economies in that it involves fiscal and social-security fraud, and contributes to undermining the Welfare State.

4.- FAIR TRADE STRATEGIES. MIGRATION AND DEVELOPMENT

"Because of the lack of a social dimension to globalisation, competition within each individual country and between countries to attract multinational companies and foreign investment is mainly based on keeping wages low and using production methods that are unsustainable and harmful for the environment," says Kwasi Adu-Amankwah, General Secretary of the ITUC African Regional Organisation. As long as there is a significant development gap between Europe, on the one hand, and Asia, Africa and Latin America, on the other, Europe will have to deal with the arrival of immigrants. This migration pressure originates mainly from Africa, whose geographical borders are also the dividing line between the greatest inequalities in the world.

We start from the premise that migration and development are closely interrelated and interdependent processes, which can decisively influence each other. Migration does not merely involve the movement of people, and development does not merely involve economic growth. The concept of globalisation encompasses more than just the integration of economic activities. Today's migration flows are no longer unidirectional and permanent, as they were in the past, but temporary and circular. The South-North axis, marking the traditional direction of migration flows, is becoming increasingly blurred, giving rise to new and diverse geo-economic maps. Making decent work available is an essential prerequisite for the eradication of poverty. Endogenous, self-sustainable and fair development is impossible unless workers' rights are protected, and this includes the right to a decent wage as well as other labour rights such as freedom of association and the right of workers to protect their interests through

collective bargaining. For this to be possible, trade union organisations are needed which are strong, independent and free from external interference. This means we must strengthen trade union structures and integrate them in the global unions.

For the purpose of defining our strategic approach, some points made in a recent study entitled "The Current Global Economic Crisis and Migration: Policies and Practice in Origin and Destination", issued by the Development Research Centre on Migration, Globalisation and Poverty in May 2010²⁰, could be very useful, given also that they coincide with our own analysis in the present document:

- The need to distinguish long-term from short-term migration trends and to gain a better understanding of the relationship between migration and development;
- Migration will continue as a result of the profound disparities in the global system, but the direction of migration flows will change because of the emergence of the new fast-growing economies in areas which previously formed part of the developing world (the destination of migration will increasingly shift from North America and Europe to Asia, the Middle East, Southern Africa and some parts of Latin America);
- Migration will resume in both areas when the current crisis comes to an end (?);
- Most probably, because of these changes, restrictive policies will become ineffective;
- A large-scale return of immigrants to their countries of origin, resulting in a decrease in workers' remittances, is very unlikely to happen;
- No simple or single policy response can be appropriate. Huge variation exists among both destination and origin countries in terms of their patterns of migration and levels of development. Thus:
 - There is a need for data sharing so that policy response can be based upon the best available evidence.
 - Partnerships between countries of origin and destination countries may be appropriate in order to coordinate the management of migration more successfully.
 - Countries should consider the impact of the downturn on the migration and development nexus in their ongoing development work, and in their existing and planned future partnerships.

These vitally important questions – particularly in view of the current crisis and its effects on development and migration – lead us to reconsider a number of other issues which were discussed not so long ago at the International Meeting on Migration and

²⁰ http://www.migrationdrc.org/publications/working_papers/WP-T32.pdf

Development²¹, held in Seville in 2007. These include the traditional North-South divide as the key underlying factor driving social and economic inequalities, and its influence on immigration; and **well-meaning, altruistic proposals aimed at regulating global trade on the basis of Fair Trade principles or establishing jointly agreed, fair financial systems** (e.g. in relation to the double taxation of migrant workers' remittances). Something more than just the global economy has been rattled by the crisis: Conventional perceptions of the socioeconomic system are being replaced by a new outlook, based on more realistic, broader parameters. Some European multinational companies are conducting aggressive campaigns, even hiring specialist union-breakers, in an attempt to prevent workers in other countries from organising and engaging in collective bargaining. In so doing, they are contravening international standards and, in some cases, the laws of the countries concerned.

On Tuesday 7 December, the Second European Report on Development²² was published under the auspices of the European Commission and seven EU Member States, namely Finland, France, Germany, Luxembourg, Sweden, the UK and Spain. The Report, which advocates a new approach to development cooperation with Africa, argues that social protection can contribute to reducing poverty and vulnerability, and promote socially-inclusive development and growth. The Report highlights the role of workers' remittances and financial transfers as well as their limitations in terms of achieving adequate social protection. The report makes some interesting considerations about the need to provide social protection not only for migrants in the host countries but also for the families that are left behind in the countries of origin.

In the today's markedly neoliberal context, global trade is all but fair. The increasing liberalisation of trade is forcing poorer countries – under the provisions of free trade agreements – to operate in deregulated markets as part of a system which still enables wealthy countries to protect their own exports. An interesting study published by Trade-Human Rights-Equitable Economy (3D) and Sur-Red Universitaria de Derechos Humanos (Human Rights University Network), entitled "Practical Guide to the WTO and Other Trade Agreements for Human Rights Advocates"²³, analyses the negative repercussions of WTO rules and practices for human rights around the world, and also puts forward proposals and actions to redress the balance in global trade:

- Use the tools available to uphold human rights;
- Intervene in the countries concerned;
- Intervene during the negotiation process;
- Request an assessment of the impact of liberalisation on specific groups;
- Ensure that human rights are taken into account in the settlement of disputes;
- Ensure that human rights are included in the analysis of trade policies;
- Consider the possibility of including human rights in WTO rules;
- Closely examine other aspects, such as sustainable development and labour standards.

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http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l33207_en.htm

22

http://www.eusa.org.za/en/PDFdownload/Development/European_Report_on_Development_2010.pdf

²³ http://www.3dthree.org/pdf_3D/Guia_Practica_OMC.pdf

Fair trade – as promoted by the United Nations and various NGOs and social and political movements – involves an alternative approach whereby the trade relation between producers and consumers takes place on a voluntary, equitable basis. The main principles of fair trade are the following:

- The producers form part of cooperatives and voluntary organisations that function democratically;
- Initiative and freely-performed work; non-reliance on subsidies and financial assistance;
- Rejection of child labour;
- Gender equality;
- Decent work, respect for human rights;
- A fair price is paid to producers, enabling them to enjoy decent living conditions;
- Buyers usually pay for the products in advance so that the producers will not have to seek other means of financing production;
- Value is attached to quality and sustainable production;
- Concern for the environment;
- Effort to eliminate intermediaries between producers and consumers;
- Consumers are informed about the origin of the products;
- The process (including the relationship between producers, distributors and consumers) must be voluntary.

Fair trade promotes equitable conditions in commercial transactions and the lifting of discriminatory restrictions on goods (raw materials, manufactured products, technology) from developing countries. In addition to eliminating discrimination and protectionism, fair trade also aims to narrow the excessively large gap between consumer prices in the First World and the money paid to producers in the country of origin, thus preventing the exploitation of workers (which amounts to virtual slavery in many countries). Furthermore, fair trade does not rely on government intervention or subsidies. A set of international Fair Trade principles and requirements have been established by Fairtrade Labelling Organizations (FLO International). Fulfilling these principles and requirements enables operators to obtain a FAIRTRADE label, which guarantees the origin of the product concerned. The label has contributed significantly to the global growth of fair trade products.

Fair trade has achieved a high degree of consumer acceptance in Europe, in many cases outperforming conventional trade. Europe is the main destination of Fair Trade products and Latin America is the main area of production. Most fair trade Products are sold through supermarkets, while fair trade importing companies are those with the highest number of employees, and labelling companies those with the highest turnover. In Europe, fair trade is a major market niche – indeed one of the most dynamic, with an increasing presence of large multinational companies, particularly in the food processing industry. Within Europe, the United Kingdom, Switzerland, France and Germany have the highest volume of retail sales. For its part, Switzerland has the highest consumption per capita.

In Africa, 60 per cent of the population lives and works in rural areas, but subsidised products from Europe and the United States (milk, sugarcane, cotton, fruit, etc.) are destroying the local markets, thus spurring a massive exodus to the cities and swelling the ranks of irregular migration. Promoting rural development in these areas, on the basis of food sovereignty and a fair price for local products, could improve the livelihood of many African farmers, thus sparing them the need to set out on a quest for the "European paradise". But in order to offer low-priced products to European consumers, many companies resort to child labour, slavery and exploitation. Oil and mining companies, as well as companies in the chemical and pharmaceutical sectors, buy raw materials cheaply in Africa by supporting and financing arms trafficking, civil wars and dictatorial military regimes that oppress the people.

Strengthening fair trade can be an effective strategy even in the short term, but only a bold and effective European policy against irregular migration can contribute to reducing migration flows. This means a policy which is not centred on border security and further segmentation of the labour market, but which regards the development of the countries of origin as a decisive factor of success in the medium and long term.

5.- PROPOSED METHODOLOGIES AND TOOLS

In light of the above, we shall outline, in the following, what we believe should be the basic premises of any proposed methodology or instruments aimed at ensuring fair working conditions for undocumented migrant workers, as well as of any fair trade strategies that we might put forward:

1.- Global trade is not following the principles of fair trade but, on the contrary, so-called "free trade" is largely characterised by cynical protectionism and is negatively impacting progress in less-developed countries, thus fuelling poverty and migration towards the more developed countries.

2.- Any fair trade strategy put forward by the European trade union movement, jointly with other organisations, should be based on a set of "rules of fair trade" and promote the rights of workers in the countries of origin. To this end, we must strive to strengthen the international trade union organisations as much as possible and effectively lobby national governments.

3.- Respect for human rights, regardless of a person's legal status, is an absolute principle. Equal rights for undocumented immigrant workers in Europe can only be achieved if these workers become fully-fledged "regular" workers in both legal and administrative terms. European trade unions must avoid further segmentation through the granting of "low-level rights" to irregular immigrant workers.

Proposed types of action:

- Establish forums and timetables to develop joint strategies and monitor/evaluate existing agreements relating to development and migration;
- Actively participate, through national and international trade union organisations, in policymaking that has a bearing on migrant workers;

- Develop comprehensive policies and programmes to assist migrants who return to their countries of origin;
- Promote alliances to achieve regular and protected migration, developing, to this end, bilateral and multilateral agreements to regulate migration flows and protect the rights of migrant workers and their families in accordance with the relevant ILO and UN Conventions. The regularisation of migrants should not be regarded as a factor that negatively affects host countries, but rather, as the main tool to tackle the problem of vulnerability;
- Join trade union action to promote democracy, political stability, the eradication of slavery and other forms of human exploitation;
- Avoid the depletion of human resources and "brain drain" in the countries of origin, striving to prevent a two-tier migration policy;
- Promote agreements on social security and other acquired rights in the host countries so as to transfer these rights to the countries of origin;
- Cooperation between trade unions to monitor the workforce selection and recruitment processes in the country of origin in order to ensure that they are carried out fairly and transparently, without the involvement of any intermediaries or organised crime networks;
- Cooperate to promote the organisation of migrant workers and their active involvement in unions;
- Develop specific campaigns aimed at promoting the following: compliance with the ILO Conventions and Standards; gender equality in employment; the eradication of child labour; social inclusion; quality education and vocational training; occupational health; the eradication of informal work; equal treatment and equal working conditions; decent work, and so on;
- Strive to include social and environmental clauses in multilateral and bilateral trade agreements;
- Combat racism, xenophobia and all forms of discrimination and promote the integration of immigrants in the labour market and society at large in the host country, respecting cultural diversity and recognising its positive contribution to society;
- Moving beyond the focus on border security and expulsions, we must identify innovative approaches to irregular immigration, including the development of major channels for legal, regular migration, preventive and protective measures, and a greater emphasis on the protection of human rights;
- Consider the feasibility of developing circular or temporary migration schemes, offering pathways to achieve permanent residence and citizenship.

Up until now, the European Commission has pursued a migration policy based on making the most of scant resources and enforcing border controls, but it should now recognise the importance of orderly, legal migration. This involves channelling migration flows through appropriate mechanisms to ensure that immigrant workers are integrated into the labour market with full rights and duties and enjoy full social protection. The ETUC should campaign for the inclusion, in future EU legislation in this area, of the following provisions, which were recently proposed by the European Federation of Building and Wood Workers with the aim of preventing, identifying and penalising illegal work in the building sector, but which, in view of their general characteristics, can also be applied to other sectors:

Scope of the agreed measures;
Concrete definitions of the European Union;
Specific regulations to deal with providers (gang masters) and employers of irregular workers;
Specific regulations to deal with fictitious companies;
Introduction of a European social identity card;
Several and joint responsibility of the main contractor;
Specific preventive measures;
Strengthening of inspections, investigations and control;
Make it easier to report abuses;
Establish an obligation to improve national administrative cooperation;
Law-enforcement measures;
Creation of a new "EU Social Intelligence and Investigation Agency (EU-SIIA), which will be responsible for preventing and detecting illegal work.

The observable correlations between pay levels and migration flows explain the specific and distinctive processes of migration in Europe. The aging of the population is a key contributory factor to the increase in social costs. A "demographic renewal" is necessary to maintain and increase our production capacity, and therefore we need immigrants. However, the specific characteristics of different European countries and the peculiarities of immigration in each of them have greatly hindered the development of an adequate common immigration policy in Europe. Thus, while the various forms of interdependence generated by the Single Market promote a measure of agreement to tackle immigration and asylum issues at Community level, the existence of different national legislations relating to the actual contents of the integration process hinder the establishment of clear and binding agreements. The evolution of migration issues on the European Agenda betrays the very substantial weight carried by different national interests when it comes to taking concrete decisions.

The ETUC should reject a complex maze of EU Directives targeting different groups of workers, usually the most vulnerable ones. It should combat the growing liberalisation and segmentation of the labour market – which greatly hinder the effective integration of immigrants – and, above all, it should combat social dumping, extreme competition and the division of the working class.

QUESTIONS FOR FURTHER DEBATE:

- 1.- The legal consequences of irregularity. Are there any alternative solutions to regularisation that can bring about equal rights for all workers?
- 2.- How can fair trade influence global trade as a whole and at the same time promote respect for workers rights? The WTO.
- 3.- What kinds of actions can trade unions undertake in the European context to uphold the rights of undocumented immigrants?