



CLANDESTINE ACTIVISTS:
HUMAN RIGHTS ACTIVISM FOR UNDOCUMENTED MIGRANTS
(A case study of a campaign of domestic workers in the Netherlands)

by

Jayson S. Lamchek

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*School of Global Studies, University of Gothenburg
School of Business and Social Sciences, Roehampton University
Department of Archaeology and Social Anthropology, University of Tromsø*

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Declaration of Authorship

The following work is my own effort. I certify that all the material in this Dissertation which is not my own work, has been identified and acknowledged. No materials are included for which a degree has been previously conferred upon me.



Jayson S. Lamchek
Santiago de Compostela, Spain
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Abstract

The emergence in the Netherlands of a campaign for recognition and rights of domestic workers, mostly undocumented migrants, is a highly unlikely event. Among other things, the Netherlands is not a party to the Convention on Migrant Workers and it has an aggressive policy against irregular migration centered on the denial of most social rights to undocumented migrants. The campaign of domestic workers is a window into pro-undocumented migrants' human rights (UMHR) activism in a harsh political environment. This paper looks at the opportunities and constraints of pro-UMHR activism in the Netherlands and the strategies that activists can and do adopt to overcome constraints and create opportunities, as demonstrated in the campaign of domestic workers. It advances the view that deprived of a 'hegemonic' language, pro-UMHR activists will likely engage in processes of argumentation/dialogue/persuasion in which an explicit normative language of human rights for undocumented migrants is largely avoided. A key finding is that activists in the campaign of domestic workers are constrained to conceal instead of announce their motivation which is the regularization of undocumented status. The paper challenges some established conceptions of human right activism's relationship to human rights norms in the standard social constructivist account.

Key words: 'clandestine strategies'; Convention on Migrant Workers; human rights activism; migrant domestic workers; 'spiral model'; undocumented migrants

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*For my parents Anmon and Dalisay,
my wife Cy and my daughter Iraya.*

INTRODUCTION

The rights of undocumented migrants pose a difficult but urgent topic for human rights advocacy in our globalizing era which is also called an ‘age of migration’ (Castles & Miller 1998). If human rights were universally applicable to everyone within the jurisdiction of host states on the basis of humanity alone, then theoretically even undocumented migrants would be entitled to them. However, in actual practice, migrant-receiving states assert the prerogative to restrict or deny human rights to undocumented migrants, reinforcing the association of human rights with the privileges of citizenship. Moreover, more than twenty years since it was proposed, no Western¹ migrant-receiving state has consented to be bound by the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (for short, Convention on Migrant Workers or CMW), a core UN human rights instrument in which undocumented migrants are recognized to be entitled to a modicum of human rights protections (Bosniak 2004). In the absence of treaty commitment to the CMW by host states, how then can claims to human rights for undocumented migrants be made and given effect?

Existing international instruments appear to have only an extremely limited impact on undocumented migrants. In contrast to the limited gains obtained through international litigation² using international human rights norms of general applicability, for example, large-scale regularizations appear to have had more impact.³ The emergence of pro-regularization movements in Western countries (Laubenthal 2007; Basok 2009) in which undocumented migrants themselves have successfully mobilized to gain access to citizenship, and hence, to institutionalized human rights, despite the lack of treaty commitment to the CMW raises challenging questions about the relationship of human rights activism to human rights norms.

¹ EU countries (particularly Finland, Greece, Italy, Norway, Portugal, Spain, Sweden and France) have substantially participated in the drafting of the CMW, and a few non-Western migrant-receiving countries Argentina, Ecuador, Mexico, Morocco, Senegal and Turkey have ratified it. (Platevoet & Stodi 2010)

² E.g., articles 2 (right to life) and 3 (freedom of inhuman and degrading treatment) of the European Convention on Human Rights (ECHR) have been interpreted by the European Court of Human Rights as bases for permission to remain and receive support in some instances of poor and deteriorating health (*D v. U.K.*, application No. 30240/96 cited in Morris (1993)). See, also Thym (2008) on litigation concerning art 8 (right to family life) of ECHR.

³ In Europe, some 3.5 million undocumented migrants successfully obtained legal status through some mode of regularization between 1996-2008. (Baldwin-Edwards & Kraler 2009)

CHAPTER 1

BACKGROUND AND METHODOLOGY

1.1 Aim and Research Questions

The aim of this research is to examine, through an actual case, how the expansion of human rights beyond the present nation-state logic is carried out in practice, i.e., how the correspondence between human rights protection, on the one hand, and citizenship or membership in the host state, on the other hand, is transcended. The research will provide an illustrative case study of activism that is targeted at gaining greater access to human rights for undocumented migrants in a Western migrant-receiving state that aggressively works to exclude them. I have chosen as subject matter an ongoing campaign of domestic workers who are mostly undocumented migrants in the Netherlands. As expounded further below, the Netherlands is an extremely challenging setting for pro-undocumented migrants' human rights (UMHR) activism because while the protection of human rights, specifically social rights, for citizens and regular residents is institutionalized, there are almost no legal means for undocumented migrants to obtain their full human rights in that country. This sets the Netherlands apart from Southern European countries where large-scale regularizations have been more common.

The paper raises the following research questions:

- (a) What opportunities and constraints exist for pro-UMHR activism in the Netherlands as demonstrated in the campaign of domestic workers?
- (b) Again, as demonstrated in the said campaign, how do/can pro-UMHR activists struggle for inclusion of undocumented migrants in that country?
- (c) How does the struggle for human rights for undocumented migrants (HRUM) affect the overall understanding of human rights promotion?

Although activism in the local setting is interlinked with activism at the international level, most notably, the ongoing effort to pass the International Labor Organization

(ILO) Convention on the Rights of Domestic Workers in June 2011, the present inquiry is limited to the local level.

1.2 Setting the Scene

The Netherlands

The Netherlands exhibits typical features of a country reluctant to accept immigrants. Official statistics report a total registered population with a foreign background of about 3.3 million (out of a total of 16.6 million, or 20%) as of 2010. The top three non-‘Western’ countries where migrants come from are Turkey and Morocco (reflecting the legacy of guest worker programs adopted between 1960 and 1970), followed by Surinam (reflecting post-colonial migration). (Centraal Bureau voor de Statistiek 2010) The total number of undocumented migrants is a topic of guesswork, but existing estimates in the Netherlands based on statistical techniques of population biology applied to police data are regarded as of comparatively ‘high quality’ (Clandestino Research Project 2009:4; van der Leun & Ilies 2008; Jandl 2004). The Clandestino Research Project (2009) provides the figure of from 62,000 to 108,000 as of 2008. Van de Leun opines that the most likely figure is ‘around 7 percent of the population of legally registered non-western immigrants’ (van der Leun 2004:3).

The Netherlands has, compared with other industrialized states, a highly redistributive, predominantly universal (as opposed to means-tested), and generous welfare provisions for its members. The Dutch welfare state is often characterized as of a ‘social democratic’ type (Goodwin & Smitman 2000; Crepaz & Damon 2008) as opposed to the ‘conservative’ and ‘liberal’ types in Esping-Andersen’s typology of welfare capitalisms (Esping-Andersen 1990), or else as a ‘hybrid’ (Arts & Gellisen 2002). Membership in the Dutch welfare state is zealously protected from perceived ‘outsiders’, as undocumented migrants are legally barred from accessing most forms of social services (further discussed in section 3.1 below).

The Near Impossibility of Regularization in the Netherlands

The Netherlands also combines institutionalized social rights protections for citizens and regular residents (as reflected in the well-developed welfare state) with the deprivation of a route to full human rights for undocumented migrants (i.e., regularization⁴). This pattern is also exemplified by other Northern European states. Comparative data on regularization across Europe suggests that the stronger the internal solidarity (expressed through the welfare system), the harder it is for ‘outsiders’ (i.e., undocumented migrants) to get in (represented by pathways to regular or legal status). Large-scale regularizations have been more common in Southern European countries⁵, where the welfare state is comparatively smaller and welfare heavily depends on the family and the market, than in Northern European countries. In the Netherlands, regularization programs have been rare, often implemented in silence, and benefited extremely small numbers of undocumented migrants in comparison with countries like Italy and Spain. (van der Leun & Ilies 2008:14) Apart from asylum, marriage to citizens represents the only existing pathway to regular or legal status for an undocumented migrant, but even this option is increasingly being restricted by the state as well. (van der Leun & Ilies 2008: 15)

Domestic Workers and their Campaign for Recognition and Rights in the Netherlands

This paper focuses on undocumented migrants engaged in domestic work, or work performed in private households. Employment of undocumented workers have also been observed in low-paid jobs in other economic sectors like horticulture, restaurants and catering, and construction (see van der Leun & Kloosterman 2006). But protection of the labor market enforced through surveillance or what is known in the Netherlands as ‘internal controls’, a key feature of Dutch policy towards undocumented migrant workers since the 1990s, is pushing the undocumented to work in clandestine conditions for their safety. Domestic work may be attracting a growing number of undocumented migrants, both female and male, because of the

⁴ Broadly defined, regularisation refers to ‘any state procedure by which non-nationals who are illegally residing, or who are otherwise in breach of national immigration rules, in their current country of residence are granted a legal status’ (Baldwin-Edwards & Kraler 2009: 7).

⁵ Italy, Spain and Greece alone already account for 82% of all applications for regularization, with about 4 million applicants. The approval rate in these three countries are very high, at an average of 80%, compared with Germany, Belgium, Luxembourg and France, from 21% to 53%. (Baldwin-Edwards & Kraler 2009:36)

inherently ‘hidden’ nature of the work setting. (van Walsum, forthcoming cited in Günther 2011:4)

At the moment, there is a campaign by domestic workers in the Netherlands for the recognition of domestic work as ‘regular work’ and for greater access to rights.⁶ The emergence of this campaign by and for a group of largely undocumented migrants in the Netherlands is in itself a very implausible event. The general political climate in the country is characterized by a rising tide of anti-immigration sentiments, and even racism, expressed in the political discourse of the Netherlands as ‘full’ (van der Leun 2004:4) or ‘overcrowded’.⁷ There is a clear policy trend away from multiculturalism towards ‘integration’ which is driven by fears of Muslim radicalization among certain segments of the migrant population (Nana 2007). The last parliamentary election in 2010 is even marked by the unprecedented victory of the conservative, anti-immigration and anti-Islamic *Partij voor de Vrijheid* (Party for Freedom, PVV) which was responsible for including a proposal to criminalize undocumented migrants as an item in the agreement establishing the present coalition government.

Besides these political factors, there are also general constraints related to organizing and mobilizing undocumented migrant workers for conventional political activities. These include restrictions on movement and association with others (e.g., clandestine migrants avoid contacts with authorities; domestic workers work in households and hence lack opportunities for networking in the workplace) and absence of funding sources (Schwenken 2003:46). The mere fact that undocumented migrants are outsiders to the established political body, without the legal right to be represented therein, makes their act of claiming rights from the host state a remarkable feat of political agency in itself (Anderson 2009; McNevin 2007).

There is an antecedent of the Dutch campaign in the United Kingdom in the mid-1980s when undocumented migrant domestic workers launched a campaign there

⁶ See, Appendix B for the statement of the goals of the campaign.

⁷ In May 2002, Pim Fortuyn, then posed to lead the election of his party to Parliament and become Prime Minister, and shortly before being assassinated, stated in a BBC interview, ‘I just say, the Netherlands is a small country. We are already overcrowded, there’s no more room and we must shut the borders.’ (Lang 2002; van Selm 2005)

to obtain work permits.⁸ This regularization campaign was documented primarily by feminist scholar Bridget Anderson. Schenker (2003) has furthermore analyzed the framing of the domestic workers' issue at the European Union by self-organizations from the UK campaign and their transnational network RESPECT-Europe; while Anderson (2009) followed the aftermath of the campaign in the UK, highlighting how the state has been able to 'recapture' the campaign's achievement.

1.3 Research Methods

Interviews and Participant Observation

Because the campaign of domestic workers maintain an online presence in a social networking site (Facebook), there are some materials, like news and photographs, about the campaign that can be publicly accessed. I chose to conduct face-to-face interviews with campaigners/activists in order to get primary data on campaign activities, including the participation of undocumented migrants in such activities, and their views and opinions about the campaign. Qualitative interviews have the advantage over analysis of documents of being able to get at underlying beliefs and motivations that may not be readily expressed in activists' public or written communications. They are relatively time-consuming and expensive compared to surveys, but were less so compared to ethnography. I also chose to supplement qualitative interviews with participant observation of campaign meetings and activities in order to gain eyewitness knowledge of the participation of undocumented workers in campaign activities and actual discussions had by activists among themselves. Participant observation helped me pick out perceptions and opinions from other (observable) data reported in interviews.

In the summer of 2010, I stayed in The Hague and met fellow Filipinos there, including migrant domestic workers. Grace Escaño, my initial contact in the campaign, is the chair of a domestic workers' self-organization called Courage Acknowledgment Respect and Equality for Migrant Domestic Workers or CARE-MDW (CARE for brevity) and a leading activist in the campaign. In February 2011, I

⁸ See, Appendix C (A Note on the Similarities and Differences between the Campaigns of Domestic Workers in the UK and in the Netherlands).

arranged to follow her to organizational meetings and campaign activities primarily to seek respondents for interviews. Through this means and through referrals, I was able to tap into a web of self-organizations of domestic workers, other organizations that support them, and other individual activists interlinked through the campaign. Given the time constraints, it was not possible to interview all the actors in the campaign, and a few important actors (e.g., CMFW and lawyers' organizations) have been left out. Thus I was only able to interview a segment of the varied community of activists/campaigners. I prioritized interviewing the Filipino and Indonesian groups because they were apparently the most numerically dominant groups in the campaign. As for the Latin American group, I had to contend with a language barrier. Among support organizations, I interviewed the labor union FNV Bondgenoten that appeared to be a key actor in the campaign, acting as a kind of nerve center coordinating the different self-organizations and supporters.⁹ Besides the union, I interviewed five other support organizations that the self-organizations referred to me or whom I met through a campaign coordination meeting.

In the end, I came up with the following number of interviews:

Representatives of self-organizations of domestic workers	: 14
1. CARE	: 5
2. Migrante-Netherlands	: 5
3. United Migrant Domestic Workers (UMDW)	: 1
4. Malayang Samahan ng mga Pilipino (MSP)	: 2
5. Indonesian Migrant Workers' Union-Netherlands (IMWU-Netherlands)	: 1
Representatives of the labor union and support organizations	: 8
1. FNV Bondgenoten (including the domestic workers' representative to the union leadership)	: 3
2. Ondersteunings Komitee Illegale Arbeiders (OKIA)	: 1
3. Stichting LOS	: 1
4. Het Wereldhuis	: 1
5. Dokters van de Wereld	: 1
6. Pinay sa Holland	: 1

⁹ See, Appendix C.

- Others : 3
1. A Dutch activist-artist who worked on a campaign-related project for FNV Bongenoten
 2. A Dutch-Indonesian activist supporter of IMWU
 3. A Dutch-Filipino individual supporter who is not part of the campaign

A total of twenty-five (25) people were interviewed of which eleven (11) were undocumented migrant domestic workers themselves. Each interview lasted approximately one hour. Except for two interviews¹⁰, all the interviews were one-on-one. The interviews were face-to-face, qualitative and semi-structured, conducted between February 3 to March 25, 2011 in different locations in the Netherlands (principally in The Hague and Amsterdam, but also in Utrecht, Delft, Den Bosch and Ijmuiden).¹¹ Interviewees were generally asked about their organization's activities (or in case of individual supporters, their own activities) or plans in relation to the campaign, their individual experiences in the organization and in the campaign, and their views and opinions about campaign goals and strategies. Some of the interviewees shared aspects of their personal lives as well.

Participant-observation was conducted in the context of an organizational meeting (CARE, 02.03.2011), an informal gathering (Migrante-NL-Den Haag, 02.10.2011), campaign-related meetings (02.04.2011 and 02.07.2011), a public forum on the legislative proposal to criminalize undocumented migrants (03.17.2011), and two key union activities, viz., the mobilization at Moreelsepark, Utrecht dubbed 'Cleaners' Day' [*Dag van de Schoonmaker*] and the opening of the art exhibit called 'Museum of Garbage' [*Afvalmuseum*] at the Utrecht Central Station (03.19.2011).

¹⁰ The very first interview with Escaño was participated in by two other officers of CARE who spontaneously joined in while I was conducting the interview with her. These two other persons were later interviewed separately one-on-one. The interview with two representatives of MSP were conducted jointly upon their request (to save time).

¹¹ The schedule of interviews is set out in Appendix D.

Analysis of Data

The data-gathering and analysis for this research proceeded in broadly similar fashion as in Grounded Theory research methods (Charmaz 2006). A hallmark of the Grounded Theory approach is that data collection and analysis are not necessarily separate and sequentially ordered phases of the research process, but rather collected data feed into the development of categories which are then used to generate further, theoretically informed data. Similarly, in this interview research, initial interviews were of an exploratory nature and asked for the ‘basic social process’ (Charmaz 2006:20), that is, the realities of the campaign on the ground. Data obtained from previous interviews then fed into the development of interview questions for succeeding interviews which became more focused on obtaining specific data that the evolving analysis demanded.

Analysis was aided by constant note-taking in between interviews and soon after the events observed and participated in. Transcription of interviews, summarizing of transcriptions, and note-taking enabled the production of many detailed observations reported in this thesis. These observations were broadly ordered under the themes of ‘opportunities and constraints for pro-UMHR activism’ and ‘strategies of pro-UMHR activists’ which are presented in chapters 3 and 4. I have endeavored to situate the present case study in the existing literature in order to produce a theoretically-informed perspective that brings coherence to the collected observations. At the end of chapter 2 (Theoretical Framework), I state the analytical scheme in terms of expectations in the analysis (section 2.3). In the specific analyses undertaken in chapters 3 and 4, I further employ concepts derived from discourse analysis and social movement theory, which are briefly discussed in the prefatory paragraphs to the said chapters.

CHAPTER 2

THEORETICAL FRAMEWORK

In this chapter, I locate the research within the existing theoretization of human rights activism, particularly paying attention to the standard social constructivist account of Risse, Ropp and Sikkink (1999) of a ‘spiral model’ of change in state behavior towards human rights. Following Shor (2008) and Basok (2009), I argue that models of human rights change that assume the pre-existence of human rights norms of unquestioned acceptance by Western states limit our appreciation of human rights activism in the context of Western states and dealing with specific issue-areas. The spiral model needs to be calibrated to encompass pro-undocumented migrants’ human rights (UMHR) activism in Western migrant-receiving states which deny rather than endorse the applicability of norms. If pro-UMHR activism is to be properly understood as human rights activism, then human rights activism will also have to be reconceptualized by emphasizing the goals of actors rather than the explicit use of a normative or rights language. I then review notions of undocumented migrants’ and state ‘strategies’ in the irregular migration literature (Jordan & Düvell 2002; Lahav 2006; Engbergson & Broeders 2009) in order to conceptualize support organizations (Jordan & Düvell 2002) and pro-regularization movements (Laubenthal 2007; McNevin 2006; McNevin 2007; Basok 2009) as forms of human rights activism that influence undocumented migrants’ strategies vis-à-vis the state.

2.1 Conceptualizing Change in the Undocumented Migrants’ Human Rights Issue-Area: Review of the Spiral Model

Researchers of human rights activism have been drawn to the theory of ‘social constructivism’ in International Relations.¹² The emphasis placed by social constructivism on ideational factors (e.g., social/legal norms) as opposed to material factors (e.g., economic/political interests of powerful states) makes it possible to account for the so-called ‘power of human rights’ (Risse, Ropp and Sikkink 1999). As a ‘principled issue’ (Risse, et.al. 1999), with almost nothing going for it except

¹² For a classic statement of the social constructivist school of IR, see Wendt (1992).

perhaps powerful ideas, human rights for undocumented migrants (HRUM) would appear to present a good topic for this theoretical approach. In this section, I review Rise, et.al. (1999)'s influential 'spiral model' in order to conceptualize change in relation to HRUM.

Risse, et.al. (1999)'s spiral model explains how states are 'socialized' into behavior respectful of international human rights norms. The process of change is envisioned as proceeding in five sequential stages: (1) repression; (2) denial; (3) tactical concession; (4) prescriptive status; and (5) institutionalized rule-consistent behavior. It is driven by three kinds of mechanisms: (a) instrumental adaptation to pressure/strategic bargaining; (b) argumentation/dialogue/persuasion; and (c) institutionalization/habituation. At first, repressive states when confronted by domestic opposition engage in denial, but denial in turn creates a 'boomerang effect' whereby domestic actors are led to seek linkages with international actors. The transnational networks that they form exert pressure through naming and shaming, sometimes causing states to make tactical concessions in order to buy the appearance of international legitimacy. Gradually, governments get caught up in their own rhetoric by the logic of argumentation, and human rights norms begin to have binding effect. Finally, norms gain prescriptive status, penetrate institutions and guide routine behavior. The spiral model underlines the gradual nature of change, the role of discourse, and the importance of transnational networks of activists.

Two potential difficulties in applying the spiral model to the study of how change takes place with respect to HRUM can be identified at the outset. In the first place, the spiral model was intended to analyze change in relatively weak developing countries¹³ initiated by transnational networks of activists that often include powerful Western states. Moreover, previous applications of the spiral model also tend to view states' human rights behavior as a homogenous unit, i.e., there is no disaggregation made of specific human rights issues or issue-areas and human rights progress is mistakenly assumed to be uniform across issue-areas (Shor 2008). These considerations can make the spiral model appear unsuitable for the analysis of

¹³ Kenya, Uganda, South Africa, Tunisia, Morocco, Indonesia, the Philippines, Chile, Guatemala, Poland, and Czechoslovakia in different historical periods (Risse et.al. 1999) as well as Paraguay (Evans 2005), Nicaragua (Santa Cruz 2004), and Argentina and El Salvador (Sikkink 2004) all cited in Shor (2008).

specific human rights issues of undocumented migrants in Western states.

However, Shor (2008), analyzing materials on human rights compliance and non-compliance by Israel, has argued that the spiral model is relevant even in relation to Western states and works better when analyzing disaggregated issue-areas even as its analytic power may vary from one issue-area to another. The spiral model can be modified to account for change as well as lack of change in specific human rights issue-areas in the context of an established Western democracy.¹⁴ Hence, lack of change or deterioration in human rights behavior intertwined with ‘terrorism’ or grave domestic or international conflicts will need to be analyzed using supplementary elements derived from the realist approach. But even within this issue-area, the spiral model affords analytic insights. For example, the human rights activism of transnational networks succeeded in substantially reducing excesses in the Israeli practices of erecting the Palestinian barrier, torture, and the use of Palestinian civilians as human shields in Israeli military operations, and accorded well with the spiral model’s prediction of stage-by-stage change. (Shor 2008)

Shor is certainly correct in emphasizing the need for a disaggregation of issue-areas. Speaking in the abstract about human rights behavior as a homogenous unit can lead to the uncritical view of Western states as in a comparatively advanced stage of institutionalized human rights compliance in all the important issue-areas. From this angle, the specific human rights issues faced by undocumented migrants in Western states can appear trivial in comparison to human rights issues faced by citizens in developing countries, simply because the former are in Western states.

Another difficulty with the spiral model is pointed out by Basok (2009), viz., that the spiral model deals with human rights activism in which the international human rights norms involved enjoy unquestioned endorsement by the larger part of the community of states, especially the West. This ‘hegemonic’ (Basok 2009) character of the human rights norms is what underlies the international legitimacy that states seek to obtain through tactical bargaining. Moreover, in the spiral model,

¹⁴ In Shor’s modification of the spiral model in line with a comprehensive approach in IR (Cardenas 2004), elements of realist (e.g., great power interests) and liberal approaches (e.g., regime type and rule of law) are brought back into the analysis.

human rights actors are conceived as working towards implementation of international norms whose applicability in principle is not an issue.

The anthropological conception of human rights activists as active intermediaries doing the work of ‘translation’ (Merry 2006) of international human rights norms into local socio-cultural idioms constitutes an advance in the appreciation of local human rights actors as not merely passive transmitters but creative interpreters. But ‘translation’, like ‘implementation’, also assumes the pre-existence of internationally agreed norms.

In contrast, pro-UMHR activists contend with the lack of endorsement by Western states of the international norms laid down in the Convention on Migrant Workers (CMW) concerning the basic human rights of undocumented migrants (HRUM). And while human rights norms under widely accepted instruments (say, the right to social security under Art. 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)) are expressly worded as applicable to ‘everyone’, host states assert the prerogative to exclude undocumented migrants from their coverage or accept obligations thereunder only with respect to citizens and other regular residents. Viewing the goal of human rights activism as implementation of human rights norms, or even as translation, will not invite controversy when it involves citizens only. But as soon as unwanted non-citizens are brought into the picture, conceptions of human rights activism as implementation or translation become political (committing the speaker to the position currently rejected by Western states) rather than being merely descriptive. It may therefore be more analytically correct to speak of pro-UMHR activism in terms of a struggle for inclusion (or resistance to exclusion) or recognition (i.e., of undocumented migrants as rights bearers), rather than in terms of implementation or translation.

Hence, the spiral model is a useful reference frame for differentiating between human rights activism *for undocumented migrants*, on the one hand, and human rights activism *for citizens*, on the other hand. While human rights activism for citizens benefit from the three kinds of mechanisms in the spiral model, pro-UMHR activism,

in the absence of Western endorsement of the CMW or equivalent instruments,¹⁵ could not confidently rely on all three mechanisms (e.g., not on tactical bargaining). Rather, viewed through the spiral model, the chief driver of change in the HRUM issue-area would appear to be argumentation/dialogue/persuasion.

Western migrant-receiving states can be seen as engaged in a kind of denial akin to Cohen's 'interpretive denial' (Cohen 2001) because they interpret exclusion from rights and non-recognition of undocumented migrants as rights bearers as not amounting to violations of human rights norms (Feldmann & Olea 2004). Furthermore, human rights activists advocate for undocumented migrants in the international level, e.g., at the European Union (Guiraudon 2001) or the International Labor Organization (ILO), either exclusively or as part of multi-level strategies, and derive some resources therefrom (Gray & Statham 2005). Local actors also form and obtain support from transnational networks with other local actors in other states. Thus, elements of a 'boomerang' pattern of influence can be detected. Nevertheless, the discourse on HRUM do not (yet) have a 'hegemonic' character (Basok 2009) which will create the legitimacy that states might be willing to buy with tactical concession. To the contrary, the larger part of the community of states, and certainly the West, considers it a facet of state sovereignty to subject undocumented migrants to exclusion or non-recognition.

Basok (2009) suggests that we might think of HRUM as emerging norms. Rather than speculating, a more productive pursuit is to document and analyze processes by which the legitimacy of specific patterns of exclusion from rights and non-recognition of undocumented migrants are unsettled and effectively challenged. These processes take place at many levels from international standard setting (e.g., the proposed ILO Convention on Domestic Workers) to local campaigns aimed at both the undocumented migrants themselves and the larger society, and are creating the conditions for change to take place in this human rights issue-area.

A focus on these struggles for inclusion and/or recognition recall what

¹⁵ I am here excluding asylum-seekers in the scope of these remarks. Rejected asylum-seekers who contest their status are sometimes considered undocumented migrants but their supporters have the Refugee Convention to deploy. The full logic of the spiral model is theoretically available to them in the same way as citizens and regular migrants.

sociologists refer to as the ‘negotiated’ character of human rights norms (Waters 1996) and the sense of universal rights as ‘in the making’ (Sassen 2006) that are lost in accounts of human rights activism that take universal rights as already made, needing only to be implemented or translated in local settings. The documentation and analysis of processes by which the interests of undocumented migrants are written into local interpretations of global norms follows the path that Brysk (2010) referring to Goodale (2009) has called ‘dialectical ethnographic universalism of human rights’ which is a project that constructs universal norms from the ground up.

2.2 Conceptualizing Pro-UMHR Activism

Given that pro-UMHR activists are deprived the use of a ‘hegemonic’ language of human rights, it is not surprising that pro-UMHR activists have been given more neutral labels in the existing literature, e.g., as ‘support organizations’ or ‘social movements’ that do not make explicit reference to human rights. But support organizations, pro-regularization movements and the like are in fact working for the enjoyment or achievement by undocumented migrants of some or another human right. In this section, I draw from the existing literature that provides examples of forms of pro-UMHR activism. I use as a starting point Jordan and Düvell’s (2002) theoretization of irregular migration, which brings in sharp contrast the state’s strategies of immigration restriction and exclusion and the undocumented migrants’ own strategies for remaining and surviving. I then consider how these different forms of activism relate to the strategies of the undocumented migrants themselves vis-à-vis the state.

Strategies of Undocumented Migrants and of the State and the Role of Civil Society

In Jordan and Düvell (2002)’s theoretical framework, globalization is presented as riddled with paradoxes to be solved or explained or transcended. A key paradox is that of ‘mobility versus membership’. ‘Mobility’ here refers to the interest of migrants to pursue better life chances beyond state boundaries. The other side of the dilemma is termed ‘membership’ to draw attention to the fact that host states view themselves as rightly allowing or restricting movement into their borders/societies in

order to maximize advantages for their own citizens/members. The state and the undocumented migrants are therefore seen as having two opposed self-interests and strategies for maximizing benefits to themselves. ‘People who break migration rules (irregular migrants) must therefore be seen, individually and collectively, as acting to deal with the consequences of these struggles on their lives.’ (Jordan & Düvell 2002: 3). ‘Dealing’ with an irregular or undocumented status means adopting some kind of strategy for remaining or surviving in the host state. This could include working and living in relative clandestinity and finding alternative means of satisfying such needs as housing or health care apart from host state provisions.

Mobility is increasingly being perceived as itself a kind of right, which combines elements of civil and political as well as social and economic human rights. The burgeoning and contested discourse on ‘migration and development’ is increasingly associating (circular) mobility with the enjoyment or achievement of human rights. For example, in the 2009 United Nations Human Development Report (UNDP 2009) which was devoted to the theme of ‘migration and development’, the mobility of workers is seen as a vital factor in the measurable increase of human development, enabling huge numbers of individuals from underdeveloped countries to work, have access to health care and education, enjoy physical safety and exercise political rights. Similarly, Jordan and Düvell (2002) acknowledge that economic migration is a kind of ‘voting with the feet’ or the ‘exit option’¹⁶, i.e., an exercise of a kind of a right to choose which kind of life to lead in which kind of society, although for some, the ‘choice’ is whether or not to live at all, akin to the right of refugees to protection. Migration is even referred to as ‘resistance to hardships’ (Lutz 2008: 3) and as ‘collective civil disobedience’ (Ansley 2005: 209). More radical and explicitly counter-hegemonic philosophical and legal discourses of ‘open borders’ argue from a right of free movement in liberal political theory (not fully recognized in the Universal Declaration of Human Rights and existing human rights instruments) to directly challenge the state’s claim of sovereign prerogatives to control or regulate

¹⁶ ‘Irregular migration is part of the emergence of transnational communities, but transnationalism itself must be understood within a broader analysis of how individuals and groups respond to globalisation... - moving between communities, forming and joining associations, clubs and networks. More generally, it raises the question of whether such movements across jurisdictions and among groups represent an alternative to collective action and political participation within them. ... What does it tell us about the relative payoffs of democratic activity and for ‘voting with the feet’ ...?’ (Jordan & Düvell 2002: 4)

migration altogether, generating activism around issues of militarized border enforcement, detention, deportation and removal of undocumented migrants. (See e.g., Carrens 1987; Cohen 2003; Hayter 2004) These discourses have been accompanied by sophisticated theoretical as well as empirical analyses of experiences of rightlessness among undocumented migrants, often drawing on Foucaultian notions of biopolitics or Agamben's 'homo sacer' or bare life (Shinkel 2009; Khosvari 2009).

'Support organizations' can influence or impact on strategies of undocumented migrants, although not always with the intended results. For example, in Jordan and Düvell's own case study of 'support organizations' for undocumented migrants in the U.K. (Jordan & Düvell 2002: chap. 6), perceptible differences were observed in the strategies of Turkish irregular migrants in the UK, on the one hand, and their Brazilian and Polish counterparts as a result of intervention by support organizations. Because the Turkish community is well serviced by their support organizations, Turkish irregular migrants are more likely to apply for asylum, often engaging immigration authorities in long drawn-out legal battles which have very low chances of succeeding. In contrast, Brazilian and Polish migrants, who have no comparable ethnic/community organizations, adopt a strategy of avoiding contacts with authorities as much as possible, i.e., living in relative clandestinity. They will most probably contact support organizations only when they are already in trouble with the police or immigration authorities.

Private actors, including civil society or non-government organizations, are also increasingly implicated in state strategies of migration restriction and exclusion (Lahav 2006). This is a result of the delegation of migration control functions from national immigration authorities to sub-state as well as international actors. Through sanctions and penalties on transport companies, employers, and non-government providers of publicly funded services, states are able to mobilize private actors as gate-keepers. Migration regulations may also marshal citizens (e.g., through the obligation for sponsors to report when their foreign guests have left) and even the migrants' own families (e.g., through support requirement for reuniting family members in the form of judicially enforceable pledges) for similar roles as agents of immigration controls and exclusion (Lahav 2006: 295-303). Devolution strategies are coupled with strategies of international cooperation in immigration control as when

states pool resources for enforcement of immigration rules, an increasingly common phenomenon within the EU (Lahav 2006: 307), but which could also include strategies of ‘outsourcing’ (Feldmann & Olea 2004) as when enforcement takes place in sending or transit states. Border controls are pushed inwards (the borders are everywhere crisscrossing the state) and outwards into the territories of other states and in ‘transnational space’ or ‘no man’s land’ like ‘airports, where intervention by lawyers and human rights associations is almost impossible’ (Lahav 2006: 306).

Jordan and Düvell (2002)’s ‘membership vs. mobility’ paradox is recaptured in Engbergesen’s and Broeders’ (2009) presentation of the state and the undocumented migrant as pitted against each other in a contest of wills. Engbergesen & Broeders (2009) is also a good complement to Lahav (2006) because while the latter emphasizes increased enforcement capacities by states, the former shows the corresponding diversification of irregular migrants’ ‘counterstrategies’. For example, increased emphasis on employer sanctions, exclusion of irregular migrants from labor and social services, and new identification and surveillance technologies like biometrics, may lead irregular migrants to switch from formal to informal employment, from legitimate activities to subsistence criminality and from being identifiable to being unidentifiable (Engbergesen & Broeders 2009). Undocumented migrants may fashion out their own strategies by piecing together resources derived from their own social networks, support organizations, and individual sympathizers within society or government, which are all legal or legitimate actors. But shadier actors like illegitimate temporary work agencies, criminal syndicates and other entrepreneurs of mobility can also provide solutions, such as ‘black’ work, forged documents or fictitious work arrangements, albeit at a price.

Support Organizations and Pro-Regularization Movements as Forms of Pro-UMHR Activism

The appreciation of strategies of undocumented migrants clarifies what is meant by ‘*support organization*’, and for that matter, what is meant by ‘*pro-UMHR activism*’ which is the phrase I use in this paper. To support undocumented migrants implies at the very least an intention to enable rather than hinder undocumented migrants in the pursuit of their strategies of remaining and surviving in the host state.

Subsumed in the phrase ‘support organizations’ are the types of organizations that Jordan & Düvell (2002) documented in the UK, namely, NGOs, some of which are exclusively concerned with immigration and refugee issues (like the Refugee Council and the Joint Council for the Welfare of Immigrants); lawyers’ organizations (including private law offices); and community organizations including those operated by immigrants. They provide a broad range of services from legal advice, shelters and food for the destitute, to free language lessons and use of computers that help undocumented migrants deal with undocumented status. Among support organizations, it may happen that only lawyers directly use the language of international human rights norms as legal norms for the benefit of migrants as when, for example, they are aided to apply for asylum or appeal their deportation. But other services or services of other support organizations, like the provision of shelters, etc. are mutually complementary or coordinated with legal services and are often accompanied by campaigning activities that try to influence public discourse as well. Hence, and it makes sense to speak of various support organizations’ activities as a unified whole, on the basis of a generally shared motivation on the part of supporters to get greater access to rights for undocumented migrants. Undoubtedly, many support organizations who act on the ‘here and now’ basis, see themselves as stepping up heroically to take over responsibility that the host state is unwilling to shoulder for undocumented migrants, although by doing so they may also be reinforcing the host state’s denial of responsibility.

A focus on the motivation or goal of the activism rather than on the language used is justified by the fact that HRUM do not (yet) or do not in the specific circumstance constitute an effectual language.¹⁷ Human rights activists in the strict sense, i.e., those who make use of the language of international human rights to obtain rights for undocumented migrants like, say, Amnesty International, may not be the most important actors in this issue-area.¹⁸ In fact, it may happen that activism which is actually intended for undocumented migrants to enjoy human rights consciously

¹⁷ This argument is only strengthened by analyses of a ‘broken asylum system’ (Human Rights Watch 2009) that detect declining support for the Refugee Convention by European states (Fekete 2005).

¹⁸ The weakness of international actors have been documented in Guiraudon (2001) who assesses that EU immigration policies are not coherent enough to provide a language to express local movement demands, and that Brussels NGOs are unable to affect policy in favor of their supposed local constituencies. As can be expected, local actors (e.g., the *san papiers* movement) frame issues in local discourse instead of universal human rights.

avoid human rights language altogether in order to maximize its effectiveness. For example, in the US state of Tennessee, undocumented migrants and their allies undertook from spring of 2001 up to 2003, a campaign that ‘fought successfully for access to a state-issued driver’s license for people who could not produce proof of lawful presence in the USA’.¹⁹ In this campaign, ‘at least in its public aspect and public rhetorical strategies, [campaigners] seldom mentioned anything remotely like “rights”.’ (Fran 2005: 199) Activists attributed the success of their efforts precisely to the avoidance of a rights language in favor of appeals to the self-interest of citizens, e.g., highway safety. A human rights lawyer who was among the organizers of the campaign said:

A final reason I believe we won this struggle for the rights of undocumented workers in Tennessee is that we did not frame the campaign as a struggle for rights at all. Instead, *at least in its visible, public face*, the campaign was framed almost entirely around desires, interests and preferences of US citizens. (Fran 2005:206)

Indeed, the reference to the ‘visible, public face’ of the campaign implied that there was a private, inaccessible space as well, i.e., a backstage, in which campaigners were able to more freely express their as yet unpopular beliefs and views about HRUM, forming what James Scott has called a ‘hidden transcript’ of the weak (Scott 1990). Thus, like the undocumented migrants’ themselves who operate within society clandestinely, human rights activists may be engaged in clandestine strategies that conceal rather than announce their goals. The clandestinity of undocumented migrants that is the logical cause of state restrictions on their freedom of movement and to work mirror the clandestinity of pro-UMHR activists’ strategies that similarly arises from state denial of an effective language of rights.

In continental Europe, groups and networks emerged using more confrontational methods of protest movements, like occupying churches and holding mass demonstrations to press for regularization. The earliest of the European movements is the *sans papier* movement in France which emerged in the mid-1990s as a coalition among undocumented migrant workers and asylum seekers asserting the

¹⁹ Access to drivers’ license was key human rights issue for undocumented migrants in Tennessee where no public transportation system outside the small centers of large cities existed and where therefore being able to drive a car was a pre-condition to ‘even the simplest acts of daily existence’ (Fran 2004: 203), e.g., buying groceries. Also, since undocumented migrants could not get a driver’s license, it became a proxy for a citizen/legal resident’s ID, i.e., a convenient tool of state surveillance.

right to live in the country on the basis of colonial, economic and cultural ties with France (McNevin 2006). The *sans papier* movement has parallels in Spain and Switzerland²⁰ (Laubenthal 2007), as well as in Germany's *No One is Illegal* network and in Italy's *il 3 Febbraio* (Jordan & Düvell 2002:153). Even larger pro-regularization mobilizations have been accomplished in the United States where about a million undocumented migrants and their supporters held nationwide mobilizations in March, April and May of 2006 including the so-called 'A Day without an Immigrant' boycott/strike of May 1, 2006 (McNevin 2007; Pulido 2007).

Insofar as regularization implies greater rights, if not full rights of citizenship, pro-regularization movements are also broadly speaking a kind of human rights activism. But as opposed to clandestine strategies that follows a logic of survival of the weak in the shadows or in the margins of civil society, strategies of collective mobilization follows a different logic of empowerment and advancing rights by openly asserting and claiming them against the state, despite the risk of arrests and deportations. 'No longer avoiding scrutiny and pleading for inclusion from a position of little leverage, irregular migrants now *demand* recognition of their social and economic contribution and their pre-existing rights as political subjects.' (McNevin 2007:667) As McNevin (2007) observed, these later strategies are 'reminiscent of "outing" in other identity-based movements' (McNevin 2007:667), e.g., the LGBT movement.

This difference raises such questions as: Are irregular immigrants able to effectively resist exclusion from human rights protection while remaining hidden, i.e., with the help of support organizations, among others? Can momentuous and more open confrontations between undocumented migrants and the state, which can be witnessed in Southern Europe and the United States, be built up from clandestine strategies or 'everyday forms of resistance' (Scott 1990)? How are irregular migrants enabled to come out from clandestinity and openly claim papers/human rights from their host state? An exhaustive inquiry into these questions is beyond the purview of the present research. However, an analysis of the campaign of domestic workers that

²⁰ Nationwide mobilizations reached 400,000 participants in Spain, 100,000 in France and 10,000 in Switzerland. As a result of these actions, national regularization processes were opened in France in June 1997 and in Spain in June 2001. (Laubenthal 2007: 102)

is presented in this case study can contribute towards an understanding of aspects of these questions.

2.3 Some Expectations in the Analysis

The campaign of domestic workers will be analyzed through an analytical scheme built up of the following propositions:

- (1) Following the discussion in Section 2.1 above, it can be surmised that the main mechanism that could drive change in the HRUM issue-area are processes of argumentation/dialogue/persuasion and not tactical bargaining involving transnational networks of activists. Therefore, *I focus on opportunities and constraints for pro-UMHR activists that are discursive in nature, and are furthermore, local in character.*
- (2) Pro-UMHR activists will not only see themselves as implementing pre-given rights, but will try to make new ones. Therefore, *I consider pro-UMHR activists' implementation efforts as only a part of their work which also involves a more creative 'norm-building' part.*
- (3) Framing of arguments and messages in terms of the desires and interests of citizens (Ansley 2005), which tend to instrumentalize the human rights of undocumented migrants, should not be automatically discounted as anti-UMHR. On the contrary, pro-UMHR activists may be relying on this kind of strategy. *I try to discover in the analysis examples of clandestine strategies employed in the domestic workers' campaign.* Pro-UMHR activists could be using clandestine strategies which tend to conceal, instead of announce, their motivation to gain greater access to rights for undocumented migrants. In this sense, pro-UMHR activists' strategies would mirror characteristics of individual strategies of undocumented migrants for remaining and surviving in the host state (Jordan & Düvell 2002; Engbergesen & Broeders 2009). Alternatively or simultaneously, pro-UMHR activists could also be

transforming the individual strategies of migrants vis-à-vis the state from clandestinity towards open resistance.

CHAPTER 3

MARGINAL SOCIAL RIGHTS AND PRO-UMHR ACTIVISM

In this chapter, I look at activists' use of the local language of human rights to advance campaign goals. As will be shown below, it is still possible to claim some human rights for undocumented migrants in the Netherlands, a non-party to the CMW, because Dutch law provides, by way of exception, some social rights to undocumented migrants. However, the use of these marginal social rights as a campaign strategy is very limiting.

Exclusion of undocumented migrants has been previously studied by performing discourse analysis on techniques of exclusion in different national settings. (e.g., Mehan 1997; Vas Dev 2009) Similarly, in this chapter, I take exclusion of undocumented migrants as a social problem with a discursive aspect. The technique of critical discourse analysis which Fairclough calls 'interdiscursive analysis' (Fairclough 2001:125), which looks at how discourses 'flow' in different contexts/directions and are mixed and transformed in the process, can be applied to explore how exclusion and inclusion can form a hybrid discourse. In the first section, I outline the dominant way by which the social rights of undocumented migrants is dealt with in Dutch law.²¹ This dominant rights discourse is intertwined with the Dutch immigration policy of 'discouragement' (van der Leun 2004) centered on the Linking Act [*Koppelingswet*] of 1998, a legal framework that works largely to exclude, but also paradoxically and in a more limited way, to include undocumented migrants in the welfare state. I will argue that it is a hybrid discourse that is formed from two contradictory demands: on the one hand, to fight undocumented migration flow through the denial of social rights to undocumented migrants; and on the other, to recognize that undocumented migrants are still human beings. The exceptions to the deprivation of social rights that the Linking Act allows also serve as one measure to gauge the extent of recognition/denial by the Netherlands of HRUM as embodied in the CMW, and are valuable to review on that account.

²¹ A survey of the basic rights of undocumented migrants in the laws of the Netherlands is published by Stichting LOS (2009) as well as PICUM (Platform for International Cooperation on Undocumented Migrants n.d.)

3.1 Undocumented Migrants Still Have Rights: Human Rights within the Dutch ‘Discouragement’ Policy

Like in other countries, the creation of the category ‘illegal foreigners’ in the Netherlands came about only after the economic downturn in the 1970s caused by the oil crisis. In the preceding period 1950s-60s, foreigners who came to work in the Netherlands without an official work contract under the Dutch guest worker program were called ‘spontaneous workers’. Although they were undocumented in this sense, they could nevertheless obtain social-fiscal numbers, pay taxes and premiums on health insurance, and obtain social services. With fears of job shortages, debates about labor migration became more common. The guest worker program was stopped and sanctions on employers who hired ‘illegal foreigners’ were increased. In the 1990s, following a budgetary crisis of the Dutch welfare state (van der Leun 2004:4) a series of laws were passed which systematically cut access of ‘illegal foreigners’ to social services. From 1992, ‘illegal foreigners’ could no longer obtain social-fiscal numbers and pay taxes making ‘illegal foreigners’ truly undocumented, and then in 1998, the Linking Act was passed which linked entitlement to each social benefit under existing laws to legal residence status. (Minderhoud 2000) The fear was that welfare benefits might be encouraging undocumented migrants from coming and discouraging them from returning (Chiswick 2000 cited in van der Leun 2004:4). Hence, the theory behind what van der Leun (2004) has called the Dutch ‘discouragement’ policy towards irregular migration is that depriving them social rights would discourage more from coming, if not make those already in the country leave on their own accord. In fact, deprivation of social rights has become such an important tool of migration control that it may even rival the centrality accorded to deportation itself.

The drive towards exclusion is unmistakable in the wide-ranging deprivation of almost all social rights. Nevertheless, the Linking Act did not take away all social rights, but rather, it recognized by way of exception, a few basic rights that undocumented migrants still have as human beings, albeit in restricted forms. These three rights are the right to imperative medical care, education for children, and access to publicly financed legal assistance. (van der Leun 2004:5)

According to a veteran activist involved in the protests against the proposed

law, the carving of a space for human rights within the Dutch ‘discouragement’ policy was the result of resistance to the Linking Act in its original form. (Marijke Bijl, interview 02.04.2011) The original proposal was presented to Parliament in 1995, but its enactment was delayed by widespread protests among doctors, teachers, lawyers,²² a broad range of social actors, and many local governments as well. The proposal ‘was claimed to be unnecessary, immoral and unworkable’ (van der Leun 2004:4). Professionals argued successfully against taking on duties to denounce clients/patients who were undocumented migrants to the Aliens Police on the basis of professional ethics. In the original proposal, undocumented migrants’ right to access health care was only recognized for ‘acute life-threatening emergencies’, but due to the opposition of doctors, this was rephrased to ‘imperative medical treatment’. What constituted ‘imperative medical treatment’ was left for attending doctors themselves to decide, so that the result was a substantial expansion of the exception. (van der Leun 2004:4-5) Similarly, teachers were able to press for a modification of the restriction to the right to education for undocumented children. Originally, the proposal set an age limit of 16 but this was eventually raised to 18 and children were allowed to finish whatever course of study they began before turning 18. With the modifications made, the Linking Act was eventually ‘accepted’ by its critics.²³

Hence, the human rights of undocumented migrants contained in the Linking Act were a product of *compromise*. Moreover, they were *concessions* made not directly to the migrants themselves but to Dutch social actors, specifically to professionals whom the law recruited as implementers of the discouragement policy. It is well to note that, according to Bijl, in the debate about the rights of undocumented migrants, the undocumented migrants themselves had no direct role. (interview 02.04.2011) The protest against the Linking Act was carried out largely by Dutch citizens. And the resulting three recognized rights reflect the three professions that fought for these rights using the language of their own professional ethics. This attests to the fact that although professional ethical codes constitute a different genre from human rights instruments, they share some elements in common, and the former could therefore sometimes, as in this case, serve as an alternative language to human rights instruments.

²³ ‘[I]f you look at a distance, this Linking Law was accepted.’ (Bijl, interview 02.04.2011)

Moreover, the provision of human rights to undocumented migrants did not challenge and in fact existed side by side with the affirmation of the prerogative of the state to remove undocumented migrants through deportation. It was not therefore a step towards greater freedom of mobility, but, in fact, it reinscribed the legal fiction of state sovereignty and territoriality. In her analysis of the Convention on Migrant Workers (CMW), Bosniak (1991) emphasized that the same convention that afforded substantial human rights protections to undocumented migrants also reinforced the principle of state sovereignty by explicitly affirming the state's authority in the sphere of immigration and 'national membership' policy. In a sense, all international human rights instruments, because they rest upon the state system for their implementation, suffer from this defect. Therefore, the hybridity of the dominant Dutch rights discourse mirrors the dual nature of human rights as universal entitlements and as a state-affirming discourse.

3.2 Seizing Opportunities (Cautiously): Campaign Activities in Relation to Medical Care

In the foregoing section, the social rights of undocumented migrants recognized under Dutch law were presented as exceptional and marginal and co-exist with the greater imperative of exclusion. In the present section, the limited enabling effect of such marginal social rights is concretely illustrated by looking at campaigner's considerable efforts relating to medical care, which is one of these marginal social rights.

Since 2006, the right to health care is implemented in the Netherlands through compulsory health insurance coverage, which insures that Dutch citizens and residents will be able to afford the services of medical professionals. However, the Linking Act prevents undocumented migrants from taking out a health insurance policy. (Cuadra 2010) Uninsured, undocumented migrants must fully shoulder the fees of health professionals as well as the market cost of medicines. Therefore, undocumented migrants' access to health care is first of all hindered by the high cost of health care.

Nevertheless, most of the activists interviewed in the study spoke about access to medical care as an area in which opportunities exist for the advancement of the goals of their organizations and for the campaign²⁴. Magreet Kroesen, project coordinator for *Dokters van de Wereld* (DvdW), the Dutch branch of *Medicins du Monde*, explains that obstacles for accessing health care for undocumented migrants are surmountable given the proper knowledge. For example, she points to knowledge of the reimbursement system. Since 2009, as a result of changes in the health care law in the Netherlands, the state fund CVZ, that previously reimbursed only first-line doctors that attended to uninsured patients with difficulties paying (including undocumented migrants) can now also be used for the reimbursement of contracted hospitals as well as institutions that come after hospitals like rehabilitation centers and elderly care. DvdW is among a few organizations working in the right to health issue-area that disseminates knowledge about the new system to undocumented migrants and provides trainings for groups and individuals, often in coordination with the support organization *Het Wereldhuis*, to equip them with practical skills, e.g., negotiating commonly encountered administrative barriers. In the opinion of Margreet Kroesler of DvdW, given the existing legal framework and the morale of the Dutch medical profession, undocumented migrants could obtain most forms of medical assistance from the country's medical establishment. Hence, DvdW does not feel compelled to provide direct medical help to undocumented migrants. This is by far a more favorable condition than what exists in other European countries where cash-strapped support organizations are forced to provide very limited medical services to undocumented migrants.²⁵

Domestic workers' self-organizations are starting to make use of opportunities in health care for their recruitment strategies. As a campaign activity, DvdW is providing a series of trainers' training that hopes to turn a number of leaders and members of the domestic workers' organizations into lay experts in accessing health care for fellow undocumented migrants. Some of the older leaders, like UMDW's *Coring delos Reyes*, have already gone through these trainings several times and have

²⁴ A statement of the goals of the campaign of domestic workers can be found in the domestic workers' agreement with the FNV-Bondgenoten labor union (reproduced in Appendix B) which includes 'ensuring access to health care for undocumented migrant domestic workers'.

²⁵ Kroeser relates that, of all the MdM branches in Europe, it is only DvdW that does not run a private clinic to provide direct medical assistance to undocumented migrants. She sees this as an indication of the relative progress of the Netherlands in this issue-area compared with other European countries. (interview 03.02.2011)

made use of learned skills to assist others. (Koesler, interview 03.02.2011) In turn, officers of CARE are intending to capitalize on this capacity for servicing fellow undocumented migrants to attract recruits into their organization. (Grace Escaño, interview 02.03.2011; officer of CARE, interview 02.04.2011) The chair of Migrante-Netherlands-Den Haag also mentioned holding a ‘medical mission’ among their organizational activities, with the help of private doctors. (interview 02.10.2011)

Nevertheless, in seizing opportunities in relation to health care, activists know that they are participating in a system that was principally designed to discourage undocumented migration, and feel constrained accordingly. Officers of CARE perceptively opined that the Dutch government has an interest in not letting undocumented migrants know about CVZ, the system of reimbursement which was intended for the medical establishment. CARE’s chair Grace Escaño said that Dutch activists inform domestic workers that the CVZ has ‘a lot of excess budget, not even half gets used’ and so they are encouraged to make use of it. Still, they said ‘If you have money and can pay, then pay.’ An undocumented migrant activist (A) said this was important to ‘show the government that you are not abusing them.’ (interview 02.03.2011) She said the government’s fear that ‘the system would be abused’ was ‘in a way, understandable’. Moreover, Escaño thought the state was ‘willing to help. But only for those whom they can afford to help.’ (interview 02.03.2011) Hence, these domestic workers are aware of the Dutch state’s fear of abuse of the welfare state which is at the heart of the Dutch ‘discouragement’ policy, and this awareness causes them to behave cautiously.

The vigorous but cautious attitude among activists towards opportunities in health care was also detectable in a campaign coordination meeting that I observed. At first, the organizer of FNV Bondgenoten, wanted to know from the domestic workers’ organizations about any actual case of refusal of medical care which they can use for lobbying hospitals for better access to healthcare.²⁶ A veteran Dutch activist then emphasized that the alliance with doctors was very important, and that the existing system for accessing healthcare for the undocumented is also a precarious one. Thus, if campaigners put too much pressure on it, the system might collapse.

²⁶ In a different occasion, Mari Martens of FNV-Bondgenoten said the union was even ‘ready to picket hospitals’ if union members who are undocumented migrants should be refused medical care. (interview 03.23.2011)

Again, the concern was that even as undocumented migrant workers should be provided access to health care, they should not appear to be abusing the current system. Instead, the union organizer appealed to the domestic workers' sense of pride as workers: *'We are workers. We work, we earn money, we pay.'* There was a common understanding that they should pay when they can and to the extent they can. Activists wanted the undocumented to know that there is a system for the undocumented to get healthcare assistance, but it is a sensitive and complicated system, and they didn't want to appear to promote free-riding by the untrained. So an activist said *'we also don't want it too public.'* (field notes 02.07.2011)

3.3 Beyond Health Care: Campaigns' Limits, or Future Work?

I think the minimum rights should be that you don't let people die, you don't let people starve. And the problematic thing in the Netherlands is that this medical right is covered, but still people don't have the right to shelter, don't have the right to food. ... I can't explain really to normal people how can you have the right to medical treatment for instance, but you don't have the right to a house? (Rian Ederveen, interview 02.15.2011)

In contrast to their considerable efforts in and somewhat cautious attitude towards exercising the right to health care, activists have an even more inhibited attitude towards unrecognized rights. According to Rian Ederveen of Stichting LOS, a second-line support organization that networks scores of direct service organizations (mostly for refugees and asylum seekers), undocumented migrants do not have access to the huge Dutch social housing sector that offers affordable housing, as well as to all kinds of publicly-funded accommodation (e.g., those meant for the homeless), so that they must rely on the small market for relatively expensive private housing. (interview 02.15.2011) One undocumented migrant interviewed related that she had to make do with a shared small expensive flat that was inconveniently located. When asked why her organization does not also make addressing the housing problem like hers part of their recruitment strategy (like they do with health care), she explained that this was because housing is not one of the areas that support organizations are able to help them with. (interview 02.04.2011) Indeed, as the quote of a supporter above points out, the inability of undocumented migrants to claim rights to housing

while they can claim rights to medical care creates an incoherent situation from the viewpoint of advocacy of basic human rights for the undocumented.

Another reason why housing is not on the campaign's agenda might be because domestic workers who (eventually) earn income, are generally able to satisfy their housing needs with the help of relatives and compatriots. Among Filipinos, many interviewees mentioned compatriots taking in complete strangers into their homes at least until they could afford to rent their own rooms. This underscores the fact that from the viewpoint of individual strategizing of undocumented migrants, pro-UMHR support organizations are only one among many other possible providers of (mobility) resources. Thus, pro-UMHR support organizations will not likely spend their scant resources on provision of services that undocumented migrants are already able to find through other support mechanisms.

Attitudes towards deportation issues provide another illustration of activists' understanding of the limits to what they can realistically accomplish. Many activists interviewed, specially undocumented migrants themselves, consider deportation as an unchallengeable eventuality, which contrasts with the belief that obtaining medical assistance was legally uncontroversial. The chair of Migrante in the Hague (C) said that the organization cannot really rescue anyone from deportation. *'Of course if you're undocumented, if you get caught by authorities, you and we can't do anything.'* Instead, officers of the organization advice their members to avoid getting into trouble with fellow Filipinos or when crossing the street, and the like. *'You really need to obey the regulations here so you can avoid trouble. ...That's the primary thing that saves you.'* Interestingly, holding a medical mission in which undocumented migrants are informed to appear at a certain place and time to get treatment from a hired doctor was regarded as uncontroversial. When asked whether holding medical missions were dangerous, C said *'Not really because you aren't doing anything wrong.'* (interview 02.10.2011)

However, undocumented migrants have under the Linking Act the right to access publicly funded lawyers, and this right can theoretically be made use of for the purpose of defending against deportation, and not only for ensuring observance of

legal rights in the deportation procedure. Hence, some activists are urging that they further develop ways to mobilize lawyers to assist undocumented migrants against arbitrary arrests leading to deportation. For example, Grace Punongbayan, a senior leader of Migrante said: *'[W]e believe that they [undocumented migrants] are not supposed to be treated as criminals...why should they be arrested, detained and eventually deported?...they have not committed a crime.'* (interview 03.25.2011)

However, this kind of fundamental questioning of the state's prerogative to deport was rarely expressed in my interview research, and anti-deportation activism is largely an untried terrain for the domestic workers' campaign.

3.4 Concluding Remarks

Because the Netherlands is not a party to the CMW, pro-UMHR activists turn to a local language of rights, i.e., to Dutch domestic law to scour for legal rights that undocumented migrants can use for their benefit. We might think of these rights as pre-given in relation to domestic workers, but they are in fact products of earlier struggles/negotiations by certain social actors (i.e., citizens) that transmitted certain human rights norms derived from professional codes of ethics into the legal infrastructure of exclusion. However, the strategy of using the Dutch law for the benefit of undocumented migrants is largely constraining. While there may be loopholes in the health care area, education and legal aid, there are high walls that have been erected around the rest of the welfare state and the state's claimed prerogative to deport. If pro-UMHR activism were only reduced to implementing recognized legal rights, then indeed exclusion would appear largely impervious to change. Therefore, to gain an insight into how established patterns of exclusion of undocumented migrants in the Netherlands could be unsettled, we must look to other strategies.

CHAPTER 4

THE ‘WORKER’ FRAME IN THE DOMESTIC WORKERS’ CAMPAIGN

The understanding of opportunities and constraints to pro-UMHR activism presented in the preceding chapter is necessarily incomplete as it pertains only to the opportunities available within, and constraints imposed by, the dominant rights discourse. The campaign of domestic workers does not only make use of existing opportunities and accept constraints within the dominant rights discourse. More importantly, campaign activists also try, as they must, to overcome constraints and create new opportunities through the deployment of counter-discourse(s) to achieve their goal of greater inclusion. I argue that one such counter-discourse is being constructed by framing undocumented migrants as *workers*.

In this chapter, I provide concrete illustrations of pro-UMHR activists’ strategies that overcome constraints to organizing and mobilizing undocumented workers and create support for them despite the inhospitable political climate in the country. Like Anderson (2009), Schwenken (2003) and Günther (2010), I bring my own illustrative examples into a coherent perspective by using the concept of ‘framing’. In analyzing the logic and persuasiveness of activists’ reasoning and messages, researchers have drawn from social movement theory, particularly the concept of ‘framing’ (Payne 2001). The term ‘frame’ in social movement theory refers to ways of conveying ideas that ‘generate shared beliefs, motivate collective action and define appropriate strategies for action.’ (Merry 2006:41) A well-crafted frame can constitute a ‘power resource with relative autonomy from material power resource’ (Lynch 1999:265 cited in Payne 2001:39), and therefore can account for how weak undocumented migrants can create change in the UMHR issue-area despite seemingly insurmountable political and material obstacles. In this chapter, I look at how activists claim rights for undocumented migrant domestic workers by framing them as *workers*.

4.1 Domestic Workers: Workers or Victims, or Both?

It is useful to point out two contrasting, but sometimes compatible, ways by which domestic workers' messages might be 'framed' to gain rights. Following Anderson (2009) and Schwenken (2003), we can speak of a 'worker' frame and a 'victim' frame. Anderson summarized how the 'worker' frame functioned in the context of the UK campaign in the mid-80s as follows:

First, it asserted the dignity and value of their work, for themselves, employers and the wider public. They were not 'helping' but contributing socially and economically to households and wider society; ...[also] often sustaining extended families back home. It also asserted their legitimacy as public actors, their right to be heard and to be treated with respect, and it was accompanied by the demand that this labour be recognized as a route to formalized citizenship. (Anderson 2009:5-6)

Schwenken opines that the UK campaigners' success in obtaining regularization in 1998 resulted from their promotion of the discourse of 'rights' [i.e., domestic workers as workers with rights], as opposed to a discourse of victimhood [i.e., domestic workers as victims of human trafficking or as 'new slaves' needing protection], so that 'migrant domestic workers were perceived by the public not only as victims, but also as agents with a voice articulating their demands'. (Schwenken 2003:6) However, the UK campaigners also framed domestic workers as 'new slaves' especially in the earlier stages of the campaign²⁷ in which cases of abuse against domestic workers by non-British employers, typically rich Middle Eastern businessmen who brought in their maids with them to the UK, were highlighted to gain the sympathy of and 'appeal to the humanitarian sentiments of the British public' (Maitet Ledesma, activist in the UK campaign, interview 02.14.2011). 'In rescuing the domestic workers from the clutches of the employer, the UK was portrayed as re-enacting its status as an upholder of justice and liberty.' (Anderson 2009:7)

Many aspects of the realities of domestic workers in the Netherlands can potentially activate the 'victim' frame. For example, a number of the Filipino activists whom I interviewed came from a background of working with the proper visa as domestic servants of diplomats and then 'escaping'. An officer of a domestic worker's organization experienced abusive conditions, including being locked up in

²⁷ For example, a key campaign literature was entitled 'Britain's Secret Slaves' (Anderson 1993).

the diplomat's residence. (interview 02.10.2011) Among Indonesians, a Dutch-Indonesian supporter Siswa Santoso also spoke about his personal encounters with women from remote rural villages lured with false promises by recruitment agencies linked to elements of the Indonesian community in the Netherlands. (interview 03.23.2011) Domestic workers of foreign diplomats have sometimes come out in the media with their stories of abuse and have been accordingly portrayed as victims of slavery (see, e.g., van Tol 2011). It is also note-worthy that a lawyers' group Bonded Labor in the Netherlands (BlinN) which is interested in fighting human trafficking is among the organizations that support domestic workers.

Nevertheless, there are also difficulties in framing domestic workers as trafficked persons. Even among those who 'escape', many do not self-identify as victims. 'Escapees' (in Tagalog, *takas*), which is a word the Filipino domestic workers themselves use, connote either that abusive conditions leave them little choice but to flee, or that they are willfully abandoning the contractual bond (and opting for 'free illegality'²⁸) because of better pay or working conditions as undocumented workers, or both. Moreover, domestic workers sometimes view diplomats as privileged mobility entrepreneurs that can help them in their individual strategies of surviving and remaining in the host state. For example, an undocumented migrant (L) explained that in exchange for sponsorship as the diplomat's 'domestic servant' with corresponding visa, she agreed to work for a diplomat for free on a part-time basis²⁹. (interview 02.03.2011) Domestic workers can also themselves be involved in exploitation of their fellows by 'selling' their jobs to other domestic workers, a practice that my Indonesian interviewees reported as occurring among Indonesians and which IMWU strives to correct. (interview, 02.11.2011; interview, 03.23.2011)

More importantly, unlike the situation in the UK in the mid-80s, there are established mechanisms against human trafficking in the Netherlands that jive well with restrictive immigration policies. The police actively encourage 'victims of exploitation or trafficking' to come out by offering them a temporary residence permit with the corresponding social rights including theoretically the permission to work

²⁸ To borrow a phrase from Pei-Chia Lan (2007).

²⁹ The rest of the time, she works for pay for other households. Thus, ironically, the working conditions of domestic workers with papers inasmuch as they also perform 'black work' may be very similar to undocumented domestic workers.

(Ministrie van Sociale Zaken en Werkgelegenheid 2009). But the protection accorded to victims extends only until the conclusion of the legal case for the prosecution of violators (i.e., the victim will have to leave the country afterwards) and the work permission presumably pertains to ‘regular’ employment, not to domestic work. Hence, the ‘victim’ frame appears to lead to established legal remedies that undercut claims to regularization.

Inasmuch as the ‘victim’ frame relies on an established ‘human trafficking’ discourse that does not look at mobility as freedom but rather sees migrants as in need of being rescued from exploitation in foreign lands and put back in their home countries, the ‘victim’ frame will not likely work as it did in the UK. In contrast to the ‘victim’ frame, the ‘worker’ frame offers much more open-ended possibilities for claiming or obtaining rights, which include the possibility of regularization, as will be illustrated below.

4.2 The Silent Place of Regularization in FNV Bondgenoten’s Campaign for Labor Rights

Don’t talk about undocumented people. Talk about the services. Talk about the fact that private households want to have the service, that they want to pay for it, and that it’s really important for society that it’s there. Because two people are working for the family but somebody has to take care of the kids and the household. (Mari Martens, interview 03.23.2011)

Their recognition as workers is the first item in the agenda of the domestic workers’ campaign. In this undertaking, the campaign has obviously reached a milestone in having a major labor union³⁰ recognize domestic workers, including undocumented ones, by taking them in as union members. Through the union, domestic workers are able to have an established³¹ channel for bringing their demands to the state. FNV Bondgenoten is a crucial actor in formulating and timing the campaign’s specific demands upon the state.

³⁰ According to its website, Federatie Nederlandse Vakbeweging (FNV, Dutch Labor Movement Federation) is the largest federation of labor unions in the Netherlands consisting of 19 unions representing 1.9 million workers. FNV Bondgenoten is the largest union within FNV.

³¹ Günther characterizes Dutch industrial relations in general as ‘corporatist’, and Dutch unions as having close involvement with governmental decision-making (Günther 2011:3 citing Visser/van Ruysseveldt 1996: 30).

There are many senses in which domestic workers can be said to be unrecognized³² as workers in the Netherlands, including:

- (a) Firstly, domestic work is ‘black’ work (whether or not done by undocumented migrants). The employment arrangement is informal, usually unwritten, with the income paid and earned necessarily undeclared. This reflects the fact that domestic work is not viewed as proper work; it is associated with assisting in household chores which is supposedly done by the housewife without pay (hence, the term ‘household helper’); or, at best, it is regarded as a kind of odd or side job. However, there is a huge demand for the services of domestic workers -- 1.2 million Dutch households indicated in a 2004 survey that they made use of ‘household assistance’ averaging 3.4 hours per week (Social Economic Research Institute (2004: 24) cited in Günther (2011:4))—which means that domestic work forms an unregulated service sector within the Dutch economy.
- (b) Secondly, domestic workers effectively fall outside the protection of Dutch labor laws that are meant for ‘regular’ workers. As it exists, the labor law extends the usual labor rights (payment of minimum wages, paid sick leave, paid vacation, and so on) only to those employed for at least three days in a week by the same employer. (FNV Bondgenoten 2009) In contrast, a domestic worker usually works only a few hours every week for an employer (although the relationship might last for several years) so that a typical domestic worker would have as many as ten (10) different employers at any given time.³³
- (c) Finally, domestic workers are mostly migrants without permission to work under Dutch immigration rules. Employment as a domestic worker does not qualify one to a visa or work permit, except for those brought in by diplomats as their ‘domestic servants’ or for EU nationals³⁴.

FNV Bondgenoten is engaged in struggling against all three senses of non-

³² It has to be acknowledged that the invisibility of domestic work has long been a topic of feminist research (See, e.g., Rollins 1985; Romero 1992).

³³ Those I interviewed reported having up to 20 current employers. Only one had an employer for whom she worked for at least three days in a week.

³⁴ According to my interviewees, there is a growing presence of domestic workers from Poland.

recognition, although not simultaneously or with the same degree of confidence. Rebeca Pabon, the union organizer, for example, said the demand for work permits is a ‘political matter’ which is currently unrealistic given the present right-wing government. (interview 02.14.2011) This understanding is widely shared among domestic workers who speak of work permits as a ‘long term’ goal. This might also reflect the activists’ own perception that their number is still small.³⁵ Nevertheless, FNV Bondgenoten initiates discussions in Parliament and in the media about legislative adjustments that have to be made to include domestic workers in the ambit of labor rights.³⁶ The union also promotes discussions in the media about changing the unregulated nature of domestic work, which is partly aimed at courting support from employers of domestic workers.³⁷ These public discussions take the topic of domestic work away from the domain of invisibility and counter the perception of domestic work as ‘something less than work’. Pabon sees them as creating the necessary preconditions for informed and more favorable future discussions about work permits for undocumented domestic workers.

“[W]e go through the discussion on labor rights and at the same time we are pushing for the support of the employers, and you need to create these conditions, because the main issue here is not only the undocumented people. It is, in general, that we are building from scratch, an industry that is totally deregularized. And if you go on and you say ‘domestic workers are undocumented and they want work permits’, what permits? To work in what?!” (interview, 02.14.2011)

Therefore, the demand for work permits, which will regularize the status of undocumented migrant domestic workers, is not (or not yet) made a prominent element of FNV Bondgenoten’s campaign for labor rights, although it is the end-goal and the factor that motivates domestic workers to push for the said campaign. The campaign is directed at winning the support of employers and other sectors of society, that is to say, of citizens. Hence, what are emphasized are the needs and interest of citizens, and not the rights of undocumented migrants. Mari Martens, the union’s

³⁵ E.g., Grace Escaño said that FNV Bondgenoten targeted organizing 2,000 domestic workers (interview 02.03.2011), but Pabon said only close to 400 have been organized (interview 02.14.2011).

³⁶ According to Pabon, in late 2010, FNV Bondgenoten offered a book-length study and petition to Parliament proposing changes to the rights of “part-time” domestic workers. A Parliamentary committee has been formed to look into the proposal which is also now in the hands of the Ministry of Social Affairs and Employment. (interview 02.14.2011)

³⁷ According to Martens, the FNV proposal for making domestic work “white” work is based on a tax deduction for employers who hire domestic workers. (interview 03.23.2011) Pabon said the FNV would also like to push for discussions about creating government support for agencies or cooperatives that will provide the services of domestic workers to households in the context of a regulated market. (interview 02.14.2011)

national negotiator for the cleaning sector, whose quote appears at the beginning of this section, thought that the ‘proper way’ to gain rights for domestic workers is to argue for Dutch families’ need for their services, instead of the domestic workers’ need for work permits. (interview 03.23.2011)

As previously mentioned, campaigners target the support of employers, and this is evident in their proposal to spare employers from paying taxes for employing the services of domestic workers, and allowing domestic workers instead to pay taxes on their incomes. ‘*Just spare them,*’ said A, an officer of CARE, ‘*We earn the money, you just let us pay.*’ (interview 02.03.2011) The statement underlines campaigners desire for domestic workers to be seen as giving society a favor instead of the other way around.

4.3 Camouflaged Demonstrators: Undocumented Migrants in a Mobilization and Public Exhibit

In FNV Bondgenoten’s campaigning strategy, domestic workers are framed as workers *like other workers*, emphasizing their commonality with the rest of the Dutch working class while de-emphasizing their status as undocumented migrants. As will be shown below, this way of deploying the ‘worker’ frame also facilitates the solidarity between them and other union members and helps transcend some constraints in the mobilization of undocumented migrants.

In March 19, 2011, FNV Bondgenoten marked the first anniversary of a historic nationwide strike of cleaners (*schoonmaak*) that won for some 150,000 cleaners a wage increase and other benefits under a collective bargaining agreement for the sector. (For a background to the strike, see Decker 2010) Undocumented migrant domestic workers participated in that strike as members of the cleaning section of FNV Bondgenoten. (See, Günther 2011:17) Like the domestic workers’ campaign itself, the cleaners’ strike was also centrally about winning social recognition for cleaners as workers. ‘What do we want? Respect! When do we want it? Now!’ was the signature chant of the strikers (Decker 2010), which may as well be appropriated by the campaign of domestic workers. The union commemorated the

strike by holding a mobilization in a public park in Utrecht and then, as if to re-enact the strikers' occupation of Utrecht Central Station the year before, marching into the train station where the demonstrators witnessed the opening of the art exhibit 'Museum of Garbage' which was installed there.

The commemoration activities in Utrecht, like the strike itself, show how undocumented migrants who otherwise in their everyday lives follow individual strategies of avoiding contacts with authorities can be facilitated to exercise their political right to assembly and expression in a public space. In this regard, the combining of the small number of undocumented migrant domestic workers with the larger number of cleaners who were regular workers employed by cleaning companies was the most obvious facilitating factor. Domestic workers marched alongside other union members, wearing the same orange vests as the other participants in the mobilization. That the other cleaners were predominantly migrants too and were foreign-looking helped camouflage the undocumented workers.

The deployment of the 'worker' frame in a way that subsumes domestic workers under the larger category 'worker' was also evident in their representation in the Museum of Garbage. The Museum of Garbage featured objects contributed by cleaners, including domestic workers, with an accompanying testimony about the object that conveyed aspects of the realities of the cleaners' and domestic workers' occupations and lives. According to Matthijs de Bruijne, the artist that worked on the exhibit, about 25% of the objects and testimonies were from domestic workers. (interview 03.21.2011) Each object and testimony was unique and anonymous; it was as if the objects spoke for the cleaners and domestic workers. Through this alternative way of communicating, viewers could be introduced to intimate details about the labor and humanity of cleaners and domestic workers, messages which otherwise might not get through if mediated by their foreign-looking bodies. The rationale for the strategy is evident in De Bruijne's statement:

Labor is one of the main issues how we can tackle this new racism here in the Netherlands. And I think it's really important that workers, among workers, we start to realize that we are all workers. And we are not Filipino, or we are this, or we are that. I think it's a trick of the new liberals to position the worker not anymore as a worker, but as a migrant coming from Morocco, Turkey... (interview 03.21.2011)

In the mobilization, visual representations of domestic workers in the mobilization paraphernalia, like banners and murals, were aplenty but interspersed with those of other cleaners. The Minister of Social Affairs and Employment was in attendance at the mobilization as an invited guest. He was called to the stage to listen to sometimes belligerent oral petitions from leaders of the union's cleaners' section, and also to receive a commemorative book which was a collection of photo essays about the cleaners' strike. Interestingly, the book featured a photo essay on Lorie Matulay, an undocumented migrant who openly campaigns for domestic workers' rights, shown in the photo cheerfully receiving the Clara Meijer-Wichmann Penning Prize from the League of Human Rights and J'accuse organizations. The sight of a representative of the right-wing government among scores of silently observing undocumented migrants and their unmistakable but inconspicuously placed emblems surely signified an achievement of sorts. Does this purely symbolic encounter between the state and the undocumented migrants in a mobilization presage greater things to come?

4.3 Concluding Remarks

Activists are clamoring for recognition of domestic workers as 'workers' in order to obtain extension of labor rights to undocumented migrants, and hopefully, pave the way towards their regularization. Because an open demand for regularization is seen as unrealistic, campaigners keep silent about undocumented migrants' interest in work permits and focus instead on citizens' needs for the services of domestic workers. That is to say, they adopt clandestine strategies that tend to conceal instead of announce their motivation. In their attempt to create new norms benefiting undocumented migrants, campaigners engage in a kind of self-instrumentalization in which undocumented migrants' rights are argued on the basis of citizens' needs and desires for their labor.

The participation of undocumented migrants in the mobilization of cleaners shows that undocumented migrants in the Netherlands can be mobilized for conventional political activities. The 'worker' frame is important in this regard

because it facilitates solidarity among undocumented migrants and other workers thereby increasing their still scant power. But, as in their anonymous representation in the Museum of Garbage, undocumented migrants in the mobilization were, in a manner of speaking, camouflaged and not 'outed', as activists ensure that undocumented migrants' need for clandestinity is not totally compromised even in the context of such public events. Thus, these campaign activities also demonstrate that forms of open resistance like a mobilization can be built up while activists still adopt clandestine strategies.

CONCLUSION

The Case Study

I have endeavored in this case study to specify the opportunities and constraints for pro-UMHR activism in the Netherlands as demonstrated in the campaign of domestic workers, and also to illustrate how campaigners struggle for the inclusion of undocumented migrants in that country. I have argued in chapter 2 that in appreciating pro-UMHR activists' work we should look at human rights activism not only as implementation of existing norms but as norm-building; and that norm-building may paradoxically rely on activists' clandestine strategies that conceal rather than announce pro-UMHR motivations. Therefore, I looked, not only at campaigners as support organizations 'implementing' recognized rights (Chapter 3), but also at opportunities for argumentation/dialogue/persuasion that campaigners as social movement actors create for themselves and the constraints that they overcome through their framing strategies (Chapter 4).

The constraints on pro-UMHR activism in the Netherlands are almost overwhelming and include the inhospitable political climate, the general difficulties of organizing and mobilizing undocumented migrants, and, as discussed in section 3.1, the legal infrastructure of exclusion (i.e., the Dutch 'discouragement' policy) upon which the dominant rights discourse is based. However, the campaign of domestic workers shows that there are still loopholes within the 'discouragement' policy in the form of marginal social rights that pro-UMHR activists use. Campaigners seem to (cautiously) seize pre-given opportunities created by the exceptional negotiated recognition of the right to imperative medical care for the undocumented. (section 3.2) In contrast, they seem constrained to press for access to social housing and against deportation. (section 3.3) This situation illustrates that without state recognition for the basic rights of undocumented migrants like the right to food and shelter, pro-UMHR activists are debilitated and inhibited from providing the corresponding forms of support services to undocumented migrants. In contrast, pro-UMHR activists are enabled by exceptional state recognition of the right to medical care, for example, to provide referral service to elements of the medical establishment. Lacking adherence by the Dutch state to a broader set of standards

such as that laid down in the CMW (or an equivalent convention like the proposed ILO convention on the rights of domestic workers), pro-UMHR activists in the Netherlands will remain beset with the confounding situation in which undocumented migrants are entitled to medical treatment and yet have no right to food or shelter.

The strategy of scouring for rights within Dutch law (which can be thought of as ‘implementation’ efforts) however is not the only tool that pro-UMHR activists can employ. The more interesting strategy that campaigners use has to do with ‘norm-building’. In chapter 4, I looked at how activists frame or consistently convey ideas about domestic workers in order to galvanize support for new rights benefiting them. In section 4.1, I raised doubts about whether the domestic workers can be consistently portrayed as ‘victims’ and whether this will likely lead to rights for domestic workers. In section 4.2, I considered how campaigners are trying to gain recognition for domestic workers as ‘workers’, by among others, obtaining extension of labor rights enjoyed by ‘regular’ workers to undocumented migrant domestic workers. To do this effectively, campaigners seem to understand the need for what I call ‘clandestine strategies’ and the self-instrumentalization of undocumented migrants in their discursive strategies. By pressing for a regulated domestic service sector instead of work permits, campaigners conceal instead of announce their motivation while silently creating the necessary pre-conditions for regularization in the future. They are courting employers and society (i.e., citizens) by emphasizing their needs and desires, instead of the needs and desires of undocumented migrants. By framing themselves as workers, they are also courting the solidarity of fellow workers, which in turn enable undocumented workers to mobilize for conventional political actions despite their need for clandestinity, albeit, as ‘camouflaged demonstrators’. The campaign of domestic workers in the Netherlands confirms the proposition that in the absence of a ‘hegemonic’ language of HRUM, pro-UMHR activists can and do engage in processes of argumentation/dialogue/persuasion using alternative discourses. Mirroring the survival of undocumented migrants in the very harsh political and legal setting of the Netherlands, pro-UMHR activism can emerge and advance there despite the odds.

Human Rights Promotion in Light of Pro-UMHR Activism

I have argued in this paper that the standard social constructivist account have largely missed pro-UMHR activists' important role in human rights promotion. There are a number of reasons for this.

Human rights activists in the standard social constructivist account implement or translate into local settings a set of human rights norms that are pre-given or already made, and already well-accepted by the international system led by Western states. In contrast, because Western migrant-receiving states do not acknowledge the applicability of basic human rights norms to undocumented migrants, pro-UMHR activists are deprived a language of rights with which to authoritatively articulate the interests of these 'outsiders'. Despite this disability, they argue, using alternative discourses, for the transcendence of the citizenship-human rights nexus by making human rights' norms' literal promise to 'everyone' within the host state real, even to non-citizens. They struggle, sometimes successfully, to make theoretically universal norms speak about the actually excluded, despite the fact that the activists themselves are partly mute. In this sense, they are not merely implementing or translating human rights norms as in the standard social constructivist account, but are actually creating them. Pro-UMHR activism shows that the universality of human rights as reality, and not merely as theory, is constructed through a gradual process of inclusion.

The partial muting of pro-UMHR activists can clearly be observed in the case of the Netherlands where the state has asserted, rightly or wrongly, a prerogative to protect the welfare of citizens by excluding undocumented migrants from most social rights, thereby depriving pro-UMHR activists even a language of basic rights for undocumented migrants. It also seems clear that pro-UMHR activists in the Netherlands seek the transcendence of the human rights-citizenship nexus by trying to make the entitlements of workers to minimum wages, vacation leave, sick leave and so on extend not only to workers who are citizens or regular residents, but also to domestic workers who are undocumented migrants. If successful in this endeavor, pro-UMHR activists would have greatly contributed to the establishment in that country of the principle that the right to be justly compensated for one's labor, to take

a rest, and so on, are not exclusive privileges of Dutch citizens and denizens, but are really rights universally applicable to all workers in that country.

Also, in the standard account, human rights activists speak a normative or rights language. Therefore, it is not surprising that it would miss noticing the pro-UMHR activists at the forefront of the promotion of the universality of human rights, because of their clandestine strategies involving self-instrumentalization. Like the clandestinity of undocumented migrants that is the logical cause of state restrictions on their freedom of movement and to work, the clandestinity of pro-UMHR activists' strategies also arises from state denial of an effective language of rights.

The thesis therefore suggests that the standard account of human rights promotion in terms of the dissemination of hegemonic global norms will have to be supplemented by an understanding of processes whereby universal norms emerge in local settings through discourses of the weak that may not necessarily be utilizing right-based approaches.³⁸ Stammers (2005) argues for 'alternative accounts' of the history of human rights in which historical social movements, like the Diggers' and Levellers' movements of John Locke's time, rather than the 'bourgeois' philosophy of 'natural rights', are identified as 'important agents of transformation'. In a more encompassing theory of human rights promotion herein argued, social movements would probably also occupy a place of importance comparable to what is now accorded by the standard theory to international human rights instruments. But momentous struggles for citizenship are probably built upon silent acts of resistance that are even easier to ignore. As the campaign of domestic workers shows, mundane acts of support for the excluded by support organizations and volunteers could be accompanied with organizing and campaigning activities for grander goals, and undocumented migrants, availing themselves with the resources of allied actors, could gradually transcend their weakness. The yearning for greater access to human rights of undocumented migrants can be harnessed and channeled, and hopefully be transformed into a power to contend with.

³⁸ I agree with Ansley (2005:209) that the important question 'is not whether rights-based approaches associated with citizenship can be useful ..., but rather when, how, and under what circumstances they are most likely to be useful - or not.'

RECOMMENDATIONS

There are many limitations to this case study that could be surpassed by further research. First, the research is limited to the national level. It does not consider activists efforts at the regional and international levels, most notably, lobbying at the European Parliament and the International Labor Organization for an international convention on the rights of domestic workers, passage of which could have a huge impact on local activism. Such a treaty could substitute for the role that the CMW was hoped to play. Second, further research could be made to investigate the impact of the campaign of domestic workers on organizing of other undocumented migrants who are not domestic workers. (For example, does it have an impact on the organizing of undocumented migrants in other sectors of the economy, or with other backgrounds, like overstaying au pairs?) Third, because only activists were interviewed about their perspectives, state reactions to activists' efforts were not covered. A more comprehensive understanding of what drives change in the HRUM issue-area in the Netherlands will have to consider all these other aspects.

On the practical side, the thesis suggests the following:

- (1) There is still room for improvement in making fuller use of other recognized rights for the purpose of advocacy, in particular, the right to legal aid for undocumented migrants, e.g., in order to systematically challenge arbitrary arrest, detention and deportation. (Section 2.3);
- (2) Domestic workers' self-organizations can and do build alliances with anti-human trafficking advocates, but will need to be critical about the compatibility of their respective goals. (Section 4.1). Without discounting the importance of the alliance with the Dutch labor union, their strongest ally so far, domestic workers' self-organizations can and do still seek to multiply their allies beyond the labor movement. This is because the 'domestic worker' theme is capable of being connected with various other themes, e.g., 'migration and development', feminism, etc. But as with the anti-human trafficking discourse, a critical attitude will always have to be taken on the likely ultimate impact of alliances on access to human rights.

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Word Count: 16,327 words

The word count pertains to the main body of the text, from pages 1-50, i.e., from 'Introduction' to 'Recommendations'.

I endeavoured to strictly abide by the 15,000 word limit, radically downsizing the ambitions of the paper and keeping footnotes to a minimum, among other measures. Nevertheless, the limit was still exceeded because of the need for concluding remarks and other reiterations, without which it might be harder for the reader to follow the argument. As the excess falls within the allowance of 2,000 words, I hope for the examiners' kind indulgence.

Appendix A

Explanations of Anonymous Attribution and the Use of the Term ‘Undocumented Migrants’

A chief ethical concern in undertaking this study is the protection of the identities of undocumented migrants who chose or need to be clandestine. One undocumented migrant whom I encountered in the course of data-gathering was later arrested, illustrating the real and palpable danger that undocumented migrants face. Sometimes, undocumented migrants also expressed their wish to protect the identities of their supporters. Having said that, it must also be pointed out that the undocumented migrants interviewed were not always fearful of arrests or the like, and have sometimes ‘come out’ in interviews with the media, for example. Therefore, I have withheld the names and other identifying details that may put undocumented migrants in danger. However, with respect to those who have ‘come out’ and have been identifying themselves with their full names in the media, I thought following the same procedure would be unnecessary and would run counter to their expressed desires. I also thought concealing the names of representatives of support organizations and individual activists who publicly support undocumented migrants and/or campaign for them in the legitimate exercise of their own legal rights as disempowering.

Another concern, which is almost a standard problem in research on this topic, is what label to use to call undocumented migrants. Leading alternative labels include ‘illegal immigrants’ or ‘illegal aliens’ and ‘irregular migrants’. There are many competing arguments for and against any of these terms. (Goldring, Berinstein & Bernhard 2009; Düvell 2008; Cholewinski 2005:9 in favor of ‘irregular migrants’ and against ‘illegal immigrants’; Baghir-Zada 2009: 19-28 in favor of ‘illegal alien’) I have used ‘undocumented migrant’ instead of ‘illegal immigrant’ or ‘illegal alien’ because I share the standpoint that the later terms are demeaning to the person so labelled, being loaded with judgment about the legality of his very person (indeed, as the slogan ‘No One is Illegal’ points out, only acts and not persons themselves can be ‘illegal’). I acknowledge that the term ‘illegal’ can be used provocatively, as for example, the ‘Committee of Illegal Workers’ that existed in the Netherlands in the 1990s did call themselves to draw attention precisely to the deprivation by the state of legal status to workers. (Marijke Bilj, interview 02.04.2011) However, my purpose was not to provoke but to describe, and ‘without papers’ (in Tagalog, *walang papel*) was what the undocumented migrants whom I interviewed most often called themselves or their situation. Therefore, I decided to use ‘undocumented migrants’ in order also to communicate more clearly with my interview respondents.

Appendix B

Goals of the Campaign of Domestic Workers (as Reflected in the Domestic Workers' Agreement with FNV Bondgenoten)

“Agreements with domestic workers

Before domestic workers became members of FNV Bondgenoten, we made specific agreements about our goals. We decided that, together with the domestic workers, FNV Bondgenoten would commit itself to:

- achieving recognition of domestic workers as regular workers, preferably covered by the collective labour agreement for the cleaning sector (CAO Schoonmaak);
- protecting workers' rights and including workers in the social security system;
- ensuring access to health care for undocumented domestic workers;
- building up a network to support undocumented members if they are arrested because of their residential status;
- looking into possibilities for organizing a campaign focused on work permits for migrant domestic workers, because FNV Bondgenoten feels that domestic work can only be regarded as ‘decent work’ if workers also have a work permit.”

(Excerpt from *FNV Bondgenoten, Union of Domestic Workers and Cleaners*. 2009. FNV Bondgenoten, n.p. (leaflet published in both English and Dutch))

Appendix C

A Note on the Similarities and Differences between the Campaigns of Domestic Workers in the UK and in the Netherlands in Terms of Campaign Structures

The UK campaign was centered around the domestic workers' self-organization *Waling Waling* (later named United Workers Association) with *Kalayaan* serving as an accountable network of supporters. (Anderson 2009:3) Both of these groups were initiated by the Commission on Filipino Migrant Workers (CFMW), the same organization that was also instrumental in forming the self-organization TRUSTED in the Netherlands in 2005, from which CARE originated. (Grace Escaño, interview 02.03.2011) In its multi-national, but predominantly Filipino composition, TRUSTED is unmistakably patterned after *Waling Waling* in the UK campaign. United Migrant Domestic Workers (UMDW) was formed by activists who also had roots in CFMW. (Coring delos Reyes, interview 03.08.2011) CFMW and its European network RESPECT also later helped form in the Netherlands the Ghanian Migrant Workers' Union and OTRADELA, the organization of Latin American migrant domestic workers. (Lorie Matulay, interview 03.25.2011) There is however no equivalent of *Kalayaan* in the Dutch campaign in the sense of a single nerve center for all supporters of the domestic workers. The closest thing that comes to a campaign coordination center is the Dutch workers' union FNV Bondgenoten which, since December 2008, has accepted undocumented migrant domestic workers from the various self-organizations as union members. Each self-organization has its own organizational plans and activities and overlapping support networks but self-organizations meet each other and with support organizations on a regular basis under the auspices of the union's "coordination meetings". CFMW has departed from the scene after coming into disagreement with the Dutch union and with domestic workers about its proper role in the campaign, and this has strengthened FNV Bondgenoten's coordination function further. Nevertheless, organizations perceive their relationship to FNV Bondgenoten differently and the latter also has its own agenda and activities as an organization.

To illustrate the differences among self-organizations of domestic workers: According to its chair Coring delos Reyes, UMDW has organizational by-laws that require all members of the organization to also be members of the union. This is because it views strengthening domestic worker membership in FNV Bondgenoten as a pressing task in the campaign of domestic workers. (interview, 03.08.2011) On the other hand, Migrante-Netherlands has an organizational orientation that identifies it as a "patriotic organization" that tends to make it more oriented towards Philippine issues than the other Filipino groups. It sees working with FNV Bondgenoten as only one of 'several fronts' of activism for undocumented migrants, the others being Dutch churches, the Philippine embassy and trans-national organizing of Filipinos through Migrante-International. (Grace Punongbayan, interview 03.25.2011)

Appendix D

Schedule of Interviews

The Hague

1. Grace Escaño, chair of CARE 02.03.2011 (with inputs from A and J, both of CARE) and 02.25.2011 (follow-up interview)
2. A, representative of CARE 02.03.2011
3. L, representative of CARE 02.03.2011
4. S, representative of CARE 02.04.2011
5. J, representative of CARE 02.25.2011
6. C, chair of Migrante-NL-Den Haag 02.10.2011
7. JC, representative of Migrante-NL-Den Haag 02.10.2011
8. JJ, representative of Migrante-NL-Den Haag 02.10.2011 (did not consent to be audio recorded)
9. Marijke Bijl, representative of OKIA 02.04.2011

Amsterdam

1. Rebeca Pabon, national organizer of FNV Bondgenoten 02.14.2011
2. Virgie Tonogan, social worker at Het Wereldhuis 02.14.2011
3. Maitet Ledesma, representative of Pinay sa Holland and formerly officer of CMFW in the UK 02.14.2011
4. R & E, representatives of MSP 02.14.2011 (joint interview)
5. Margreet Koesler, program coordinator at Dokters van de Wereld 03.02.2011
6. Coring delos Reyes, chair of UMDW 03.08.2011
7. Matthijs de Bruijne, artist (worked for FNV Bondgenoten on the “Museum of Garbage” art exhibit) 03.21.2011
8. Lorie Matulay, representative of domestic workers in the board of the cleaners’ section of FNV Bondgenoten 03.25.2011

Utrecht

1. Rian Ederveen, representative of Stichting LOS 02.15.2011
2. Aldo Gonzales, sits on the council of advisers of Migrante-Netherlands 02.15.2011
3. Mari Martens, national negotiator for the cleaning sector at FNV Bondgenoten 03.23.2011
4. Grace Punongbayan, sits on the council of advisers of Migrante-Netherlands 03.25.2011

Delft

1. Yasmine Soraya, secretary of IMWU 02.11.2011

Den Bosch

1. Mely Laguardia, Dutch-Filipino supporter (not part of the campaign) 02.12.2011

Ijmuiden

1. Siswa Santoso, Dutch-Indonesian supporter and adviser of IMWU 03.23.2011

Appendix E

Sample Interview Guides

Note: Because the data-gathering for this research proceeded broadly in accordance with Grounded Theory research methods, the interview guide for each interviewed organization/individual took into consideration data obtained from previous interviews and the demands of the evolving analysis. In this sense each interview was unique (although the answers obtained were overlapping at times). The following are two sample guides: Sample A, having been used in an earlier interview is more exploratory than Sample B, used in a much later interview, which is more focused.

Sample A. Interview Guide for Rian Ederveen, Stichting LOS, Utrecht, 02.15.2011

1. *Basic facts about the organization and/or the interviewee:* name, location, organizational history, structure, ethos; interviewee's position in the organization; etc.
2. *The organization/interviewee's views on irregular migrant's human rights:*
 - 2.1. How does the organization/interviewee see or understand the prevailing human rights situation of irregular migrants in the Netherlands?
 - 2.2. What are/should be the human rights of irregular migrants in the Netherlands? Should irregular migrants be entitled to social rights like other immigrants? Which social rights? Why?
 - 2.3. In the organization/interviewee's view, what accounts for the exclusion of irregular migrants from universal human rights in the Netherlands?
 - 2.4. What is the ideal relationship of irregular migrants to the Dutch welfare regime?
3. *Organization/interviewee's activities in regard to irregular migrants' issues:*
 - 3.1. Which irregular migrants' issues does the organization/interviewee deal with? e.g., deportation or detention of irregular migrants? lack of access to health care? lack of education for their children? workplace exploitation?
 - 3.2. How do they deal with these issues? e.g., negotiation with the government? legal/judicial action? lobbying/campaigning for regularization? organizing irregular migrants? Cite examples of actual activities and strategies in the past as well as ongoing projects.
 - 3.3. What factors affect their choice of issues and strategies?
 - 3.4. How does the organization/interviewee relate to other Dutch organizations?
4. *Organization/interviewee's links/relations with transnational actors:*
 - 4.1. Does the organization/interviewee have links/relations with other civil society actors abroad? e.g., ideological/ideational links? networking relationships?
 - 4.2. With which civil society actors? e.g., pro-regularization movements abroad? international NGOs? individuals?
 - 4.3. What kind of support/resources do they get from and give to transnational civil society actors? In what ways are they enabled/empowered by linking/relating to transnational civil society actors? e.g., have they benefited from other organization's experiences in effectively framing irregular migrants' issues? Cite specific experiences.
 - 4.3. How about state actors?
 - 4.4. What links/relations does the organization/interviewee have or intends to have with EU human rights institutions like the Council of Europe? In what ways do EU

human rights institutions contribute to the legitimization of the organization/interviewee's goals/activities?

5. *Achievements and Prospects*

5.1. What changes in state behavior does the organization/interviewee consider as positive? Why?

5.2. What are the opportunities within Sweden for further advancing the organization/interviewee's views/goals about irregular migrant's human rights?

Sample B. Prepared questions for Margreet Koesler, Dokters van de Wereld, Amsterdam, 03.02.2011

1. Could you tell me about the policy advocacy work of the Medoc project?
2. What is DvdW's involvement in the implementation of the present policy? Refer to 2009 changes. What are the changes introduced in 2009? Could you give me a background of that? What are the effects that you see?
3. DvdW has a specific view/argument about children. Could you tell me more about it? This seems to be relevant to the situation in NL. How are you arguing for greater health rights for children of undocumented migrants in NL?
4. DvdW also seems to have more encompassing view of health to include 'social determinants of health' like housing, working conditions (e.g., night time work). Are you addressing housing rights too? How about working conditions?
5. How does DvdW see itself in relation to the campaign of domestic workers?
6. DvdW has also worked in other European countries. How does NL compare with other countries? Is the Linking Act provision on healthcare unique to NL? Are the practical barriers to healthcare access any worse in NL than in other countries?
7. What improvements can be further achieved in NL?
8. How are you bringing your knowledge and experience to bear on policy at an international level?
9. Ask for a copy of DvdW publication 'Niet Vergeten'.