




International
Labour
Organization



► **Migrant workers' rights
to freedom of association
and collective bargaining**



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to freedom of association
and collective bargaining**

Labour Migration Branch (MIGRANT)

Conditions of Work and Equality Department (WORKQUALITY)

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► Foreword

Migration flows and the drivers and impacts of migration are increasingly the subject of more in-depth research and greater understanding. The number of international migrant workers has risen globally over the last five years to 169 million people, reaching a total of 4.9 percent of the world's labour force. Around 70 million of these migrant workers are women. Migrant labour has increasingly become a critical source for filling important labour market gaps and ensuring greater national sovereignty over the production of essential goods.

Migrant communities are by no means homogenous; they are diverse with a multitude of ethnic and national backgrounds. Migrant workers, and especially women, are also often engaged in precarious, temporary, and low-paid work, and are significantly under-represented in trade union membership and structures.

Migrant workers, however, play an ever-more vital role in supporting the well-being of our societies. They should be guaranteed, as all citizens, the fundamental and enabling freedom of association and collective bargaining rights at work so that they may claim freely and with equality the fair share of the wealth which they have helped to generate and to achieve fully their human potential. The starting point for achieving this is a robust legislative framework that assures migrants a collective voice at work and tackles the particular practical challenges that migrant workers face, as well as the situations which hinder their rights and leave them vulnerable to exploitation and abuse.

The ILO Report on Migrant Workers' Rights to Freedom of Association and Collective Bargaining supports efforts to fine-tune laws and regulations to promote migrant workers' freedom of association and collective bargaining (FACB) rights. It depicts the special challenges men and women migrants face and clarifies the expectations from international instruments. It aims at unpacking the generalizations of FACB violations to identify the specific types of exclusions and restrictions that exist for the enjoyment of these rights by migrant workers. The Report also provides advice to surmount common practical obstacles to the full exercise of FACB rights at the workplace, such as language barriers, the casual nature of work, discrimination, and cultural and gender-based barriers.

Building, among others, on the results of an ILO Survey on the perspectives and experiences of trade union federations around the world, the report provides a ground-level identification of the obstacles encountered and shares examples of good practices in promoting migrant workers' FACB rights. It highlights the importance of cross-border trade union cooperation and networking to support migrant workers in the exercise of their rights and the expression of their collective voice. The report calls for specific organizing strategies for women migrants depending on prevailing gender inequalities and sectors concerned. It also encourages the development of robust state institutions, such as the labour inspectorate, to ensure effective recognition of migrant workers' rights and underlines the importance of accessible justice.

The Report recognizes that there is no one-size-fits-all strategy to promote and implement in practice the FACB rights of migrant workers. Trade unions take different approaches to organizing, representing, and servicing migrant workers. The type of industrial relations system that exists in a country also impacts the way trade unions engage with migrant workers and their strategies for organizing new members.

The report notes the positive trend of trade unions toward adopting a more inclusive approach to migrant workers as part of the actions being undertaken for renewal and revitalization of trade unions. This includes the strengthening of trade union outreach in organizing new members and expanding the coverage of collective bargaining agreements. This mobilization stands to benefit both the migrant workers and the national workers, as well as the trade unions engaged.

The report fills an important void in literature by bringing clarity on the rights set out in international treaties and Conventions and their confrontation with the realities on the ground. Drawing on good practice, the report paves a way for the collective voice of migrant workers to be heard so that they may contribute their labour in conditions of freedom, respect, and human dignity. Taking action to support this collective voice will help us to reach the broader goal of eliminating inequalities everywhere.

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► List of acronyms

ACTRAV	ILO Bureau for Workers' Activities
CEACR	ILO Committee of Experts on the Application of Conventions and Recommendations
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW	Committee Committee on the Elimination of All Forms of Discrimination against Women
CERD	Committee on the Elimination of All Forms of Racial Discrimination
CFA	ILO Committee on Freedom of Association
CMW	Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families
EHCR	European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950
EPZ	export processing zone
ETUC	European Trade Union Confederation
EU	European Union
FACB	freedom of association and collective bargaining
FAO	Food and Agriculture Organization of the United Nations
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
IOE	International Organization of Employers
IOM	International Organization for Migration
ITUC	International Trade Union Confederation
MRC	Migrant Worker Resource Centre
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights
SDG	Sustainable Development Goal
TUS 2021	ILO Trade Union Survey 2021
UN DESA	United Nations Department of Economic and Social Affairs





Executive summary

Freedom of association and the right to collective bargaining (FACB) are fundamental rights of universal scope that should apply to all workers – including migrant workers – without distinction. In addition to safeguarding procedures of organization and negotiation, FACB rights make it possible to promote and realize a range of other rights, such as other fundamental principles and rights at work, good conditions of work, fair wages, and access to social protection (ILO 2020b). In other words, FACB are critical to all workers, including migrant workers, to achieve decent work.

However, ILO supervisory bodies as well as UN human rights bodies have raised concerns regarding the difficulties faced by migrant workers in some countries when it comes to establishing and joining trade unions and enjoying the benefits stemming from collective bargaining. Challenges arise from both a lack of legislative protection as well as implementation gaps that hamper effective application of FACB rights in practice.

Recognizing that migrant workers can face obstacles, in law and in practice, to organizing and collectively bargaining and that freedom of association is a fundamental principle and right and an enabling condition for the realization of decent work, the ILO Resolution concerning fair and effective labour migration governance (2017) proposed that FACB rights for migrant workers should be a priority for action. The ILO Plan of Action – adopted by the ILO Governing Body in 2017 to follow-up on the Resolution – called for the ILO to work with constituents to produce a report on key obstacles to and good practices on freedom of association and collective bargaining for migrant workers. To this end, the ILO report below presents the findings of an extensive literature review and analysis of:

- ▶ International and regional legal instruments;
- ▶ ILO and UN policy documents, reports and training materials on the FACB rights of migrant workers;
- ▶ Relevant academic research; and
- ▶ Reports of workers' and employers' organizations and non-governmental organizations.

In addition, in 2021 the ILO carried out a Freedom of Association and Collective Bargaining for Migrant Workers Trade Union Survey (TUS 2021) to gather the perspectives and experiences of trade union confederations around the world in regard to organizing migrant workers and ensuring their FACB rights. The findings from that survey have been used in the preparation of this report and are also presented in detail as an Annex to this publication.

This report is mainly concerned with the FACB of migrant workers in more formal trade union structures. Trade unions can play an essential role in strengthening the voice of migrant workers, and their absence makes migrant workers more susceptible to exploitation. Through collective bargaining and other modalities, trade unions can provide avenues for issues concerning migrant workers to be discussed and negotiated with employers and be included in collective agreements. Trade unions can also facilitate safe and fair migration. But this is not exempted from challenges.

There is no one-size-fits-all strategy to promote and implement in practice FACB for migrant workers, and different approaches exist when it comes to organizing, representing and servicing migrant workers. Some sectors where migrant workers dominate, such as care and domestic work, are also expanding and provide both challenges and opportunities for trade unions. This report addresses some of the strategies and practices applied and provides suggestions for the way forward. It also notes the positive trend of trade unions toward adopting a more inclusive approach to migrant workers as part of the actions being undertaken for renewal and revitalization of trade unions. This includes the strengthening of trade union outreach in organizing new members and expanding the coverage of collective bargaining agreements.

Freedom of association and the right to collective bargaining are fundamental rights of universal scope that should apply to all workers – including migrant workers – without distinction.

International migrant workers are an integral part of the global labour force

International labour migration remains central to the international human rights and development agendas. International migrant workers now constitute close to 5 per cent of the global labour force, making them an integral part of the world economy (ILO 2021a). An increasing number of women have been migrating not as accompanying family members but for economic reasons to support themselves and their families (ILO 2016c; Fleury 2016; Fudge 2011; ILO 2020f).

While for many, migrating for employment may be a rewarding and positive experience; for others, working conditions in destination countries are abusive and exploitative, and characterized by violations of fundamental principles and rights at work. Migrant workers usually face inequality of opportunity and treatment in destination countries, including in respect of access to employment and training, wage levels and payments, conditions of work and social protection. Migrant workers in an irregular situation are even more vulnerable to exploitation and discrimination, particularly regarding their fundamental rights, including the right to a safe and healthy working environment, and their working conditions (ILO 2012; ILO 2021f).

Gender inequalities, stereotypes and discrimination are also perpetuated throughout the migration cycle and often result in women migrant workers being concentrated in low-paid work and in the informal economy, where they face a greater risk of economic exploitation. While organizing is crucial to enabling empowerment and agency of both men and women migrant workers, specific organizing strategies may be required depending on prevailing gender inequalities and sectors concerned. By organizing, women migrant workers can address their specific concerns and eventually be able to bargain collectively to reduce gender pay gaps, increase pay and benefits, and improve working conditions, including preventing gender-based violence, discrimination and exploitation (Spotlight Initiative 2019; Hennebry, Grass, and McLaughlin 2016).

The international legal and policy framework is clear but obstacles exist in its implementation

As clearly expressed in the ILO Constitution, freedom of association is one of the fundamental principles upon which the ILO is based. It is a human right of all workers and essential to sustained progress, the pursuit of social justice, and the attainment of decent work. Under the terms of the ILO Declaration on Fundamental Principles and Rights at Work (1998), as amended in 2022, and its Follow-up, freedom of association and the effective recognition of the right to collective bargaining are principles concerning fundamental rights that all ILO Member States must respect, promote and realize. The ILO Declaration emphasizes that special attention should be given to problems of persons with special social needs, particularly the unemployed and migrant workers. The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), are among the ten ILO Conventions identified by the ILO Governing Body as being fundamental. They address the FACB rights of all workers, including migrant workers, irrespective of their migration status, residence or nationality.

There are also other ILO standards that elaborate on the fundamental principles of freedom of association and effective recognition of the right to collective bargaining that are particularly relevant to migrant workers. These include the Migration for Employment Convention (Revised), 1949 (No. 97), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), as well as standards covering: domestic workers, nursing personnel or rural and plantation workers; the informal economy; employment and decent work for peace and resilience; violence and harassment; and the fundamental right to non-discrimination.

The right to freedom of association for everyone is further protected under the Universal Declaration of Human Rights (1948); the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR), and under other thematic international human rights instruments on protection against discrimination, including the International Convention on the Protection of the Rights of All Migrant Workers and their Families (ICRMW). Regional instruments in Europe, Latin America and Africa also contain provisions on FACB rights, both in general and concerning migrant workers.

International law is clear regarding the FACB rights of migrant workers. The problem lies in its application in national laws, policies and practices.

International policy documents have also reinforced both the need for and the importance of safeguarding the fundamental rights of all workers, in particular FACB rights. In addition to the ILO Declaration on Fundamental Principles and Rights at Work, the ILO Declaration on Social Justice for a Fair Globalization (2008) underscores that freedom of association and effective recognition of the right to collective bargaining are of particular importance for the full realization of decent work for all workers. The ILO Centenary Declaration for the Future of Work (2019) underlines the importance of both these Declarations and that fundamental labour rights and principles apply to all workers.

Overall, international and regional instruments, policies and guidance, including on fair recruitment – along with the work of the supervisory bodies – provide a clear, coherent, and mutually reinforcing legal framework on the FACB rights of migrant workers, regardless of their status, nationality, or country of origin, or the sector in which they work. International law is clear regarding the FACB rights of migrant workers. The problem lies in its application in national laws, policies and practices.

Legal barriers to migrant workers' FACB rights are the most commonly cited obstacles...

Some countries place restrictions on freedom of association and collective bargaining of a general nature. In addition, there may be specific restrictions on foreign workers' FACB rights. In many countries, these rights may be denied explicitly to:

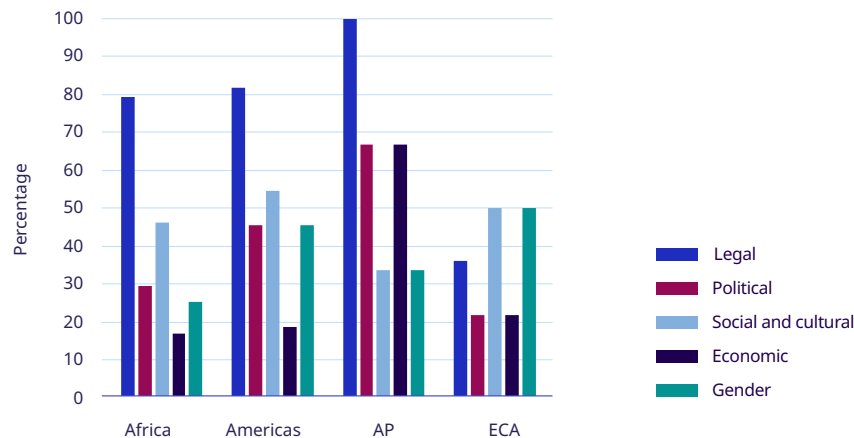
- Some or all migrant workers based on their nationality, residence, work permits or reciprocity;
- Undocumented workers;
- Sectors where migrant workers constitute a high proportion of workers, such as domestic work, agriculture and export processing zones, and where labour law may not apply at all; and
- Types of informal working arrangements and insecure contracts.

These restrictions create obstacles for migrant workers to exercise their rights, notably to form or become members of trade unions, elect representatives, vote and act as trade union officials, and effectively engage in collective bargaining, especially in sectors or work arrangements with a high concentration of migrant workers. Indeed, legal barriers to migrant workers accessing their FACB rights were the most commonly cited obstacles in the ILO Trade Union Survey (TUS 2021), being reported by more than 70 per cent of trade union confederation respondents.

Even in countries where the labour law protects the FACB rights of migrant workers, the lack of alignment between labour law and immigration law can permit private employers or recruitment agencies to insert restrictions on FACB rights in the labour contracts of migrants. Enhanced security powers based on immigration laws and targeted at migrants – such as granting broad arrest and deportation powers to law enforcement – can have a chilling effect on migrant workers exercising their right to organize or pursuing their rights through the judicial system.

In addition, some bilateral labour migration agreements between countries of origin and destination do not contain any reference to labour rights or equal rights protection. A gaping omission in the contents of these agreements is the lack of reference, support or promotion of FACB rights for migrant workers.

► **Figure ES1. Obstacles to freedom of association and collective bargaining rights for migrant workers according to trade unions, by region (n=57)**



Source: TUS2021, see figure A13 in Annex.

But also practical barriers hamper migrant workers' ability to organize and join trade unions...

In many countries, even when FACB rights are recognized under domestic legislation, there are gaps when it comes to their application. A recent Solidarity Center and Civicus (2019) survey of migrants and refugees confirms that many migrant workers want to exercise their rights and participate more fully in their new countries. They do not want to remain on the margins of the host society. Migrant workers report that they want to have a voice in their communities and in their workplaces on issues affecting their lives. However, many do not feel able or comfortable doing so.

Some of the barriers that hamper migrant workers' ability to organize and join trade unions include:

- Temporary stay or short duration of contracts in the country of destination;
- Participation in temporary labour migration programmes that restrict access to FACB rights
- Long working hours;
- Lack of days off;
- Isolated workplaces;
- Language barriers;
- Limited knowledge of their rights;
- Discrimination or anti-migrant attitudes;
- Fear of anti-union reprisals by employers; and
- General reluctance to get involved with workers' organizations.

Many also fear losing their jobs or facing sanctions from local authorities (TUS 2021; ILO 2018c; Solidarity Center and Civicus 2019; Chung 2019). Migrant workers who are part of a minority group, such as LGBTI+ persons, or those in an irregular situation may face additional discrimination and challenges to exercising rights of association, including fear of detention or deportation.

Social dialogue is key to the development of rights-based, transparent, and coherent labour migration legislation and policies that also take into account labour market needs (ILO 2013, as cited in ILO 2017a, 26). However, through the ILO TUS 2021, trade unions indicated that they were rarely involved

in social dialogue discussions concerning laws and policies governing the treatment of migrants. Thus, institutionalized social dialogue on migration and the protection of migrant workers' rights appears to be the exception, and in many cases, even where there are institutional arrangements in place, such dialogue is lacking in practice.

Several examples of good practices exist...

A number of regional and country-level good practices have been initiated to address legal and practical obstacles to FACB rights in the following areas:

Removing legislative restrictions on forming and joining trade unions and on full participation in trade union activities – The numerous types of legal restrictions and limitations on migrant workers' FACB rights can be addressed through legislative revision of Constitutions, labour codes and other employment-related laws. There are numerous examples of such legislative revisions having taken place.

Social dialogue, tripartite committees, and collective bargaining – Given the low level of unionization in sectors dominated by migrant workers, such as domestic work and agriculture, the taking of legislative and institutional steps to promote collective bargaining in these sectors, occupations, and types of work – such as the extension of collective bargaining agreements – has served to provide protection in migrant workers' terms and conditions of employment. The undertaking of such measures should not only include the government, but rather necessitates the positive participation of trade unions and employers' organizations.

Cross-border trade union cooperation and networking – Some workers' organizations have concluded agreements with workers' organizations in other countries to exchange information, to defend the interests of migrant workers, or to provide information to migrants on regular migration pathways. To address practical obstacles to organizing migrants, trade unions in countries of origin are reaching out to migrant workers to inform and support them and to encourage them to engage with trade unions in destination countries. Trade unions are establishing Migrant Worker Resource Centres (MRCs) and using them to support outreach and organizing of migrant workers in countries of origin and destination.

Migrant workers forming trade unions – Where existing trade unions are not present for migrant workers to join and where there is no collective bargaining coverage, there are examples of migrant workers organizing themselves to form trade unions to protect their labour rights and improve their conditions of work. These initiatives are usually supported by national and global trade unions, along with human rights organizations.

Access to justice – To address language and cultural barriers, certain countries have a legal obligation to inform specific categories of workers, such as migrants, of their labour rights in a language that they understand. In addition, in some countries the law specifically grants to migrants the right to be represented by trade unions, which can provide needed assistance to migrants in understanding and protecting their rights, and in pursuing their grievances and securing adequate remedies.

Initiatives targeting women migrant workers – Migrant women stand to gain from the benefits of a collective voice that can address individual problems. Training materials have been developed and training sessions conducted on gender-based issues and topics of particular concern to migrant women, for example, through the collaboration between the ILO and UN Women under the EU–UN Spotlight Initiative. A number of trade unions, such as the International Domestic Workers Federation (IDWF), support women migrant workers in destination countries through organizing, training, and advisory services.

Looking ahead

Despite the clarity of international law, the growing (albeit insufficient) number of ratifications of relevant Conventions, and the observations of international supervisory systems, there are far too many legal restrictions at the national level interfering with migrant workers' enjoyment of FACB rights and far too few instances of satisfactory removal of such restrictions. Without the benefit of a comprehensive survey

on national laws, it appears from a general review of government reports and supervisory comments that the most significant issues are:

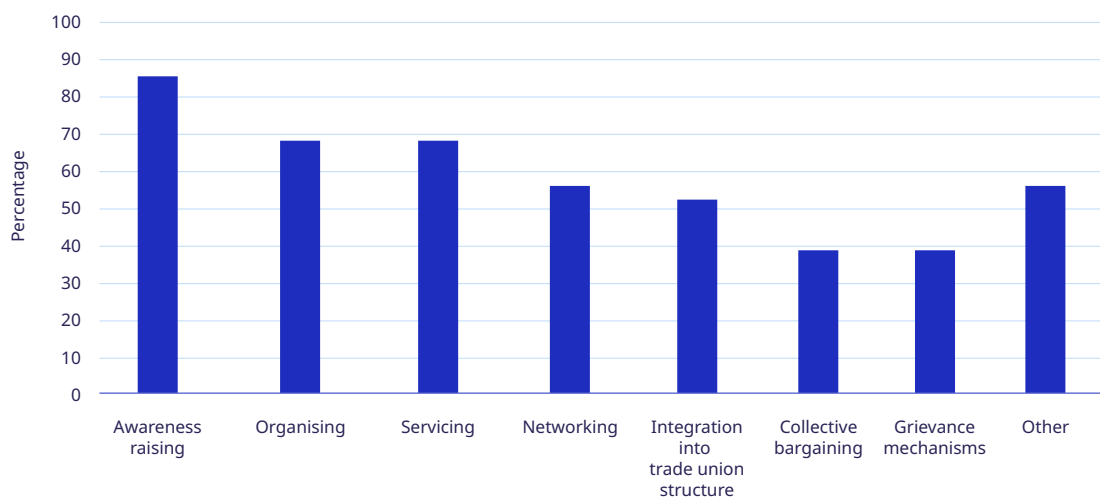
- Restrictions on foreigners establishing trade unions or workers’ organizations;
- Use of work permits to limit migrant workers’ rights; and
- Restrictions on undocumented workers enjoying any FACB rights.

Countries removing restrictions on documented foreigners joining and participating in trade union activities appears to be the most positive development. Within these reform processes, greater attention needs to be paid to eliminating restrictions and prohibitions on migrant workers, including undocumented migrants, enjoying their FACB rights, and to expressly providing for their rights to form and join trade unions and workers’ organizations of their own choosing.

Promoting and protecting migrant workers’ rights requires recognizing their fundamental right to freedom of association and collective bargaining as well as the vital role of trade unions in strengthening the voice of migrants. By exercising their right to freedom of association, migrants are empowered to claim other rights and overcome jointly the challenges they face in the labour market and in regard to their terms and conditions of work.

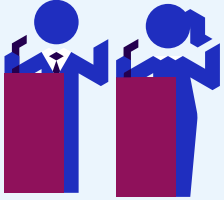
Depending on the context and their resources, trade unions reported using different strategies and actions, and most employed multiple strategies to engage with migrant workers. Most trade unions’ responses described successes related to running awareness campaigns, networking, being able to help migrants in periods of crisis, engaging in dialogue with employers, and establishing training programmes. Some emphasized the importance of targeting women migrants. However, some respondents reported that their trade unions have not experienced any successes, thus indicating a need for capacity-building of trade unions in making meaningful connections with migrant workers (TUS 2021).

► **Figure ES2. Types of activities put in place by trade unions to support migrant workers**



Source: TUS2021, see figure A5 in Annex.

The report, drawing on the findings, analysis and lessons learned, offers suggestions on ways forward to promote and ensure FACB rights for migrant workers. The specific suggested steps are informed by the results of a Trade Union Survey carried out by the ILO in 2021, secondary literature and research, and international standards comments of the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the Committee on Freedom of Association (CFA).



What can governments do?

- ▶ Through effective social dialogue, including consultations with social partners, create an enabling environment for migrant workers to exercise their FACB rights.
- ▶ Remove legal obstacles to migrant workers accessing their FACB rights.
- ▶ Enable the formation of independent trade unions of migrant workers.
- ▶ Enable collective bargaining and the conclusion of agreements.
- ▶ Promote social dialogue and tripartite mechanisms.
- ▶ Ensure governance and access to justice for the protection of migrant workers' FACB rights.
- ▶ Tackle discrimination and xenophobia.
- ▶ Collect information on FACB rights of migrant workers, including membership in trade unions.
- ▶ Design, negotiate, implement and monitor bilateral and multilateral labour migration agreements, in accordance with ILO standards and based on social dialogue.



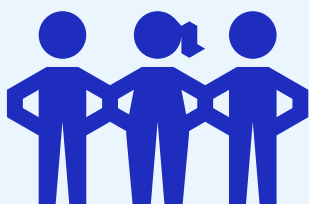


What can trade unions do?

- ▶ Participation in the recruitment process and in the pre-departure briefings and arrival briefings of regulated recruitment processes.
- ▶ Continue to build their own capacity to organize and conduct outreach to migrant workers and effectively advocate to promote respect for migrant workers' labour rights.
- ▶ Adopt innovative strategies to reach migrant workers in isolated and dispersed settings, such as private households. Digital tools may be beneficial in trade unions' efforts to connect with and support migrant workers.
- ▶ Adopt strategies in collective bargaining practices to cover non-unionized and unrepresented sectors, such as domestic and care work.
- ▶ Undertake awareness-raising and organization strategies that explicitly target women workers and address their concerns.
- ▶ Follow up the awareness-raising strategies with organizing strategies that take into account migrant workers' diverse identities, such as gender and language skills. Undertaking consultations and entering into agreements with trade unions from countries of origin can help bridge the culture knowledge gap.
- ▶ Translate all organizational documents into languages migrant workers understand.
- ▶ Engage in trade union-to-trade union cross-border networking by signing MOUs or other types of agreements to protect migrant workers' rights throughout the migration cycle. This also includes the possibility to facilitate joint research, share good practices and engage in capacity-development initiatives.
- ▶ Network and engage in partnerships with civil society, including migrant workers' rights organizations, where appropriate – especially where legal restrictions prohibit migrant workers from joining trade unions.

What can employers and employers' organizations do?

- ▶ In line with ILO standards, refrain from engaging in any acts involving threats, intimidation, blacklisting, violence, or harassment towards migrant workers in an effort to discourage or prevent their making contact with existing trade unions or to discourage or prevent them from exercising any of their FACB rights.
- ▶ Share information with migrant workers about their rights at work, workplace rules, and terms and conditions of employment in a format and languages they understand.
- ▶ Recognize independent and representative trade unions formed in their workplace; negotiate with them in good faith; and engage in effective collective bargaining with them.
- ▶ Engage in social dialogue – both tripartite and bipartite – to learn more about and to address challenges that migrant workers are facing.
- ▶ Play a proactive role in advocacy for the effective implementation of bilateral labour migration agreements to ensure good governance of labour migration processes and protection of migrant workers.
- ▶ Encourage employers in individual households and other remote sectors to join employers' organizations.





PLUS
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1.

Introduction

► 1.1. Purpose of the report

Freedom of association and collective bargaining (FACB) are fundamental rights that should apply to all workers. While in many countries, national legislation recognizes the right of migrant workers to join trade unions, other countries continue to have laws that contain restrictions on migrant workers' FACB rights, based on nationality, residence, or migration status. The ILO supervisory bodies as well as UN human rights treaties bodies have raised concerns regarding the difficulties faced by migrant workers in some countries to establish and join trade unions and enjoy the benefits stemming from collective bargaining. Challenges arise from the lack of legislative protection, restrictive legal provisions, anti-union environments, and lack of access to information on rights, among other factors. In addition, there are implementation gaps when it comes to the effective application of these rights in practice. Practical obstacles and challenges exist for men and women migrant workers to form and join trade unions, and for trade unions to promote the organizing of migrant workers, either generally or in certain sectors. According to the International Trade Union Confederation (ITUC), worldwide, less than 1 per cent of migrant workers are in trade unions (ITUC 2014).

In the United Nations' 2030 Agenda for Sustainable Development, Member States resolved to create the conditions for "decent work for all" while recognizing "the positive contribution of migrants for inclusive growth and sustainable development" and pledging that "no one will be left behind". The issues of decent work and migration cut across the whole 2030 Agenda but are explicitly addressed in Sustainable Development Goal (SDG) 8 on economic growth and decent work, mainly target 8.8, as well as in SDG 10 on reducing inequality within and among countries, particularly target 10.7. SDG target 8.8 addresses the situation of migrant workers, calling for action "to protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment".

Recognizing that migrant workers can face obstacles, in law and in practice, to organizing and collectively bargaining and that freedom of association is a fundamental principle and right and an enabling condition for the realization of decent work, the ILO Resolution concerning fair and effective labour migration governance, adopted by the International Labour Conference in 2017, proposed that freedom of association and collective bargaining (FACB) rights for migrant workers should be a priority for action.

The ILO Plan of Action – adopted by the ILO Governing Body in 2017 to follow-up on the Resolution and in line with ILO's work on SDG target 8.8 – requested the ILO Office to work with constituents to produce a report on key obstacles to and good practices on freedom of association and collective bargaining for migrant workers. This report will also contribute to achieving this goal as part of the ILO's planned knowledge development and capacity-building activities on freedom of association and collective bargaining, as set out in the ILO Plan of Action, to follow up on the Resolution (ILO 2017, para. 12(d)).

The report aims to provide a better understanding of existing challenges and obstacles – in law and in practice – to realizing the rights of all migrant workers to freedom of association and collective bargaining and highlights good practices and strategies in addressing these obstacles. It provides key insight into how trade unions view these challenges and their actions and experiences in engaging and supporting migrant workers to promote their fundamental labour rights.

► 1.2. Organization and content of the report

This introductory chapter sets out the purpose of the report, its organization and the methodology used in its preparation.

Chapter 2 contains an overview of the situation of migrant workers in the world today. It pays special attention to how the COVID-19 pandemic has impacted migration flows and individual migrant workers' situations. It also highlights the gender dimension of migration and spotlights women migrant workers.

Chapter 3 provides an overview of the international legal and policy framework governing the FACB rights of migrant workers. Chapter 4 identifies the most common legal and practical obstacles to migrant workers accessing their full FACB rights, and Chapter 5 identifies some actions and good practices to remove the legal obstacles and overcome the practical implementation gaps.

The last chapter of this report, drawing on the analysis, the findings and lessons learned, offers suggested steps on ways forward to promote and ensure FACB rights for migrant workers. The specific suggestions are informed by the results of a Trade Union Survey carried out by the ILO in 2021 (see annex), contributions from ILO offices around the world, secondary literature and research, international standards and comments of the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the Committee on Freedom of Association (CFA).

The annexes to the report include trade unions' perspectives and experiences and their key obstacles and activities concerning FACB for migrant workers, based on the findings and analysis of the results of the ILO Trade Union Survey of 2021 (hereafter referred to as "TUS 2021"). The annexes also include the survey methodology and a sample of the questionnaire used in the TUS 2021.

For the purposes of this report, the term "migrant worker" encompasses all international migrants of working age (15 years and older), whether employed or unemployed in their current country of residence.¹ The term only refers to those who have crossed international borders for employment. Therefore, it does not include those who move within a country.

¹ Article 11(1) of the Migration for Employment Convention (Revised), 1949 (No. 97) defines the term "migrant for employment" as "a person who migrates from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant for employment". A similar definition is given in Article 11(1) of the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), which defines "migrant worker" as "a person who migrates or who has migrated from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant worker". Under Article 2(1) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, "migrant worker" refers to "a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national".

► 1.3. Overview of methods

The methods used for chapters 1, 2 and 3 consisted of a literature review and analysis of international and regional legal instruments; ILO and UN policy documents, reports and training materials on the FACB rights of migrant workers; relevant academic research; and reports of workers' and employers' organizations and non-governmental organizations (NGOs). This review drew extensively on information collected by the ILO on national legislation and practice concerning FACB in (i) reports of the Committee of Experts on the Application of Conventions and Recommendations (CEACR); (ii) reports of the Committee on the Application of Standards; (iii) country baselines under the Annual Review, based on the ILO Declaration on Fundamental Principles and Rights at Work; (iv) representations under Article 24 of the ILO Constitution; (v) complaints under Article 26 of the ILO Constitution; and (vi) reports of the Committee on Freedom of Association (CFA).

With respect to ILO textual sources and national legislation, the report in particular benefited from and drew on information collected under SDG indicator 8.8.2 on the "Level of national compliance with labour rights (freedom of association and collective bargaining) based on ILO textual sources and national legislation, by sex and migrant status" (ILO 2018d). Additionally, ILO units in headquarters and offices in the regions provided inputs.

The method used for the trade union survey in the Annex consisted of the ILO undertaking field surveys with national trade union confederations and compiling and assessing the responses to those field surveys. See Annex 1 for further information about the survey and the survey methodology.







2.

**Migrant workers
in the world today**

► 2.1. Overview

International labour migration remains central to the international human rights and development agendas. Some people migrate for survival; many migrate for better job opportunities and income to secure a safer and better life for their families. Fair migration makes it possible for workers to take up productive work in destination countries and contributes to their overall growth and economic output. The growing pace of economic globalization, improvements in information and communication systems, and expansion of transportation modalities help encourage and facilitate migration. This, along with conflicts, disasters, persecution of minorities, and insufficient domestic labour-market prospects in countries of origin, as well as ageing populations and declining national workforces in many destination countries, compel and attract people to migrate (IPU, ILO and OHCHR 2015; ILO 2019c; IOE 2018; ILO 2017a). International migrant workers now constitute close to 5 per cent of the global labour force, making them an integral part of the world economy (ILO 2021a).

As of 2020, the United Nations Department of Economic and Social Affairs (UN DESA) estimates that approximately 281 million men and women are international migrants worldwide, of whom, 73 per cent are between the ages of 20 and 64 years (UN DESA, Population Division 2020a). The ILO estimates that 169 million men and women migrate for work. This figure constitutes an increase of 5 million migrant workers compared to the 2017 estimates, and an even greater percentage increase over the 2013 estimate of 150 million international migrant workers. Among international migrant workers, 99 million are men (58.5 per cent) and 70 million are women (41.5 per cent) (ILO 2021a). An increasing number of women have been migrating not as accompanying family members but for economic reasons to support themselves and their families (ILO 2016c; Fleury 2016; Fudge 2011; ILO 2020f).

The COVID-19 pandemic has had a significant impact on migration flows with the number of migrant workers worldwide for the years 2020 and 2021 being affected. The disruptions caused by the COVID-19 pandemic may have reduced the number of international migrants by around 2 million globally by mid-2020, which amounts to a decrease of approximately 27 per cent in the growth expected from July 2019 to June 2020 (UN DESA, Population Division 2020b). Nevertheless, it is anticipated that international migration will continue to grow, and that the importance attached to the protection of migrant workers' freedom of association will only increase as migration flows grow and become more diverse.

International labour migration is a complex and dynamic phenomenon that concerns all regions of the world, with most countries serving as places of origin, transfer, or destination. That said, it still holds true that a majority of all migrant workers (67.4 per cent) are concentrated in high income countries and upper-middle income countries (19.5 per cent). The rest are in lower-middle income countries (9.5 per cent) and low-income countries (3.6 per cent). It is noteworthy that the share of migrant workers in high income countries has fallen since 2013; while the respective share in the upper-middle income countries has increased from 11.7 per cent in 2013 to 19.5 per cent in 2019. This may be attributed to expanding employment opportunities, demographic changes and changing migration policies in these middle-income countries (ILO 2021a).

With respect to regional distribution, international migrant workers can be found as follows: Europe and Central Asia (37.7 per cent); the Americas (25.6 per cent); the Arab States (14.3 per cent); Asia and the Pacific (14.2 per cent); and Africa (8.1 per cent). Interestingly, the Arab States is the region with the largest share of migrant workers as a proportion of all workers (41.4 per cent) (ILO 2021a).

Globally, most migrant workers are concentrated in the services sector (66.2 per cent); while 26.7 per cent are in industry and 7.1 per cent are in agriculture. Within these sectors there are substantial gender differences, with nearly 80 per cent of women migrant workers working in the services sector, 14.2 per cent in industry and 5.9 per cent in agriculture. By contrast, the distribution of men migrants between the services sector and industry is more balanced, with 56.4 per cent of men working in services and 35.6 per cent in industry. This higher representation of women migrant workers in the services sector may

be due, at least in part, to growing labour demand in the care economy, including health and domestic work. Men migrants tend to find more jobs in manufacturing and construction subsectors (ILO 2021a).

Labour migration provides significant benefits for both origin and destination countries. The International Organisation of Employers has pointed to reliable evidence that regular migration contributes to economic growth in destination countries and makes a positive net contribution to the economies and societies in which migrant workers live and work. Companies benefit from migration to fill local skill gaps (IOE 2018). The Business Advisor Group on Migration (2022) has emphasized the role of the private sector in promoting a coherent and comprehensive migration strategy. It has identified as key issues the global need for labour mobility, responsible recruitment, skills development and recognition, the role of technology, and engagement in public discourse to promote positive perceptions of migrants. The contributions of migrant workers to growth and development in the countries of destination include filling labour shortages, promoting entrepreneurship, contributing to social security and welfare schemes, and helping to meet specific demands for skills, such as in emerging high technology industries (ILO 2020e). In these countries of destination, as pointed out by the New York Declaration for Refugees and Migrants adopted by the United Nations General Assembly in 2016, migrant workers “can help to respond to demographic trends, labour shortages and other challenges in host societies, and add fresh skills and dynamism to [their] economies” (UN General Assembly 2016, para. 46).

Some of the positive contributions of labour migration to countries of origin are the high remittance flows and transfers of investments, technology and critical skills through return migration and transnational community links (ILO 2020e). The remittances migrant workers send home, for instance, form an important source of private capital, and can contribute to increasing the GDP of countries of origin (ILO 2016a).

While for many men and women, migrating for employment may be a rewarding and positive experience, for others, working conditions in destination countries are abusive and exploitative, and characterized by violations of fundamental principles and rights at work, as defined by the ILO Declaration on Fundamental Principles and Rights at Work (1998, as amended in 2022), and by other labour rights and human rights violations. Migrant workers usually face inequality of opportunity and treatment in destination country labour markets, including access to employment and training, wage levels and payments, conditions of work and social protection. Temporary labour migrants experience violations of basic labour rights such as non-payment of wages (ILO 2022e). Undocumented migrant workers, also referred to as migrant workers in an irregular situation, are even more vulnerable to exploitation and discrimination, particularly regarding their fundamental rights, including the right to a safe and healthy working environment, and their working conditions, including access to wages and issues related to social protection (ILO 2012; ILO 2021f). The COVID-19 pandemic has not only exposed, but also exacerbated, labour market differences between migrant workers and nationals (Jones, Mudaliar, and Piper 2021).

Women migrant workers are often in a more vulnerable situation than their male counterparts, as they face discrimination not only as migrants but also as women (Pillinger 2017). Gender inequalities, stereotypes and sexism are perpetuated throughout the migration for work cycle and often result in women migrant workers being concentrated in low-paid work and in the informal economy, where they face a greater risk of economic exploitation (Spotlight Initiative 2019). Women migrant workers in an irregular situation face an even higher risk of exploitation than their male counterparts because they may suffer triple discrimination for being women, migrants, and in a situation of irregularity. The human rights abuses that migrants may face in destination countries are gendered, and can range from sexual, physical and psychological violence and intimidation to labour exploitation to lack of healthcare. Women migrant workers are more likely than men to be in precarious employment and to experience poor working conditions (long hours, little leave), low pay, undervaluation of their skills, harassment, increased health risks, and lack of medical care, including sexual and reproductive services (ILO 2020d; Hennebray, Grass, and McLaughlin 2016; IOM 2009).

Moreover, women migrant workers often face discrimination with respect to pay. For instance, recent ILO research on the migrant pay gap found that women pay a double pay penalty, as they earn less than nationals and less than male migrants. The pay gap in high income countries between men who are nationals and migrant women is estimated at 20.9 per cent, much higher than the aggregate gender pay gap in these countries, which stands at 16.2 per cent (Amo-Agyei 2020).

Due to the persistence of gender inequality patterns, women migrant migrants are more likely to find work reflecting traditional gender roles, for instance, as domestic workers and caregivers. The most recent ILO research estimates that about 73.4 per cent of all migrant domestic workers in the world (or around 8.5 million) are women (ILO 2015b). These jobs are primarily concentrated in the informal economy, and domestic work may be excluded or only partially covered within the scope of national labour legislation, including laws on freedom of association and collective bargaining, and may be excluded or only partially covered by the social protection policies, social security and welfare provisions of the country of destination (ILO 2003; ILO 2015c; ILO 2021e). This lack of protection and/or enforcement leaves migrant domestic workers at a heightened risk of suffering abusive and exploitative employment practices (ITUC 2017; CMW 2011). Moreover, exploitation of domestic workers often reflects discrimination based on multiple grounds, such as sex, race, ethnicity, or migrant status, as well as the imbalance in the employer–worker relationship, which leaves many migrant women feeling unempowered, isolated and unprotected.

► 2.2. Rights of freedom of association and collective bargaining and migrant workers

One set of fundamental rights that migrant workers are often unable to enjoy concern freedom of association and the right to collective bargaining. The right to freedom of association is the right of workers and employers to form and join organizations of their own choosing without fear of reprisal or interference, including the right to establish and join confederations and to affiliate with international organizations. Linked to freedom of association is the effective recognition of the right to collectively bargain, which enables workers, through their representatives, to freely negotiate their working conditions with their employers, conclude collective agreements and have those agreements implemented in practice. Freedom of association and collective bargaining (FACB) are not only fundamental rights safeguarding procedures of organization and negotiation. They are also enabling rights that make it possible to promote and realize a range of other rights, such as other fundamental principles and rights at work, good conditions of work, fair wages, and access to social protection (ILO 2020b). In other words, FACB are critical to all workers, including migrant workers, achieving decent work.

The effective application of FACB rights guarantees that workers can exert their collective voice to defend their rights and interests or improve the conditions of their working lives at the workplace level as well as at the national policy and law-making level. These rights are crucial to enabling social dialogue and the effective participation of social partners in economic and social policy, including policies and agreements on labour migration. The closer the relationship between social partners and migrant workers, the more effective their voice can be concerning the protection of migrant workers' rights and the effective promotion of decent work for all, including migrant workers. Moreover, the participation of migrant workers in trade unions helps ensure that the interests, experience and needs of migrant workers are considered in social dialogue on matters of economic and social policy, and there are some good examples of meaningful tripartite consultation on matters concerning migrant workers (see ILO 2022a). However, in practice, many trade unions report that they are not consulted, or their views are not taken into account in matters related to migration policies and agreements (TUS 2021).

One of the most effective ways of preventing the exploitation of migrant workers is by guaranteeing their FACB rights in countries of destination. Restrictions on or denial of FACB rights may hinder the enjoyment of other human rights, such as the rights to fair working conditions, fair wages, freedom from discrimination, freedom of expression and assembly, healthcare, housing, education, and protection against violence and harassment, sexual exploitation, and trafficking in persons (UN HRC 2020b).

Furthermore, the protection of their FACB rights allows workers, including migrant workers, to expose human rights abuses of which they have been victims and seek reparation for these abuses.

The right to freedom of association and the effective recognition of the right to collective bargaining enables a shift in the power dynamics between employers and workers (ETUC and ITUC 2018). In this sense, the CEACR considers that the full exercise of the right to freedom of association of migrant workers allows them to represent their needs and concerns at the negotiating table, emphasizing the potential of collective bargaining, in particular of collective agreements, as ways to ensure greater equality of migrant workers with nationals (ILO 2016b, para. 413).

This report is mainly concerned with the FACB of migrant workers in more formal trade union structures. There is no one-size-fits-all strategy to promote and implement in practice FACB for migrant workers, and different approaches exist when it comes to organizing, representing and servicing migrant workers. The distinction between organizing and servicing migrant workers is worth noting. Trade union services can be delivered to non-members as well as members and can include many kinds of assistance such as information, guidance and legal aid. As set out in the Annex, the majority of trade union federation respondents to the ILO Trade Union Survey (TUS 2021) reported that they address migrant workers' issues in some way, mostly through the provision of services. Depending on the national legal, political, economic, social and cultural context, as well as the industrial relations system and their resources, different strategies and actions are deployed by trade unions, from the targeting of migrant workers in organizing and public information campaigns to providing general representation, assistance and support services. In many instances, women migrant workers are specifically targeted by trade union outreach and services.

Temporary migrant workers are known to be among the most challenging groups of workers to organize. The temporary nature of migrant workers' stay in a country was identified in the TUS 2021 as an obstacle to trade union outreach (see the Annex to this report). Research has shown that the longer a migrant worker stays in the country of destination and becomes more acclimated to the local setting, the greater the likelihood of him or her becoming unionized (Kranendonk and De Beer 2016, 862; Krings 2014).

Trade unions can play an essential role in strengthening the voice of migrant workers, and their absence makes migrant workers more susceptible to exploitation. A trade union can enhance the protection of migrant workers by:

- ▶ Participating in legislative reform processes and migration policy development;
- ▶ Engaging in bilateral and regional cooperation between trade unions in countries of origin and destination;
- ▶ Organizing migrant workers;
- ▶ Building trade unions' capacity to respond to migrant workers' issues through education and training; and
- ▶ Reaching out to migrant workers by providing support services and facilitate grievance handling.

Through collective bargaining and other modalities, trade unions can provide avenues for issues concerning migrant workers to be discussed and negotiated with employers and be included in collective agreements.

Expanding trade union membership among migrant workers and adopting innovative outreach strategies to organize migrant workers, extend collective bargaining coverage and strengthen capacity to represent migrant workers can contribute to the revitalization of trade unions and expand their reach into traditionally non-unionized sectors, occupations and types of working arrangements. Indeed, scholar Michele Ford (2021) argues that the greatest potential for trade union renewal in Asian destination countries is the successful integration of temporary labour migrants into existing trade unions and the meeting of their needs once recruited. Within the European context, Krings (2014) argues that the best way to ensure that the bargaining position of trade unions is not undercut, is to organize new groups of workers, including migrant workers.

Trade unions can also facilitate safe and fair migration through delivering training, providing information on rights and on employment opportunities that migrants can trust, and assisting migrants in addressing recruitment agency abuses. Trade unions can also accompany and assist migrants in seeking redress against abuses by employers and facilitating access to justice.

While organizing is crucial to enabling empowerment and agency of both men and women migrant workers, specific organizing strategies may be required depending on prevailing gender inequalities and sectors concerned. By organizing, women migrant workers can address their specific concerns and eventually be able to bargain collectively to reduce gender pay gaps, increase pay and benefits, and improve working conditions, including preventing gender-based violence, discrimination and exploitation (Spotlight Initiative 2019; Hennebry, Grass, and McLaughlin 2016).

As the report shows, migrant workers are often legally excluded from the rights to establish or join a trade union, participate in union activities, or hold office in a trade union, and the difficulty to exercise these rights is even more striking for women migrants. In addition to the common barriers faced by all migrants, women migrant workers often encounter patriarchal pushback from community members who believe that women should remain in domestic spaces or that it is inappropriate for them to organize to advocate for their interests. Sexual harassment or gender-based violence may also be strategically used against women to discourage their collective action (UN HRC 2020b; ILO 2015f).

Responses to the ILO survey (TUS 2021) identified barriers to the forming of relationships between trade unions and migrant workers. The survey results provide insight into specific challenges trade union representatives perceive as impeding their unions' ability to support migrant workers. The major obstacles cited were:

- ▶ Legal restrictions on migrants' participation in trade unions;
- ▶ Migrants' reluctance to or fear of engaging with trade unions;
- ▶ Gender issues and dynamics;
- ▶ Anti-union political sentiment; and
- ▶ The nature of the work migrant workers are engaged in (seasonal, temporary, informal).

See the Annex of this report for further details concerning these obstacles.

From the migrant workers' perspective, in addition to the existence of legal restrictions against FACB among migrant workers in some countries, in practice, they often face other barriers to organizing and joining trade unions, such as:

- ▶ Long working hours;
- ▶ Lack of days off;
- ▶ Isolated workplaces;
- ▶ Language barriers;
- ▶ Limited knowledge of their rights;
- ▶ Fear of anti-union reprisals by employers; and
- ▶ General reluctance to get involved with workers' organizations.

Many also fear losing their jobs or facing sanctions from local authorities (TUS 2021; ILO 2018c; Solidarity Center and Civicus 2019; Chung 2019). To a very large extent, the perspectives of trade unions and migrant workers dovetail and overlap with regard to the legal and practical barriers that impede migrant workers exercising their FACB rights. The unfortunate outcome is that a very small percentage of migrant workers are in trade unions (ITUC 2014; Krings 2014).



► 2.3. The impact of the COVID-19 pandemic on migrant workers

The negative effects of the COVID-19 crisis have not been equally distributed. Those who already belong to the most vulnerable and least protected segments of society have been primarily affected. Migrant workers are among those disproportionately rendered unemployed or affected by the deterioration of working conditions that were already exploitative (ILO 2020d). Tens of thousands of migrant workers have been reportedly stuck in all parts of the world, unable to return home due to border closures and movement restrictions in response to the pandemic (Jones, Mudaliar, and Piper 2021), and tens of millions were forced to return home after losing their jobs. As the International Organisation of Employers and Building and Wood Workers International (BWI) highlighted in a joint statement, migrant workers are often stranded in foreign countries without access to services and support (BWI and IOE 2020).

In several countries, migrant workers are denied equal protection under labour law compared to national workers and are excluded from policy measures such as wage subsidies, unemployment benefits, or social security and social protection measures created to help workers face the negative consequences of the pandemic (ILO 2020d). This is particularly the case for migrants in an irregular situation, as they often do not have access to healthcare, education and other social services; work in jobs without benefits or the right to unemployment benefits; and are often excluded from the social assistance measures implemented by the State. For instance, agricultural migrants often work under informal or irregular arrangements, under poor working conditions, with no access to healthcare or social protection (FAO 2020; ILO 2020g). Where access to COVID-19 testing or medical treatment is available, migrant workers, especially migrant workers in irregular situations, may not come forward due to fear of detention and deportation.²

Migrants are over-represented in some of the sectors hardest hit by the economic crisis due to the pandemic, such as hospitality and domestic work. In the European Union, migrant workers account for a full quarter of the hospitality industry. In Austria, Finland, Germany, Ireland, Luxembourg, Norway, Sweden and Switzerland, they account for at least 40 per cent of employment in this sector (OECD 2020b). In Canada in 2016, 60 per cent of workers in the domestic work sector were migrants, most of whom were recent arrivals (OECD 2020a).

In Gulf Cooperation Council countries, tens of thousands of migrant workers in the construction, hospitality, retail and transportation sectors lost their jobs due to the pandemic and have been forced to return to their countries of origin (UN-Habitat 2020). In some cases, the workers did not receive payment of the wages owed to them before they were forced to leave (Farbenblum and Berg 2021).

Migrant workers have also been a high-risk group for COVID-19, as they account for significant fractions of key sectors, such as healthcare, agriculture, and food processing (ILO 2020d; ILO 2020g; CMW and UN Special Rapporteur on the Human Rights of Migrants 2020; FAO 2020). In the European Union, migrant workers represent approximately 13 per cent of the key workforce. As reported by trade unions, health and frontline workers, in particular, are the categories of workers most affected by the pandemic. According to the latest data, about 115,500 health workers died from COVID-19 in the first 18 months of the pandemic (ILO and WHO 2022).

² For more information on the human rights deficits of migrants in an irregular situation and the actions taken to address these deficits, see ILO, *Protecting Rights of Migrant Workers in Irregular Situations and Addressing Irregular Labour Migration: A Compendium*, 2021.

The COVID-19 crisis has also imposed challenges to the realization of the rights to freedom of association and collective bargaining. In certain countries, trade unions and employers' organizations have called for greater protection for migrant workers to effectively implement the fundamental principles and rights at work and other labour rights in response to the crisis, ensuring that their needs are identified and adequately addressed in social dialogue discussions (ILO 2020d; ILO 2021c; BWI and IOE 2020). For instance, the International Organisation of Employers, the ITUC and the IndustriALL Global Union (2020) adopted a joint statement calling for measures to support garment manufacturers and protect garment workers' income, health and employment.

The CEACR has stressed that the COVID-19 crisis does not suspend obligations under ratified international labour standards and that any derogations should be exercised within clearly defined limits of legality, necessity, and proportionality and abide by principles of non-discrimination. Regarding civil liberties and freedom of association, the CEACR recalls that crises "cannot be used to justify restrictions on the civil liberties that are essential to the proper exercise of trade union rights, except in circumstances of extreme gravity and on condition that any measures affecting [their] application are limited in scope and duration to what is strictly necessary to deal with the situation in question" (ILO 2021c, para. 52; ILO 2018a, paras 1437 and 1546). In relation to COVID-19, the Committee on Freedom of Association (CFA) examined an allegation that a regulation on public gatherings had been adopted without prior consultations, and noted:

While taking due note that the Regulations were adopted to address the consequences of the current public health emergency, the Committee wishes to recall the importance of the principle affirmed in 1970 by the International Labour Conference in its resolution concerning trade union rights and their relation to civil liberties, which recognizes that "the rights conferred upon workers' and employers' organizations must be based on respect for those civil liberties which have been enunciated in particular in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights, and that the absence of these civil liberties removes all meaning from the concept of trade union rights".³

In order to ensure full consideration of the fundamental human rights that may be affected by emergency measures, the CFA emphasized the vital importance that it attaches to social dialogue and tripartite consultation, not only concerning questions of labour law but also in the formulation of public policy on labour, social and economic matters and recalls in this respect that with the necessary limitations of time, the principles governing consultation remain valid during crises that require the taking of urgent measures (see ILO 2018a, paras 68, 1525, 1527).⁴

Thus, the CEACR and the CFA have underlined the importance, in the context of an economic crisis, of maintaining a permanent and intensive dialogue with the most representative workers' and employers' organizations, especially in the process of adopting legislation that may affect workers' rights, including legislation intended to alleviate a severe crisis.

3 CFA, Case No. 3406 (Hong Kong, China), [Interim Report](#), 2021, para. 171.

4 See also ILO, [395th Report of the Committee on Freedom of Association](#), GB.342/INS/7 (2021), para. 171





3.

The international
legal and policy
framework

► 3.1. ILO international labour standards and other instruments

As clearly expressed in the ILO Constitution, freedom of association is one of the fundamental principles upon which the ILO is based. It is a human right of all workers and essential to sustained progress, the pursuit of social justice, and the attainment of decent work. The ILO Constitution also recognized, as early as 1919, the need for the “protection of the interests of workers when employed in countries other than their own” (Preamble).

Under the terms of the ILO Declaration on Fundamental Principles and Rights at Work (1998), as amended in 2022, freedom of association and the effective recognition of the right to collective bargaining, together with the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; the elimination of discrimination in respect of employment and occupation, and a safe and healthy working environment are principles concerning fundamental rights that all Member States of the ILO must respect, promote and realize. The ILO considers these fundamental rights and the obligation to respect them to arise from membership to the ILO itself. Every ILO Member therefore has the obligation to respect, promote and realize these fundamental principles and rights, even if they did not ratify the Conventions in which these fundamental principles and rights at work are laid down in more detail. In its preamble, the ILO Declaration emphasizes that special attention should be given to problems of persons with special social needs, particularly the unemployed and migrant workers.

The ILO's **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98)**, are among the ten Conventions identified by the ILO Governing Body, as Conventions dealing with the fundamental principles and rights at work. Conventions Nos 87 and 98 address the FACB rights of all workers, including migrant workers, irrespective of their migration status, meaning that anyone working in a country, whether they have a residence or work permit or not, should benefit from the rights provided in these Conventions, without any distinction based on nationality.

Convention No. 87 guarantees the right to establish and join organizations of their own choosing to all workers and employers without distinction whatsoever, and without interference. The exceptions authorized to this principle are set forth in Article 9(1) and concern the armed forces and the police.

Convention No. 98 guarantees the right to workers and employers to engage in collective bargaining.⁵ It also provides that workers shall enjoy adequate protection against acts of anti-union discrimination, including requirements that a worker not join a trade union or relinquish trade union membership for employment, or dismissal of a worker because of trade union membership or participation in trade union activities. Workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other, in particular the establishment of workers' organizations under the domination of employers or employers' organizations, or the support of workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations.

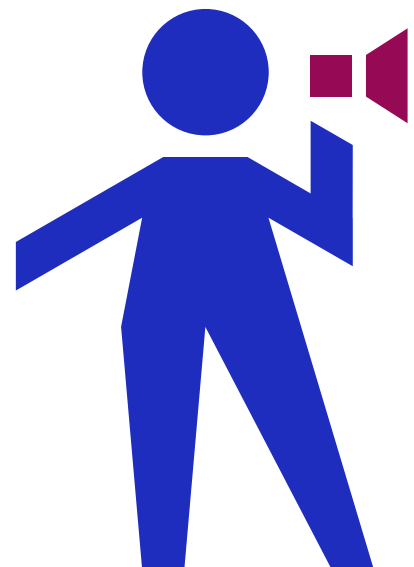
⁵ The ILO Collective Bargaining Convention, 1981 (No. 154), Article 2, defines the term “collective bargaining” as “all negotiations which take place between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more workers' organisations, on the other, for: (a) determining working conditions and terms of employment; and/or (b) regulating relations between employers and workers; and/or (c) regulating relations between employers or their organisations and a workers' organisation or workers' organisations.” The only exceptions authorized concern the armed forces and the police, as well as public servants engaged in the administration of the State (Articles 5(1) and 6).

Despite the importance of Conventions Nos 87 and 98, they have not been ratified by all the ILO Member States.⁶ On the positive side, ratifications of these Conventions continue to be registered. Convention No. 87 was ratified by the Republic of Korea in April 2021 and by Sudan in March 2021, and Convention No. 98 was ratified by Viet Nam in July 2019 and by the Republic of Korea in April 2021.

The ILO instruments dedicated explicitly to migrant workers also underscore the fundamental principle that migrant workers should enjoy freedom of association. More specifically, the **Migration for Employment Convention (Revised), 1949 (No. 97)**, requires that Member States undertake to apply, without discrimination based on nationality, race, religion, or sex, to immigrants lawfully within their territories, no less favourable treatment than that they apply to their nationals in respect of membership of trade unions and enjoyment of the benefits of collective bargaining (Article 6(1)(a)(ii)). The **Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)**, in its Article 10, also requires Member States to pursue a national policy designed to promote and guarantee equality of opportunity and treatment in respect of trade union rights for migrant workers and members of their families who are lawfully within their territory. Paragraph 2(g) of the Migrant Workers Recommendation, 1975 (No. 151), provides further detail in this regard by stating that equality of opportunity and treatment with nationals involves membership in trade unions, the exercise of trade union rights and the eligibility to hold office in trade unions and labour-management relations bodies, including bodies representing workers in undertakings.

Part I of Convention No. 143 – which can be ratified separately⁷ – contains provisions that guarantee a basic level of protection to all migrant workers, including those in an irregular situation. Article 1 of Convention No. 143 affirms that Member States undertake to “respect the basic human rights of all migrant workers”. This provision concerns, without challenging the right of States to regulate migration flows, the right of migrant workers to be protected, whether or not they are in a regular situation, or with or without documents. Article 1 does not define “basic human rights”, but the notion has been understood by the CEACR as including the fundamental human rights contained in the international instruments adopted by the United Nations in this domain, some of which include the fundamental rights of workers as have been reaffirmed in the ILO Declaration on Fundamental Principles and Rights at Work (1998), as amended in 2022, and embodied in the ten ILO fundamental Conventions, which include Conventions Nos 87 and 98 (ILO 2016b, para. 275).

International law guarantees migrant workers the right to freedom of association and to collective bargaining. Exercising these rights allows migrant workers to participate in organizations that defend their rights and represent their interests in their quest for decent work and social justice.



⁶ Of the 187 ILO Member States, 157 have ratified Convention No. 87 and 168 have ratified Convention No. 98 (as of July 2022). See the [ILO NORMLEX database](#) for ratification rates and list of countries.

⁷ Pursuant to Article 16(1) of Convention No. 143, “Any Member which ratifies the Convention may, by a declaration appended to its ratification, exclude either Part I or Part II from its acceptance of the Convention.” Only one country has done so to date: Albania has excluded Part II from ratification.

Convention No. 97 and the Migration for Employment Recommendation (Revised), 1949 (No. 86), recognize the significance of bilateral agreements between States on migration, and provide a Model Agreement to assist countries in concluding such agreements (Paragraph 21 of Recommendation No. 86 and its Annex). The Model Agreement includes a section requiring competent authorities to grant migrants and members of their families no less favourable treatment than that which is granted to nationals in regard to legal or administrative provisions or collective labour agreements. It also provides that equality of treatment shall apply to migrants lawfully in the country in relation to membership of trade unions and enjoyment of the benefits of collective bargaining (Recommendation No. 86, Annex, Article 17(2)(a)(ii)). Views on the impact of such arrangements are mixed. The International Organisation of Employers has observed that bilateral agreements are able to be adapted to specific national situations and specific migrant groups. The International Trade Union Confederation (ITUC) noting the proliferation of bilateral agreements, has observed, however, that such agreements often fail to protect migrant workers' labour rights and that such agreements should not be considered a substitute for the enactment of national legislation protecting migrant workers' rights, in particular the right to freedom of association (ILO 2016b, para. 153).

Convention No. 97 has been ratified by 53 countries, with ratifications registered in 2021 by Comoros and Sierra Leone. Convention No. 143 has been ratified by 28 countries, with ratifications also being registered in 2021 by Comoros and Sierra Leone. A review of obstacles to and prospects for the ratification of these instruments revealed that some governments held misunderstandings about the requirements of the instruments; others found them to conflict with their own national laws, and in many countries, there was a lack of awareness among migrant workers of the Conventions. This lack of awareness as well as the low level of participation of migrants in trade unions were also cited as causes of poor implementation of the Conventions even when ratified (ILO 2016b, paras 521–546).

Under the **Discrimination (Employment and Occupation) Convention, 1958 (No.111)**, both nationals and non-nationals are protected against discrimination based on race, colour, sex, religion, social origin, national extraction, and political opinion, and enjoy equality of opportunity and treatment in their access to and terms and conditions of their employment, including levels of remuneration. Migrant workers, particularly women migrant workers, are vulnerable to prejudices as well as exclusionary and differential treatment in the labour market and on the job because of their race, colour, religion, sex, and or their national extraction. The CEARC has noted that the intersection between migration and discrimination should be addressed within the context of the protections and obligations of Convention No. 111 (ILO 2012, paras 776–781).

To support the implementation of Convention No. 111, the **Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111)**, calls for employers' and workers' organizations to "not practise or countenance discrimination in respect of admission, retention of membership or participation in their affairs" (Paragraph 2(f)). The Recommendation also calls for the principle of equality of opportunity and treatment in employment to be respected by the parties in collective negotiations and industrial relations, and that no provisions of a discriminatory character be agreed upon concerning employment, training, promotion, or terms and conditions of employment (Paragraph 2(e)).

Equally crucial for protecting the FACB rights of migrant workers are the ILO Conventions that concern sectors or occupations in which a significant number of migrant workers are employed, such as the care economy (including domestic work and healthcare) and agriculture. The CEACR, in its General Survey of 2022, emphasized that the importance of FACB cannot be overstated as the cornerstone of decent work for care economy workers. In its examination of the application of Conventions Nos 87 and 98, the CEACR has drawn attention to the fact that both fundamental Conventions apply to all domestic workers and nursing personnel.

The **Domestic Workers Convention, 2011 (No. 189)**, requires Member States to take measures to respect, promote and realize the fundamental principles and rights at work of domestic workers, including freedom of association and the effective recognition of the right to collective bargaining (Article 3(2)(a)). In taking such measures, Members shall protect the right of domestic workers and employers of domestic workers to establish and, subject to the rules of the organization concerned, to join organizations, federations, and confederations of their own choosing (Article 3(3)).

The **Domestic Workers Recommendation, 2011 (No. 201)**, provides further that when taking these measures, Member States should identify and eliminate any legislative or administrative restrictions or other obstacles: to the right of domestic workers to establish their own organizations or to join the workers' organizations of their own choosing, and to the right of organizations of domestic workers to join workers' organizations, federations, and confederations. Furthermore, Member States should consider taking or supporting measures to strengthen the capacity of workers' and employers' organizations, organizations representing domestic workers and those of employers of domestic workers, to promote the interests of their members effectively, provided that at all times the independence and autonomy, within the law, of such organizations are protected (Paragraph 2(a–b)).

In its Preamble, the **Nursing Personnel Convention, 1977 (No. 149)**, recalls that nursing personnel are covered by many international labour Conventions and Recommendations laying down general standards concerning employment and conditions of work, such as instruments on discrimination, on freedom of association and the right to bargain collectively.

Very early, the ILO recognized the challenges that rural workers⁸ face concerning freedom of association, and adopted the **Right of Association (Agriculture) Convention (No. 11)**, in 1921. To address further the right to freedom of association for rural workers, the ILO adopted, in 1975, the **Rural Workers' Organizations Convention (No. 141) and Recommendation (No. 149)**. Under Convention No. 141, Member States shall fully respect the principles of freedom of association and make sure that all categories of rural workers, including any person engaged in agriculture, have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization (Article 3(1–2)).

In adopting Conventions Nos 11 and 141, and Recommendation No. 149, the International Labour Conference underlined the principle that agricultural and rural workers were equally entitled to freedom of association rights as those enjoyed by other workers, and that promoting freedom of association is essential for the establishment and growth of solid and effective rural workers' organizations capable of ensuring the participation by rural workers in economic and social development (ILO 2015a, para. 324). In its 2015 General Survey on these instruments, the CEACR confirmed the importance of trade union rights for rural migrant workers and considered "that the fact of being a foreign worker should not present an obstacle to unconditional membership of trade unions and recalls in this regard that Convention No. 11 refers to all those engaged in agriculture and Convention No. 141 refers to all rural workers as defined in its Article 2, without distinction whatsoever" (ILO 2015a, para. 130). Moreover, recognizing the diversity in rural workers' organizations, the CEACR also emphasized that Conventions Nos 11 and 141 apply to all rural workers' organizations, including trade unions, cooperatives and organizations of farmers, peasants and self-employed workers, irrespective of legal status. Agricultural and rural workers should be entitled to form and join all types of organizations of rural workers, in accordance with their choice, in order to have a strong, independent and effective voice (ILO 2015a, para. 97).

For the protection of decent work for agricultural workers in plantations, the **Plantations Convention, 1958 (No. 110)**, outlines detailed rules for the engagement and recruitment of migrant workers (Part II, Articles 5–9) and the protection of FACB rights (Part IX, Articles 54–61 and Part X, Articles 62–70), which basically reiterate the rights set out in Conventions Nos 87 and 98. The protections of Convention No.

⁸ Rural Workers' Organisations Convention, 1975 (No. 141), Article 2: For the purposes of this Convention, the term *rural workers* means any person engaged in agriculture, handicrafts or a related occupation in a rural area, whether as a wage earner or, subject to the provisions of paragraph 2 of this Article, as a self-employed person such as a tenant, sharecropper or small owner-occupier.

110 equally apply to all plantation workers without distinction as to race, colour, sex, religion, political opinion, nationality, social origin, tribe or trade union membership (Article 2).

The **Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204)**, reaffirms in Part VII that those working in the informal economy should enjoy freedom of association and the right to collective bargaining, including the right to establish, and subject to the rules of the organization concerned, to join organizations, federations and confederations of their own choosing. Governments are to provide an enabling environment for workers and employers to exercise these rights (Paragraph 32), and workers' and employers' organizations should, where appropriate, extend membership and services to workers and economic units in the informal economy (Paragraph 33).

The **Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205)**, provides that in situations of national crises or disaster, national labour laws and regulations should promote equality of opportunity and treatment for all migrant workers and, in particular, enable their participation in representative organizations of employers and workers (Paragraph 27(b)).

Given the vulnerable situations in which many migrant workers find themselves, in particular migrant domestic workers, the recent **Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019**, bring together principles of human dignity for all, equality and non-discrimination, and safety and health at work. Convention No. 190 requires States to recognize the different and complementary roles and functions of governments, employers and workers, and their respective organizations and responsibilities (Articles 4(3) and 9). The Convention expressly addresses freedom of association and the effective recognition of the right to collective bargaining as key means to both prevent and address situations of violence and harassment at work. Conversely, the denial of such rights is seen as a significant factor in increasing the risk of experiencing violence and harassment (ILO 2017a).

Convention No. 190 covers all workers irrespective of their contractual status (Article 2) and seeks to address violence and harassment that occurs "in the course of, linked with or arising out of work", both in the formal and informal economy (Article 3). It embeds a strong gender-responsive perspective with a view to tackling root causes of discriminatory forms of violence and harassment. It recognizes that some groups and workers in certain sectors, occupations and work arrangements are especially vulnerable to violence and harassment (Articles 6 and 8). In this regard, Recommendation No. 206 provides that migrant workers, particularly women, regardless of migrant status, should be protected from violence and harassment by legislative or other measures in countries of origin, transfer and destination (Paragraph 10).



► 3.2. United Nations human rights instruments

The right to freedom of association for everyone is protected under the Universal Declaration of Human Rights (1948);⁹ the International Covenant on Civil and Political Rights (ICCPR),¹⁰ the International Covenant on Economic, Social and Cultural Rights (ICESCR),¹¹ and under other thematic international human rights instruments on the protection against discrimination.

Under the Covenants the right to form and join trade unions is expressly set out in the instruments and extends to everyone, including all migrants regardless of their status. In its General Comment No. 15, the UN Human Rights Committee confirmed that the rights set forth in the ICCPR apply to everyone, irrespective of reciprocity and irrespective of an individual's nationality or statelessness (CCPR 1986). The Committee on Economic, Social and Cultural Rights (CESCR), in its General Comment No. 23 (2016), reiterated that trade union rights and freedom of association are crucial means of introducing, maintaining and defending the right to just and favourable conditions of work and apply to all workers without distinction. It specified that States Parties have the obligation to adopt the necessary measures to ensure the full realization of the right to just and favourable conditions of work including through collective bargaining and social dialogue. In its 2015 concluding observations on Thailand, the CESCR urged the country to extend the right to form a trade union to non-nationals and stressed the importance of recognizing these rights to migrant workers so they can represent their interests to improve the enjoyment of their economic, social and cultural rights, given the large number of migrant workers in the country (CESCR 2015).

While this report focuses on the rights of migrant workers to FACB within the labour market context, the interconnection among the rights to freedom of association, freedom of peaceful assembly and freedom of expression are fundamental to human rights principles and must be acknowledged. The right to the freedom of peaceful assembly is recognized in the Universal Declaration of Human Rights and the ICCPR. The UN Human Rights Committee has maintained that aliens “receive the benefit of the right of peaceful assembly” and enjoy freedom of expression to the same extent as citizens (CCPR 1986). Protection of FACB rights requires protection of freedom of expression and freedom of assembly rights.

9 Universal Declaration of Human Rights, Article 11:

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

Article 23(4): Everyone has the right to form and to join trade unions for the protection of his interests.

10 ICCPR, Article 22:

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

11 ICESCR, Article 8(1): The States Parties to the present Covenant undertake to ensure:

- (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
- (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
- (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
- (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990 (ICRMW), recognizes the right of all migrant workers and members of their families to take part in meetings of activities of trade unions, to join freely any trade union and to seek aid and assistance of trade unions and other associations (CMW 2013, paras 60, 65).¹² However, while Article 26 of the ICRMW sets out the right of all migrant workers to join trade unions and other associations protecting their interests, it does not provide for protection of the right to form trade unions. This protection is granted in Article 40 of the Convention only to migrant workers and members of their families “who are documented or in a regular situation”, who shall have “the right to form associations and trade unions in the State of employment for the promotion and protection of their economic, social, cultural, and other interests”. Both Article 26 and Article 40 provide that “no restrictions may be placed on the exercise of this right other than those that are prescribed by law and are necessary in a democratic society in the interests of national security, public order (ordre public) or the protection of the rights and freedoms of others”.

Nonetheless, in its General Comment No. 2 on the Rights of Migrant Workers in an Irregular situation and Members of their Families, the Committee on the Protection of the Rights of All Migrant Workers (CMW) – the UN treaty body monitoring the Convention – recognized that Article 26, “read together with other international human rights instruments, may create broader obligations for States parties to both instruments”. For example, the CMW cited “Article 2 of ILO Convention No. 87 (1948) concerning Freedom of Association and Protection of the Rights to Organise, and article 22, paragraph 1, of the International Covenant on Civil and Political Rights, both apply to migrant workers in an irregular situation” (CMW 2013, paras 60 and 65). The CMW further stated that

Article 26 also protects their right to participate in meetings and activities, and to seek the assistance, of trade unions and any other associations established in accordance with law. States Parties shall ensure these rights, including the right to collective bargaining, encourage self-organization among migrant workers, irrespective of their migration status, and provide them with information about relevant associations that can provide assistance.

► (CMW 2013, para. 65).¹³

12 ICRMW, Article 26:

1. States Parties recognize the right of migrant workers and members of their families:
 - (a) To take part in meetings and activities of trade unions and of any other associations established in accordance with law, with a view to protecting their economic, social, cultural and other interests, subject only to the rules of the organization concerned;
 - (b) To join freely any trade union and any such association as aforesaid, subject only to the rules of the organization concerned;
 - (c) To seek the aid and assistance of any trade union and of any such association as aforesaid.
2. No restrictions may be placed on the exercise of these rights other than those that are prescribed by law and which are necessary in a democratic society in the interests of national security, public order (ordre public) or the protection of the rights and freedoms of others.

13 With regard to Article 26(2), the CMW in its General Comment No. 2 stated that similar limitations could be found in Article 8(1) (a) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and in Article 22(2) of the International Covenant on Civil and Political Rights (ICCPR). CMW General Comment No. 2 also refers to the jurisprudence of the relevant treaty bodies for the purposes of interpreting what constitute permissible restrictions under Article 26(2) of the Convention (CMW 2013).

Thus, the lacuna in the protection of undocumented migrants in forming trade unions or other associations in the ICRMW should not be used to justify restrictions on their FACB rights, including the right to form trade unions, given the express inclusion of this right in the ICCPR, ICESCR, and ILO Convention No. 87.

In its General Comment No. 1 (2011) on migrant domestic workers, the CMW stated that FACB rights are essential for migrant domestic workers because these rights allow them to express their needs and protect their rights, primarily through trade unions and labour organizations. It also affirmed that national legislation, particularly in countries of employment, should recognize migrant domestic workers' right to form and join organizations, regardless of their migration status. States Parties should also ensure that occupations dominated by migrant workers, especially women migrant workers, such as domestic work and some forms of entertainment, are protected by labour laws and subject to inspections (CMW 2011).

In various concluding observations, the CMW has noted its concern over restrictions on the rights of migrant workers, including undocumented migrant workers, to join trade unions. For example, in Türkiye, the CMW recommended that the State Party take all measures necessary, including legislative amendments, to guarantee all migrant workers, including those in an irregular situation, the right to take part in trade union activities and to join freely trade unions, in accordance with Article 26 of the Convention (CMW 2016, paras 61–62). It should be noted here that Türkiye does provide such rights to documented migrant workers. In addition to its General Comment No. 2, the CMW has referred to ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), as the benchmark for compliance in calling on States Parties to take effective measures to ensure that migrant workers and members of their families can fully exercise their right to form and be a member of associations and trade unions. In turn, the ILO CEACR considers that the UN Convention on Migrant Workers (ICRMW) and the ILO instruments on labour migration are complementary and mutually reinforcing (ILO 2016b, para. 277).

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is applicable to all women including asylum-seekers, refugees and migrant workers. According to the Convention, States must undertake measures to end discrimination against women by incorporating the principle of equality of men and women in their legal system (Article 2(a)), and States must ensure elimination of all acts of discrimination against women by persons, organizations or enterprises (Article 2(e)). Moreover, CEDAW provides that women shall be allowed to participate in non-governmental organizations and associations on equal terms as men (Article 7). Article 11 of the Convention provides for non-discrimination of women and equality between men and women in the field of employment, including the right to work, equal employment opportunities, and conditions of work, including wages.

In its concluding observations and recommendations, the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee) has drawn attention to the obstacles affecting women migrant workers' access to justice as well as the obstacles to the effective application of labour codes to women migrant workers. In some cases, the CEDAW Committee has noted its concern over the lack of participation by and representation of women in labour unions and has called on States to promote and encourage the participation and representation of women in labour unions.¹⁴

Under international human rights instruments, migrants are to be protected against racial and ethnic based discrimination. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) prohibits racial discrimination in a range of areas, including employment, with the Convention being applicable to asylum-seekers, refugees and migrant workers. The ICERD grants all persons without distinction as to race, colour, descent, or national or ethnic origin, the right to freedom of association (Article 5 (d)(ix)) and the right to form and join trade unions (Article 5(e)(ii)).

14 For example, CEDAW Committee, *Concluding Observations on the Sixth Periodic Report of Jordan*, CEDAW/C/JOR/CO/6 (2017).

While the ICERD does not prohibit discrimination on grounds of nationality, citizenship, or naturalization, it does not permit discrimination against any particular nationality (Article 1(3)). In its General Comment No. 30, the Committee on the Elimination of All Forms of Racial Discrimination (CERD) stressed that the Article 1 limitations on the grounds of discrimination should be construed narrowly. It recommended that States should ensure: (i) that legislative guarantees against racial discrimination apply to non-citizens regardless of their immigration status; (ii) that the implementation of legislation does not have a discriminatory effect on non-citizens; and (iii) that particular attention is paid to issues of multiple discrimination against non-citizens. The CERD also recognized that while States Parties may refuse to offer jobs to non-citizens without a work permit, all individuals are entitled to the enjoyment of labour and employment rights, including the freedom of assembly and association, once an employment relationship has been initiated until it is terminated. Thus, the ICERD can be used to provide protection against restrictions on the FACB rights of migrant workers if these restrictions, in law or in practice, are the result of discrimination based on the race, colour or ethnicity of migrant workers (CERD 2004).

► 3.3. Regional instruments

Like the international level human rights treaties, regional instruments in Europe, Latin America and Africa contain provisions on FACB rights, both in general and concerning migrant workers.

In Europe there are both general instruments of rights protection and more specific instruments on migrants. FACB rights are explicitly protected under Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), 1950,¹⁵ and there is a more detailed identification of the positive obligations to be fulfilled in article 5 (the right to organize) and article 6 (the right to bargain collectively) of the European Social Charter, 1961,¹⁶ and in article 28 of its revised version, adopted in 1996.¹⁷ The ECHR provides protection of the rights set out therein to all persons, including non-nationals, who are under the protection of a State Party to that Convention. The European Social Charter, on the other hand, appears to provide FACB rights protection to all workers, including all migrants from countries under the protection of the Charter and to migrant workers who are lawfully residing in the country or who have work permits.

With respect to non-discrimination and membership in trade unions, the European Council has adopted the Directive on equal treatment between persons irrespective of racial or ethnic origin (2000/43/EC) and the Directive which establishes a framework for equal treatment in employment to combat discrimination on the grounds of religion or belief, disability, age, and sexual orientation (2000/78/EC). These Directives are intended to implement conditions for a socially inclusive labour market aimed at eliminating discrimination against groups such as ethnic minorities. In addition to calling for

15 ECHR, Article 11. Freedom of Assembly and Association:

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

16 Under the European Social Charter, all workers and employers have the right to freedom of association in national or international organizations for the protection of their economic and social interests (Article 5). In addition, all workers and employers have the right to bargain collectively (Article 6), providing expressly for migrant workers who are legally in the State, to secure for such workers (as per Article 19(4)(b)) "membership of trade unions and the enjoyment of the benefits of collective bargaining".

17 Revised Charter, Article 28: Workers' representatives in undertakings have the right to protection against acts prejudicial to them and should be afforded appropriate facilities to carry out their functions.

non-discrimination in employment and conditions of work, both Directives call for non-discrimination in membership of an organization of workers or employers. The Directive on racial and ethnic origin makes it clear in article 3(2) that it will not cover differences of treatment based on nationality, but non-nationals are covered by the prohibition of discrimination on grounds of racial or ethnic origin. Similarly, the framework Directive does not cover differences of treatment based on nationality, but it does apply to nationals of European countries as well as nationals of third countries who are lawfully residing in the country, including asylum-seekers, refugees and migrant workers in a regular situation. Thus, there is a distinction applied between migrant workers who are nationals of another Member State of the Council of Europe (which would be party to the European Social Charter) and other foreign workers.

With respect to the requirements of work permits, the European Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (2011/98/EC), sets out a common set of rights for third-country workers that all European Union (EU) Member States should adhere to in order to establish a “minimum level playing field” for the rights of third-country nationals within the EU.¹⁸ Third-country migrants who are working legally within the European Union for more than six months enjoy under this Directive equal rights with European nationals in regard to working conditions, the right to join a trade union, tax benefits and contributory social security schemes. The Directive does not cover long-term residents since long-term residents are given a more privileged status in accordance with the Long-Term Residence Directive. Refugees and seasonal workers are also excluded from this Directive.

European Council Directive 2003/109/EC on the status of non-EU nationals who are long-term residents applies to people who have lawfully resided in a European state for an uninterrupted period of five years.¹⁹ Long-term residents have the right under article 11 of this Directive to enjoy equal treatment with nationals in regard to access to employment and self-employment, access to education and vocational training, recognition of professional qualifications, social security, social assistance and social protection, access to goods and services, the right to join a trade union and the right to free movement within the country.

The African Charter on Human and Peoples' Rights, 1981, (Banjul Charter) and the American Convention on Human Rights, 1969, (Pact of San José) also contain provisions recognizing freedom of association rights of all persons, including in the field of labour.^{20,21} The protection of these rights extends to migrant workers.

In an Advisory Opinion, the Inter-American Court of Human Rights underlined the application of fundamental labour rights to non-national workers, including those in an irregular status. The Court found that States cannot restrict the rights of unauthorized workers, and that once the employment relationship is initiated, unauthorized workers have the same labour and employment rights as

18 Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, para. 19.

19 Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents.

20 Banjul Charter, Article 10:

1. Every individual shall have the right to free association provided that he abides by the law.
2. Subject to the obligation of solidarity provided for in [Article] 29 no one may be compelled to join an association.

21 Pact of San José, Article 16 – Freedom of association:

1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.
2. The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.
3. The provisions of this article do not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police.

authorized workers.²² While such advisory opinions are not legally binding, they produce legal effects on all members of the Organization of American States. Moreover, the Court has since reiterated that the principle of equality before the law, equal protection and non-discrimination applies to undocumented workers in other cases. For example, in the matter of *Undocumented Workers v. United States of America*, the Inter-American Commission of Human Rights relied on the Advisory Opinion of the Court and found that US law restricting undocumented workers from the protection of their labour rights violated the American Convention on Human Rights and recommended that the State, inter alia, provide the petitioners with:

adequate monetary compensation to remedy the violations sustained in the present report; ensure all federal and state laws and policies, on their face and in practice, prohibit any and all distinctions in employment and labor rights based on immigration status and work authorization, once a person commences work as an employee; prohibit employer inquiries into the immigration status of a worker asserting his or her employment and labor rights in litigation or in administrative complaints; ensure that undocumented workers are granted the same rights and remedies for violations of their rights in the workplace as documented workers.

► (IACHR 2016, para. 5).²³

► 3.4. International supervisory systems

The ILO has developed various means of supervising the application of Conventions, Protocols and Recommendations in law and in practice following their adoption by the International Labour Conference and the ratification of Conventions and Protocols by Member States. There are two kinds of supervisory mechanisms in the ILO. The first is the regular system of supervision, which entails examination of periodic reports submitted by Member States on the measures they have taken to implement the provisions of ratified Conventions and Protocols. The regular system of supervision is based on two ILO bodies examining Member States' reports on the application of Conventions and Protocols in law and in practice as well as observations in this regard sent by workers' organizations and employers' organizations. The Committee of Experts on the Application of Conventions and Recommendations (CEACR) publishes an annual report on its assessment of the application of ratified Conventions, which is examined by the International Labour Conference's Tripartite Committee on the Application of Standards.

The second mechanism involves the ILO's special procedures, which include a representations procedure and a complaints procedure covering all ratified Conventions and Protocols, as well as a special procedure for complaints regarding freedom of association through the Committee on Freedom of Association (CFA). The CFA bases its work on the principles of freedom of association contained in the ILO Constitution, and ratification of a relevant Convention is not required for the submission of complaints. The CFA's reports

²² See Inter-American Court on Human Rights, *Advisory opinion OC-18/03 of September 17, 2003 on the Juridical Condition and Rights of Undocumented Migrants*, box on page 92.

²³ See Inter-American Court of Human Rights, *Case of Espinoza Gonzales vs Peru*, judgment of 20 November 2014; and Inter-American Court of Human Rights, *Cepeda Vargas, v. Colombia*, judgment 26 May 2010.

are submitted to the ILO Governing Body and followed up by the CEACR if the relevant Convention has been ratified by the Member State concerned.²⁴

The UN human rights treaties are each supervised by a committee comprised of international experts (treaty bodies) established under the terms of each Convention. Like the ILO's CEACR, these treaty bodies review reports, identify violations, and assess the progress of a ratifying State's application of the Convention. The treaty bodies periodically publish reviews on each ratifying State's application of the relevant Convention.

The comments of these supervisory mechanisms provide useful information on:

- The application in law and in practice of the right to freedom of association and the effective recognition of the right to collective bargaining in general;
- Protection of the rights of migrant workers in general; and
- Protection of migrant workers' FACB rights in particular.

Much of the content of Chapter 4 on obstacles to the enjoyment and exercise of FACB rights by migrant workers has been sourced from the comments of the international supervisory bodies. However, with respect to the FACB rights of migrant workers, the supervisory bodies have lamented the lack of information provided in the ratifying States Parties' reports and have called for the provision of more information in their concluding comments.²⁵ The supervisory bodies have also called attention to the lack of extant information about migrant workers in an irregular situation. A review of the supervisory bodies' comments over the past 20 years reveals that in recent years more attention is being given to migrants' labour rights, including FACB. Some of this attention is undoubtedly due to the advocacy and observations submitted to the international supervisory bodies by trade unions and migrant workers' associations.

► 3.5. International policy and guidance

Over the last 25 years, international policy documents have reinforced both the need for and the importance of safeguarding the fundamental rights of all workers, in particular FACB rights.

The 1998 ILO Declaration on Fundamental Principles and Rights at Work, as amended 2022, and its Follow-up establish that freedom of association and effective recognition of the right to collective bargaining are fundamental principles and rights that all ILO Member States should ensure to all workers, including migrants regardless of their status. The ILO Declaration on Social Justice for a Fair Globalization (2008) underscores that freedom of association and effective recognition of the right to collective bargaining are of particular importance for the full realization of decent work for all workers.

The ILO Centenary Declaration for the Future of Work (2019) underlines the importance of the Declarations of 1998 and 2008 and that fundamental labour rights and principals apply to all workers. Under the Centenary Declaration, the ILO must direct its efforts to "promoting workers' rights as a key element for the attainment of inclusive and sustainable growth, with a focus on freedom of association and the effective recognition of the right to collective bargaining as enabling rights" (para. A(vi)), and that "social dialogue, including collective bargaining and tripartite cooperation, provides an essential

²⁴ For further information on the ILO supervisory system and comments adopted by the CEACR, conclusions by the Committee on the Application of Standards (CAS), and recommendations by the CFA and the Governing Body, see [NORMLEX](#).

²⁵ For example, CMW, *Concluding Observations on the Second Periodic Report of Rwanda*, CMW/C/RWA/CO/2 (2021).

foundation of all ILO action and contributes to successful policy and decision-making in its member States" (para. B).

From the perspective of outlining labour migration policy and protecting migrant workers' rights, the Resolution concerning a fair deal for migrant workers in a global economy (2004) provides that:

[a]ll migrant workers also benefit from the protection offered by the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998).

In addition, the eight core ILO Conventions regarding freedom of association and the right to bargain collectively, non-discrimination in employment, the prohibition of forced labour and the elimination of child labour, cover all migrant workers, regardless of status.

► (ILO 2004a, para. 12).

The Resolution concerning fair and effective labour migration governance (2017), highlights the fundamental right of freedom of association and recognizes that migrant workers face obstacles in law and in practice to organizing and bargaining collectively (ILO 2017, para. 11).

Furthermore, the ILO has international guidance that address realizing the FACB rights of migrant workers in law and in practice. The ILO Multilateral Framework on Labour Migration (2006) encourages States to:

- Adopt, implement and enforce legislation and policies to guarantee both men and women migrant workers the right to freedom of association and, when they join trade unions, the right to hold office in those organizations;
- Provide them with protection against discrimination on the grounds of their trade union activities; and
- Ensure compliance by employers' and workers' organizations with these rights (Guideline 8.4.1).

The Multilateral Framework also states that governments should work with social partners and migrant workers' associations to ensure better representation and participation in economic, social and political life (Guideline 14.6), and that governments should consult civil society and migrant workers' association on labour migration policy (Principle 7).

The ILO General Principles and Operational Guidelines on Fair Recruitment (2016) and the Definition of Recruitment Fees and Related Costs (2019) also highlight the need to respect the FACB of migrant workers. The General Principles and Operational Guidelines provide that governments should respect the rights of workers and of employers to organize and to bargain collectively, including with respect to recruitment, and that governments should create an environment conducive to the extension of collective bargaining coverage across sectors and allow workers, including migrant workers, to organize into workers' organizations to protect themselves from exploitation during, or resulting from, the recruitment process (Guideline 1.3). Employers should ensure that their recruitment processes do not require jobseekers and/or workers, in particular migrant workers, to renounce their rights to join and form workers' organizations and to bargain collectively (Guideline 29.1). In addition, enterprises and public employment services should respect internationally recognized human rights, including international labour standards, in particular the right to freedom of association and collective bargaining, and prevention and elimination of forced labour, child labour and discrimination in respect of employment and occupation, in the recruitment process (Guideline 15.4).

Decent work and labour migration are present throughout the UN Global Compact for Safe, Orderly and Regular Migration. Adopted by 164 nations in December 2018, the Global Compact calls for a collective commitment to 23 objectives to achieve safe, orderly and regular migration. Many of the objectives speak to decent work and the labour market aspects of migration. Two of these specifically mention the protection of the right to freedom of association of migrant workers:

1. Objective 6(i) calls on States to provide migrant workers engaged in remunerated and contractual labour with the same labour rights and protections extended to all workers in the respective sector, including the rights to freedom of peaceful assembly and association, and membership in trade unions.
2. Objective 16(e) calls for the empowerment of migrant women through eliminating gender-based discriminatory restrictions on formal employment, ensuring the right to freedom of association, and facilitating access to relevant essential services.

► 3.6. Governance and access to justice

Good governance based on the international human rights framework recognizes the pivotal role of employers' and workers' organizations and social dialogue to the formulation and protection of migrant workers' rights. ILO Convention No. 143 requires consultation with representative organizations of employers and workers in relation to the development of laws and regulations (Article 7). Recommendation No. 86 calls for consultation with appropriate organizations of employers and workers on "all general questions concerning migration for employment" (Paragraph 4(2)). The provisions of Convention No. 143 and Recommendation No. 151 require Member States to ensure the pivotal role of the social partners in relation to an array of legal and social protection measures that should serve to enhance the understanding of the interests of migrant workers and their representation and protection.

► The provisions of Convention No. 143 and Recommendation No. 151 require Member States to take specific steps to ensure the involvement of the social partners:

- Fully consult and enable representative organizations of employers and workers to furnish any information in their possession in relation to irregularly employed migrant workers in the territory (Article 2).
- Consult with representative organizations of employers and workers in relation to contact and exchange of information with other States (Article 4), and formulation and application of a social policy (Article 12(e)).
- Seek the cooperation of employers' and workers' organizations in promoting the acceptance and observance of a national policy (Article 12(a)).
- Collaborate with employers' and workers' organizations to foster public understanding and acceptance of equality of opportunity and treatment of migrant workers, and to examine and resolve complaints (Paragraph 4).
- Consult with employers' and workers' organizations and seek their cooperation on provision of social services for migrant workers (Paragraphs 25(2) and 29).

Once worker rights are embodied in national laws, regulations and policies, enforcement mechanisms are necessary to promote and ensure the effective implementation of these laws in practice. The main enforcement mechanism in the field of labour is labour inspectorates, which, among other responsibilities, are charged with the protection of workers' labour rights at the workplace. The international legal framework for labour inspectorates is set out in the ILO Conventions concerning labour inspection.

The Labour Inspection Convention, 1947 (No. 81), applies only to workplaces in industry and commerce. Nevertheless, many of the ILO Conventions that concern working conditions or protection of workers contain provisions that refer to Convention No. 81 and its requirement to establish a labour inspection system that will supervise the application of relevant labour legislation, including FACB rights (ILO 2006b). Article 16, for example, requires the inspectorate to inspect workplaces as often and as thoroughly as is necessary to ensure effective application of relevant legal provisions. The Labour Inspection (Agriculture) Convention, 1969 (No.129), contains similar provisions as Convention No. 81 and establishes the requirements for labour inspection in the agricultural sector. The Protocol of 1995 to the Labour Inspection Convention, 1947, extended that Convention to cover non-commercial workplaces. Within the sectors to which they apply, these Conventions cover all workers, including migrant workers, whether documented or undocumented, where they are employed as workers. None of the international labour Conventions concerning labour inspection call for labour inspectors to supervise the application of immigration or security laws. Such powers and duties should fall under the jurisdiction of enforcement bodies other than labour inspectorates (ILO 2016b).

Migrant workers, like all other workers, should have access to judicial and non-judicial mechanisms to solve their labour-related disputes and grievances, including violations of their FACB rights. Access to justice should include the right to bring complaints to an independent body such as a labour tribunal or court. ILO Convention No. 97 requires migrants lawfully within the country to have access to legal proceedings related to the matters referred to in the Convention, and on an equal basis with nationals. ILO Convention No. 143 provides that migrant workers whose position cannot be regularized shall have the possibility of presenting a case of dispute concerning past employment as regards remuneration, social security and other benefits before a competent body, either themselves or through a representative. The ICRMW establishes the right of all migrants to equality with nationals before courts and tribunals.

► 3.7. Summary

The above international instruments, policies and guidance – along with the work of the international supervisory bodies – provide a clear, coherent and mutually reinforcing legal framework on the FACB rights of women and men migrant workers in transit and destination countries, regardless of their status, nationality, or country of origin and regardless of the sector in which they work. The gap of association protection of undocumented migrant workers in the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990 (ICRMW) has been filled by the other human rights instruments, most notably ILO Convention No. 87.²⁶ Thus, within the labour context, the cause of a rights gap for migrant workers regarding FACB is not due to a deficiency in the international law. The problem lies in the challenge of fully applying international law to national laws, policies and practices. Once the international law is fully respected in national laws and policies and other agreements, supportive social partner cooperation and action, along with effective monitoring and enforcement mechanisms, are essential to ensure FACB rights can be fully and effectively enjoyed by all migrant workers.

²⁶ It is recognized that, outside of the labour field, gaps on rights of association and assembly exist in the ICRMW.





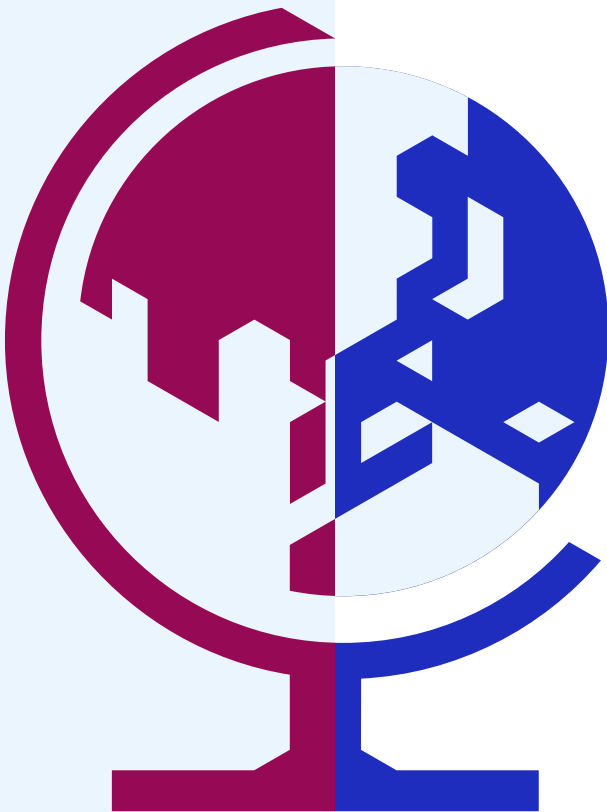
4.

**Obstacles in law
and in practice**

The importance of FACB rights to all workers cannot be overstated, both as fundamental human rights and as founding principles of the ILO. As such, most countries recognize FACB principles and provide for their basic protection in law, at least for workers in the formal economy. Nevertheless, there are obstacles to the full and effective implementation of FACB rights, both in law and in practice.

The ILO CEACR and the CFA have raised general concerns on the exercise of FACB rights that necessarily impact migrant workers. These general concerns include:

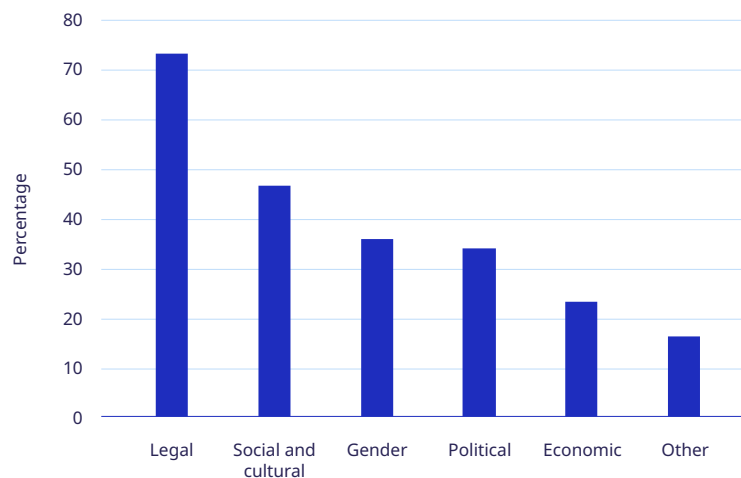
- ▶ Insufficient legislative protections;
- ▶ Imposed trade union monopoly;
- ▶ Trade union registration requirements that obstruct registration of trade unions in practice (including high minimum numbers of workers, prohibitions and restrictions of trade unions at different levels, complicated procedures, administrative approval requirements, and so on);
- ▶ Restrictions on trade union activity and rights to organize their own activities;
- ▶ Interference in trade union activities;
- ▶ Insufficient protection against anti-union discrimination by national authorities and employers (including through dismissal, demotion, transfer, and other prejudicial acts as well as intimidation, harassment and so on);
- ▶ Anti-union violence;
- ▶ Arrests and detention;
- ▶ Restrictions and limitations on collective bargaining;
- ▶ Inadequate and ineffective sanctions and remedies for violations of FACB; and
- ▶ Restrictions on access to judicial mechanisms (ILO 2022a).



► 4.1. Obstacles in law

Legal obstacles to migrant workers accessing their FACB rights were the most commonly cited obstacles in the ILO Trade Union Survey (TUS 2021), as can be seen in figure 1.²⁷

► **Figure 1. Types of obstacles to protecting freedom of association and collective bargaining rights for migrant workers, as reported by trade unions**



Note: More than one response possible.
Source: TUS 2021, see figure A1 in Annex.

In some countries there are restrictions placed on freedom of association of a general nature, which also have an impact on the enjoyment of other fundamental rights of workers. For example, the Malaysian Constitution restricts freedom of association to citizens, and permits similar restrictions on freedom of association concerning labour.²⁸ Uganda has claimed that its constitutional guarantee of the right to freedom of association, including freedom to join trade unions, excludes undocumented migrants (CMW 2015, para. 36).

In Gulf Cooperation Council countries, the labour relations between employers and migrant workers are governed by a sponsorship system, commonly referred to as the *kafala* system. This system is an all-encompassing collection of laws, administrative regulations, norms and customary practices that tie a migrant worker's legal residency and status to their employer, an individual sponsor (or *kafeel*) (ILO 2017b; Human Rights Watch 2020). Through the *kafala* system, migrant workers are placed in a situation of vulnerability, having very little leverage to negotiate with employers due to the significant power imbalance ingrained in the employment relationship. As a result, migrant workers might be subjected to abusive employer practices, such as the confiscation of passports, non-payment of salaries, deprivation of liberty, and violence, including sexual violence – practices that, according to the CEACR, might cause their employment to be transformed into situations that could amount to forced labour.²⁹

²⁷ The TUS 2021 results concerning obstacles to accessing FACB are more fully developed in the Annex below.

²⁸ The Constitution of Malaysia, article 10.

²⁹ CEACR, [Observation – Forced Labour Convention, 1930 \(No. 29\) – Saudi Arabia](#), published 2017.

Within this system, women domestic workers are particularly vulnerable. Concerns about the abusive practices and lack of FACB rights under the *kafala* system have been raised by the ITUC and addressed by the CEACR as well as other UN supervisory bodies. For example, in its concluding observations of 2018 on Lebanon, the UN Human Rights Committee expressed concern that migrant domestic workers are excluded from protection under domestic labour law and are subjected to abuse and exploitation under the sponsorship (*kafala*) system. It also expressed concern about the lack of effective remedies against such abuses and the existence of anti-union reprisals (CCPR 2018).³⁰

In addition to the general concerns on restrictions on FACB rights, there may be specific restrictions on foreign workers' FACB rights. In many countries, they may be denied explicitly to:

- Some or all migrant workers based on their nationality, residence, work permits or reciprocity;
- Undocumented workers;
- Sectors where migrant workers constitute a high proportion of workers, such as domestic work and agriculture, and where labour law may not apply at all, and
- Types of informal working arrangements and insecure contracts (ILO 2008a; IHRB 2019; ILO 2018a).

These restrictions create obstacles for migrant workers to exercise their rights, notably to form or become members of trade unions, elect representatives, vote and act as trade union officials, and effectively engage in collective bargaining. While there are countries that recognize migrant workers' FACB rights and there are some good examples set out in this report, marked progress is slow.

The result is that few migrant workers are organized, affiliated with a trade union, or have their interests represented in collective bargaining. According to the ITUC, worldwide, less than 1 per cent of migrant workers are members of trade unions (ITUC 2014). In Europe, migrants present lower levels of unionization than national workers, particularly short-term migrants (Krings 2014). In many parts of the world there is a lack of information on the extent to which migrant workers – and in particular, migrant workers in an irregular situation – effectively enjoy the right to freedom of association or collective bargaining in law or practice.

In this regard, the UN treaty bodies, and the ILO CEACR and the CFA have addressed these issues on numerous occasions as violations of the above set out international Conventions and the ILO Constitution. Largely relying on this international supervisory work, the UN Special Rapporteur on the human rights of migrants prepared a special report to the UN Human Rights Council on the right to freedom of association of migrants and their defenders, in which he drew attention to some achievements and the numerous existing barriers to migrants exercising their international human right to freedom of association (UN HRC 2020b).

The sections below present some of the obstacles originating in legislation, jurisprudence, migration agreements and conflict between laws that ultimately impinge on the realization of the FACB rights of migrant workers.

³⁰ See also: CEACR, [Observation –Convention No. 98 – Lebanon](#), published 2022; and CEACR, [Observation –Convention No. 98 – Kuwait](#), published 2022.

4.1.1. Exclusions and restrictions on the right to establish and to join organizations of their own choosing

The possibility to establish organizations is the essential prerequisite for the proper functioning of freedom of association and effective collective bargaining (ILO 2012, para. 63). According to the CEACR, the right to establish and join organizations of their own choosing, laid down in Article 2 of Convention No. 87, “implies that anyone residing in the territory of a State, whether or not they have a residence permit, benefits from the trade union rights provided for by the Convention, without any distinction based on nationality or the absence thereof”.³¹ The only exception is for the armed forces and the police, as per Article 9(1) of Convention No. 87. The CFA has emphasized on numerous occasions the importance of guaranteeing the right of migrant workers, both documented and undocumented, to organize and the need for governments to take this requirement into account in adopting legislation (ILO 2018a, paras 320–321, 323).

Nevertheless, national legislation in many countries continue to impose conditions based on nationality, residence, work permit status or reciprocity for the exercise of FACB rights or to exclude some categories of workers or sectors from their scope of labour law protection, as showcased in the examples below. Some examples of legislation set out below contain more than one restriction, but they are listed under one subheading for exemplary purposes.

4.1.1.1. Exclusions from forming trade unions based on nationality

The right to be able to form trade unions of their own choosing, in some circumstances, may be as critical to migrant workers, particularly those working in migrant-dominated sectors, as the right to join existing trade unions. For example, there may not be trade union coverage in a sector or company in which the migrants are working. Nevertheless, in some countries, national legislation imposes conditions on forming trade unions or associations based on being a national of that country.

In Thailand, for example, under the Labour Relations Act, 1975, only Thai nationals by birth can organize a trade union or serve as a trade union committee member or officer. According to IndustriALL, even though migrant workers can join already existing trade unions led by Thai-born nationals, there are very few relevant options, as migrant workers are concentrated in industries where not many Thai-born nationals are employed, such as the shrimp and commercial fishing industries. In this regard, the CFA noted that the restriction on the right to form a trade union based on nationality effectively bars unionization in those industries where migrant workers prevail, and as such, the CFA considered that such restrictions prevent migrant workers from playing an active role in defence of their interests, especially in sectors where they are the main source of labour.³²

In another example, in Jordan, although the law was amended in 2010 to allow migrant workers – who comprise 50 per cent of the Jordanian workforce (ITUC 2019) – to join an existing trade union, it does not permit them to form their own trade unions. The CEACR and the CFA have requested the Jordanian Government to take the necessary legislative measures to ensure that foreign workers can establish organizations.³³

31 CEACR, [Observation – Convention No. 87 – Kuwait](#), published 2018.

32 CFA, Case No. 3164 (Thailand), [Report No. 380](#), 2016; See also ILRF, *Time for a Sea Change: Why Union Rights for Migrant Workers Are Needed to Prevent Forced Labor in the Thai Seafood Industry*, 2020.

33 CEACR, [Observation – Convention No. 98 – Jordan](#), published 2018; and CFA, Case No. 3337 (Jordan), [Report No. 393](#), 2021.

► Box 1. Removal of restrictions on forming a trade union

In Türkiye, the Trade Unions and Collective Agreement Act (No 6356), which entered into force in 2012, eliminated the citizenship requirement for trade union founders and provided for the possibility of non-Turkish citizens to become trade union founders (ILO 2016b, para. 408).

Even in the absence of any explicit restrictions on non-nationals, a lack of explicit FACB rights protections in law for non-nationals may have a negative impact on migrant workers forming their own trade unions. In countries where the legislation is silent or not sufficiently clear to establish the rights of non-nationals to form trade unions, the CEACR has called on governments to amend their legislation and to provide information on how the right is exercised in practice.³⁴

4.1.1.2. Restrictions on registration of trade unions

Legal procedures regulating the establishment of trade unions may have a disproportionate negative impact on migrant workers' exercise of their FACB rights. For example, where a State has mandatory registration for a trade union, government officials may have discretion in determining whether to accept such registration or not. In such circumstances, a migrant workers' organization may not be recognized and registered. Article 2 of Convention No. 87 requires workers to be permitted to establish organizations without previous authorization. This means that authorities should not have discretionary power to refuse the establishment of an organization, nor must registration requirements constitute such an obstacle so that they effectively prohibit such establishment in practice (ILO 2012, para. 82).

The CEACR has found that legal requirements for the establishment of trade unions that are very difficult or impossible to fulfil, such as in the case of organizations representing domestic workers, effectively exclude such workers from the right to organize or bargain collectively (ILO 2022a, para. 1005).

Registration procedures that require documentation, such as travel or birth documents from the country of origin, to register organizations may be difficult for migrant workers to provide, in particular undocumented migrants. Also, high registration fees for establishing an organization could prove to be too onerous for migrant workers who often have minimal financial resources (UN HRC 2020b, para. 39).

4.1.1.3. Restrictions on joining trade unions based on nationality

In addition to restrictions on establishing trade unions, national legislation in some countries impose conditions on joining trade unions that effectively restrict membership to nationals of that country. These conditions may take the form of completely barring non-nationals from membership in recognized trade unions. In such instances the legislation restricts membership of trade unions to being born in or being a citizen of that country, which prevents migrant workers from joining existing trade unions. For example, in Viet Nam, the Law on Trade Unions (2012), provides only Vietnamese labourers with the right to establish, participate in or operate trade unions in the country (article 5). In Qatar the Labour Law states that membership in the General Union of the Workers of Qatar shall be confined to Qatari workers (section 116(4)).

There appears to be some marked progress in the removal of absolute barriers to non-nationals joining trade unions solely based on their nationality. However, there remains legislation in quite a few countries that places conditions on non-nationals joining and participating in trade unions based on the length of their residence and/or their work permit status. Examples of these conditions are set out below.

³⁴ For example, CEACR, [Observation – Convention No. 87 – Liberia](#), published 2021.

4.1.1.4. Restrictions on forming and joining trade unions based on conditions of residence, work permit or reciprocity

Migrant workers, regardless of their status, are covered by Article 2 of Convention No. 87. Some countries make a distinction in FACB rights protection between documented and undocumented migrant workers. For example, Türkiye provides many labour rights to documented migrants, but prohibits undocumented workers from forming and joining trade unions (CMW 2016, para. 61). In Mauritius, a non-citizen needs to hold a work permit to be entitled to join a trade union. On this point, the CEACR has requested the Government of Mauritius to ensure that all migrant workers, whether in a regular or irregular situation, enjoy, in law and in practice, the right to establish and join organizations without distinction whatsoever.³⁵

► Box 2. Removal of restrictions on forming and joining a trade union

In 2001, the CFA requested the Government of **Spain** to take the terms of Article 2 of Convention No. 87 into account in the Basic Act No. 4/2000, which restricted foreigners' trade union rights by making their exercise dependent on the authorization of their presence or residence in Spain. The CEACR noted later with satisfaction the adoption of Act No. 2/2009 reforming Basic Act No. 4/2000, which followed Constitutional Court rulings that found that the requirement imposed by Basic Act No. 4/2000 on foreign nationals was contrary to the Constitution. The new section 11 of Basic Act No. 4/2000 now provides that foreign nationals shall have the right to organize freely or join an occupational organization and can exercise the right to strike under the same conditions as Spanish workers.

In the same manner, the CEACR has noted that the restrictions provided in Kuwait's labour legislation (limiting migrant workers' ability to join trade unions to those with a work permit and at least five years' residence in the Kuwait) are not compatible with Article 2 of Convention No. 87. To highlight the impact of these restrictions in practice, the CEACR noted that: according to the Central Statistical Bureau of Kuwait, around two-thirds of the population in the country are non-Kuwaiti citizens and thus subject to these restrictions. The CEACR also considers these restrictions to be incompatible with Convention No. 98.³⁶

Residence restrictions not only deny undocumented workers the possibility of fully exercising their FACB rights, they also deny migrant workers in temporary and seasonal work the same rights protections.

Observations filed by national and international labour organizations have served to highlight the extent of the FACB problems faced by migrant workers in law and in practice. For example, the ITUC, in its observations of 2020 on the application of Convention No. 87 in Albania, denounced the persistent restrictions on the right of migrant workers to establish trade unions. Based on this information and an examination of laws that provided no clear FACB rights protection, particularly to undocumented workers, the CEACR requested the Government of Albania to take all necessary measures to ensure that all foreign workers, whether they have a permanent or temporary residence permit or are without a

³⁵ CEACR, [Observation – Convention No. 87 – Mauritius](#), published 2022.

³⁶ CEACR, [Observation – Convention No. 87 – Kuwait](#), published 2011; CEACR, [Observation – Convention No. 87 – Kuwait](#), published 2016; CEACR, [Observation – Convention No. 87 – Kuwait](#), published 2018; CEACR, [Observation – Convention No. 87 – Kuwait](#), published 2022; and [CEACR, Observation – Convention No. 98 – Kuwait](#), 2021, published 2022.

residence permit, can exercise trade union rights, particularly the right to join organizations that defend their interests as workers.³⁷

Some countries require a condition of reciprocity for migrant workers to be able to exercise FACB rights. The CFA has stated that the requirement of reciprocity is not acceptable under Article 2 of Convention No. 87 (ILO 2018a, para. 325). For example, in non-conformity with the Convention, the Labour Code of the Philippines restricts the right to form and join trade unions to migrant workers with valid permits who are nationals of a country that guarantees the same rights to Filipino workers or that have ratified either ILO Convention No. 87 or No. 98.³⁸

Countries may also require both residency and reciprocity conditions to exercise the right to establish and join organizations. Over the years, the CEACR has highlighted the need for the Government of the Central African Republic to amend section 17 of its Labour Code, which limits the right of foreign nationals to join trade unions by imposing conditions of residence (at least two years) and reciprocity.³⁹

4.1.2. Exclusion from holding trade union office, enjoying full member participation, or being employed by a trade union

In some countries there are exclusions or restrictions on non-nationals holding trade union office, being entitled to full member participation, or being employed by a trade union. For example, in Singapore, migrant workers may not act as an officer or be employed by a trade union without prior ministerial approval.⁴⁰

In the Maldives, there are restrictions to foreigners holding trade union office. In Honduras, the law requires that the officers of a trade union must be of Honduran nationality, be engaged in the corresponding activity, and be able to read and write.⁴¹

With migrant workers barred from being able to hold office, it is less likely that trade unions will take up or be seen to take up issues of concern to migrant men and women. These restrictions may also have a chilling impact on migrants joining trade unions. Article 3 of Convention No. 87 provides that workers' and employers' organizations should have the right to elect their representatives in full freedom. Therefore, national legislation should not interfere with and/or restrict migrant workers from serving as trade union officials if this is permitted under trade union constitutions and rules, at least after a reasonable period of residence in the host country. The CEACR considers that the rules concerning the election of trade union officers should generally be left to the trade unions concerned, and that prohibitions applied to foreign workers imposed by the legislation are incompatible with the principles of freedom of association. For example, the Committee has been requesting the Government of El Salvador to take the necessary steps to amend its legislation, which establishes the requirement to be "a national of El Salvador by birth" to hold office on the executive committee of a trade union, so as to allow foreign workers to be elected to trade union office.⁴²

37 CEACR, [Observation – Convention No. 87 – Albania](#), published 2022; and CEACR, [Observation – Convention No. 143 – Albania](#), published 2018.

38 CEACR, [Observation – Convention No. 87 – Philippines](#), published 2021; and CEACR, [Direct Request – Convention No. 87 – Côte d'Ivoire](#), published 2021.

39 CEACR, [Observation – Convention No. 87 – Central African Republic](#), published 2021.

40 Trade Unions Act of Singapore, 1940, sections 30(3) and 31(4).

41 CEACR, [Observation – Convention No. 87 – Honduras](#), published 2022; and CEACR, [Observation – Convention No. 87 – Maldives](#), published 2022.

42 CEACR, [Direct Request – Convention No. 87 – El Salvador](#), published 2012; and CEACR, [Observation – Convention No. 87 – El Salvador](#), published 2021. See also CEACR, [Observation – Convention No. 87 – Haiti](#), published 2021; and CEACR, [Observation – Convention No. 87 – Tunisia](#), published 2019.

Thus, some restrictions on the ability of migrant workers to take up trade union office are permissible, so long as those workers may do so after a reasonable period in the host country. In an Observation to the Democratic Republic of the Congo, the CEACR has considered that the requirement of a period of residence of 20 years for access to trade union office is excessive.⁴³ The Committee has stated in this context that three years of residence could be considered a reasonable period of time to take a trade union office. Similarly for Jordan, the CFA recalled that legislation should be made flexible to permit organizations to elect their leaders freely and without hindrance and to permit foreign workers to have access to trade union posts, at least after a reasonable period of residence in the host country.⁴⁴ In Algeria, the CEACR had requested that section 6 of Act No. 90-14 be amended so that the right to establish a trade union organization and to take up positions in the management or administration thereof was recognized for all workers, irrespective of nationality.⁴⁵ In 2022, Act No. 22-06 of 25 April 2022 removed the nationality requirement and allowed non-national workers, subject to three years' residence and according to modalities established in the statutes, to become members of the executive board of a trade union.

The CEACR in 2015 noted with satisfaction the removal of the requirement of Ecuadorian nationality to be eligible for trade union office from the Labour Code. Subsequent information received from national trade unions cast doubt on whether the amendment removing the requirement had gone into effect. Therefore in 2021 the CEACR once again has requested the Government to amend the Labour Law to remove the requirement.

► [CEACR, Observation – Convention No. 87 – Ecuador, published 2022](#)

4.1.3. Exclusion from collective bargaining

Restrictions on migrant workers' ability to form or join a trade union or workers' association directly limits their right to collectively bargain. The CEACR has called attention to restrictions placed on migrants collective bargaining rights as a violation of Convention No. 98. The denial of migrant workers to collective bargaining rights is often linked to a sector in which many migrants work being excluded from the scope of labour law and FACB rights protections. In the United States (which has not ratified Convention No. 98), domestic workers, as well as agricultural workers, many of whom are seasonal farmworkers under the H-2A temporary labour programme,⁴⁶ are excluded from the protection of the right to join a trade union and to collective bargaining under the National Labor Relations Act,⁴⁷ although certain State legislation covers these rights for agricultural workers.⁴⁸ In Kuwait and Lebanon, domestic workers are excluded from the protections of the labour code and thus from FACB rights protection. (More information on migrant worker-dominated sectors is provided in section 4.1.4. below).

43 CEACR, [Observation – Convention No. 87 – Democratic Republic of the Congo](#), published 2021.

44 CFA, Case No. 3337 (Jordan), [Report No. 393](#), 2021.

45 CEACR, [Observation – Convention No. 87 – Algeria](#), published in 2021.

46 In fiscal year (FY) 2021 the US Department of Labor certified over 317,000 seasonal farm jobs to be filled by H-2A workers, up 15 per cent from 275,000 in FY20, and more than three times the 100,000 jobs certified in FY13 (Martin 2022).

47 US National Labor Relations Act, 29 USC Sections 151–169. 2(3).

48 For example the California Agricultural labour Relations Act (1975) establish the right to organize and bargain to collectively for all agricultural employees in that State; the New York Farm Laborers Fair Labor Practices Act (2019) establishes these rights for all farm workers, including foreign visa workers.

Other legal restrictions, such as the ability of non-nationals to hold office or fully participate in trade union activities has a chilling effect on the interests of migrants being represented in collective bargaining. On this point, in regard to Malaysia, in 2021 the CEARC regretted that “the [Malaysian] Government’s report is limited to reiterating that foreign workers are eligible to becoming members of a trade union and to hold trade union office upon approval of the Minister, if it is in the interest of such union (a condition which, in the Committee’s views, hinders the right of trade union organizations to freely choose their representatives for collective bargaining purposes) and does not elaborate on any of the concerns previously raised on limitations on collective bargaining of migrant workers in practice”. The Committee requested the Government to take the necessary measures to ensure full utilization of collective bargaining by migrant workers, including by enabling migrant workers to run for trade union office.⁴⁹ The Committee thus linked migrant workers holding trade union office to the right to effective representation in collective bargaining.

In addition to legislative provisions, courts may interpret existing laws to exclude migrant workers. For example, in Malaysia, a judicial decision in the paper industry held that migrant workers under fixed-term contracts could not benefit from the conditions contained in collective agreements.⁵⁰

4.1.4. Restriction on FACB rights in sectors and working arrangements with a high concentration of migrant workers

In some countries, the relevant labour legislation containing FACB rights either explicitly excludes or does not cover specific sectors such as domestic and care work, agriculture, seafood, or export processing zones or workers in the informal economy. This lack of legal protection compromises the FACB rights of all workers in those sectors and types of employment, including migrant workers, who often constitute a significant share of the workforce in these sectors. In addition, women, who often constitute the majority of workers in excluded sectors and in the informal economy, are often most at risk of labour exploitation and thus most in need of FACB rights protections. Where they do exist, regulations covering those sectors, in particular domestic work, often fail to include protection of FACB rights.

4.1.4.1. Domestic workers and workers in the care economy

The 2022 General Survey by the CEACR provides an extensive analysis of FACB protections and rights gaps for workers in the care economy, in particular domestic workers. The General Survey notes that in some countries domestic workers are covered by general labour law and their FACB rights are thereby protected; however, in other countries there are special regulations applicable to domestic workers that do not contain FACB protections, and in other countries domestic workers are outside the scope of any labour law or regulation protection. It is noteworthy that in some countries where the labour law does not apply to domestic workers, their FACB rights may be protected through Constitutional guarantees on freedom of association or under provisions of Trade Union Acts (ILO 2022a, paras 997–999). With respect to domestic workers who may fall outside or be only minimally protected by the labour law framework, the CEACR underlines the need to ensure that domestic workers are covered by the relevant legislation and that they benefit in practice from the guarantees outlined in Conventions Nos 87 and 98 (ILO 2012).⁵¹ For example, in Kuwait, domestic workers are excluded from the scope of the Labour Law, including its provisions on freedom of association, and the Domestic Workers Law does not contain any provisions recognizing the right of domestic workers to organize. The CEACR has requested the Government of Kuwait to take all necessary measures, including through revising legislation, to

49 CEACR, [Observation – Convention No. 98 – Malaysia](#), published 2022.

50 CEACR, [Observation – Convention No. 98 – Malaysia](#), published 2017.

51 See also CEACR, [Direct Request – Convention No. 87 – Haiti](#), published 2005; CEACR, [Observation – Convention No. 98 – Lebanon](#), published 2019; and CEACR [Observation – Convention No. 98 – Kuwait](#), published 2022.

ensure the full recognition in law and in practice of the right of domestic workers to establish and join organizations.⁵² In Bahrain, domestic workers are excluded from the scope of the Labour Act for the private sector; there is also no separate law covering them and they are excluded from the Workers Trade Union Act based on their exclusion from the Labour Act. Thus, they have no legal FACB rights or protections (ILO 2022a, para. 1001).

The lack of FACB protection in law prevents organizations of domestic workers from registering as trade unions. In Bangladesh, the CEACR noted the indications of the National Domestic Women Workers Association (NDWWU) that they run organizing and awareness-raising campaigns and lobby for better legal protection of domestic workers, but they are not able to register as a trade union due to the exclusion of domestic workers from the scope of the Labour Law. The CEACR noted similar restrictions on domestic workers' organizations registering as trade unions in Kuwait and Jordan (ILO 2022a, para. 1001).

The vulnerable situation of domestic workers, in particular women, is also exacerbated by the fact that they are employed within private households and usually live under the same roof as their employers, which causes significant restrictions on their mobility, since they are often required to notify or ask permission from their employer before leaving the household (ILO 2017b). In Malaysia, while migrant workers in other sectors can join trade unions (although they are not allowed to hold trade union posts), migrant domestic workers do not have such rights to establish or join organizations of their own choosing (ILO 2003).⁵³ In the United States, domestic workers are excluded from the protection of FACB rights under the Federal Labor Relations Act. In Cambodia, the ITUC has drawn attention to the effective restrictions of FACB rights in practice for workers in sectors such as domestic work and the informal economy because of the enterprise model of industrial relations set out in the labour law. Because domestic workers and workers in the informal economy are not organized on an enterprise model, they remain unable in practice to form and join trade unions.⁵⁴ Thus, it is the structure of the industrial relations systems that interferes with many workers' enjoyment of FACB rights. It should be noted that such a system of industrial relations is not widespread, and that in many countries, informal economy workers can join trade unions and domestic workers have formed and joined trade unions.

The lack of FACB rights in domestic work and care work may also be due to limitations on private household employers. In many countries, private households that employ domestic workers are not included in the legal definition of "employer", and therefore individuals who employ domestic workers cannot establish or join occupational organizations and bargain collectively. Thus, even in systems where the right to freedom of association of domestic workers is fully recognized, collective bargaining may not be possible due to the absence of or legal limitations on employers' organizations as well as the practical hurdles that they encounter in forming a representative, collective voice for employers (ILO 2022a, para. 1009).

With respect to nurses in the care economy, many of whom are women migrants, most are not excluded from legislative protection of FACB rights; however, anti-union discrimination and the absence of effective complaint mechanisms and sanctions may, in practice, deter nurses from organizing, particularly in the private sector (ILO 2022a, para. 987).

52 CEACR, [Observation – Convention No. 87 – Kuwait](#), published 2022.

53 See also: CFA, Case No. 2637 (Malaysia), [Report No. 392](#), 2020.

54 CEACR, [Observation – Convention No. 87 – Cambodia](#), published 2022.

4.1.4.2. Agriculture and precarious work arrangements

Agriculture is another sector characterized by a significant number of migrant workers. In its 2015 General Survey concerning the right of association and rural workers' organizations' instruments, the CEACR highlights that in countries where large numbers of rural workers are migrants, restrictions on the right of migrant or foreign workers to form or join trade unions may negatively affect rural workers and that such legislative restrictions, often based on residency requirements and principles of reciprocity, may prevent migrant and foreign workers from playing an active role in defence of their interests (ILO 2015a, para. 130). For instance, the Bolivian General Labour Act of 1942 excludes agricultural workers from its scope, which implies that agricultural workers cannot realize their rights to establish and join organizations, organize their activities, formulate their programmes and elect their representatives in full freedom.⁵⁵

Recent research on Thailand reveals that in the migrant-dominated sectors of seafood processing and fishing, where migrant workers are legally barred from forming their own trade unions, labour abuse and exploitation of these workers' rights are prevalent despite government reforms in the monitoring and inspection of these sectors (ILRF 2020).

In some countries, men and women migrants work in export processing zones that are excluded from national labour law, in particular FACB rights, in order to attract international companies (ILO 2014e).

Migrant workers often are engaged under informal, precarious, short-term, temporary or seasonal work arrangements. The CFA has reiterated that all workers must be able to enjoy the right to freedom of association regardless of the type or status of the employment contract under which they have been engaged, and even if they have no contract, to avoid the possibility of having their precarious situation taken advantage of (ILO 2018a, paras 328–330). The CFA and the CEACR have recognized that one of the main concerns expressed by trade union organizations is the adverse impact of insecure forms of employment on trade union rights and the protection of workers' rights. Furthermore, such forms of insecurity can have a chilling effect and deter workers from joining trade unions as well as depriving them of their rights to trade union representation and collective bargaining (ILO 2018a, para. 326).

⁵⁵ CEACR, [Observation – Convention No. 87 – Plurinational State of Bolivia](#), published 2021. See also CEACR, [Observation – Convention No. 87 – Canada](#), published 2021.

► **Box 3. Labour inspection and effective and accessible complaint mechanisms for domestic workers**

Concerning the application of Convention No. 97, the CEACR noted with interest Spain's launching of a specific labour inspection campaign on domestic work in 2021. The labour inspection campaign addresses the informal economy by prioritizing complaints presented and includes technical assistance and sensitization on the regularization of salaries that are below minimum salary rates. The Government reported that it has taken measures to make claim forms available in different languages and that Labour Inspectors are able to access private homes within the limits of the right to inviolability of the home (and, hence, requiring the owner's consent or a judicial authorization).

The Government provided data on the inspections carried out in the domestic work sector for the period 2017–20, showing that:

- i. The Service on Social Security and Foreigners did 1,072, 952, 956 and 669 inspections in 2017, 2018, 2019 and 2020, respectively, all of them concerning undeclared work;
- ii. In 2020, 161 inspections carried out by the Service of Labour Relations and 28 inspections carried out by the Occupational Safety and Health Service originated in workers' complaints.

However, the CEACR pointed out that the data did not specify which claims were presented by migrant domestic workers.

Noting the above information and the General Union of Workers (UGT)'s observations that measures foreseen to monitor the implementation of labour inspection (Royal Decree 1620/2011) had not been undertaken, the Committee expected the Government to continue to take measures so that the relevant information is provided to migrant domestic workers in a manner and language that they understand and to take other necessary and appropriate measures to monitor the implementation of Royal Decree No. 1620/2011 as soon as possible. The Committee also asked the Government:

- (5) to provide information on the implementation of the 2021 labour inspection action campaign on domestic work and the results achieved, and
- (ii) to continue providing statistical information on complaints filed before the Labour Inspection, courts or any other competent authority, in particular those filed by migrant domestic workers, as well as the inspections conducted, and sanctions imposed.

Source: CEACR, [Observation – Convention No. 97 – Spain](#), published 2022.

4.1.5. Restrictions on access to justice

Migrant workers, like all other workers, should have access to justice and judicial remedies against violations of their fundamental labour rights, including unlawful restrictions on their FACB rights. Access to justice should include the right to bring complaints to an independent body such as a labour tribunal or court. For example, migrants may have grievances concerning non-payment of wages, recruitment fees or trade union rights infringements. They should be able to pursue these grievances without fear of retaliation or intimidation and with assurance that their complaints will be addressed fully, fairly with credible investigation. While many countries grant migrant workers equal rights with nationals in regard to access to justice, the living and working environments of migrants may inhibit their access to such justice. Most migrant workers are not members of trade unions who could assist and represent them in bringing claims or negotiating employment-related grievances. Many women work in individualized and isolated situations, such as private households, where they have little or no contact with others outside the household. In such circumstances it is unreasonable to expect migrant workers to enforce their rights through the court system without assistance. Moreover, migrants may face language barriers and lack an understanding of their rights and the national legal system. The imposition of fees as a condition for commencing or continuing legal proceedings may have a chilling effect or be an obstacle for migrant workers in accessing justice (ILO 2016b, paras 488–489).

Labour inspection services are also crucial to ensuring migrant workers' legal protection and access to justice. The CEACR has recognized the particularly vulnerable situation of migrant workers in an irregular situation and the fact that they may be unwilling to cooperate with labour inspectorates for fear of negative consequences such as losing their jobs or expulsion from the country. In this context the CEACR has pointed out that the main job of the labour inspection system is to protect the rights and interests of all workers and to improve their working conditions, rather than enforcement of immigration laws. The CEACR considers that any cooperation between immigration and labour inspection services should be carried out with caution (ILO 2016b, para. 482). This concern is linked to concerns over conflicts between immigration and labour law and national policies that prioritize security law over labour protection.

4.1.6. Conflict of labour and immigration law

Even in countries where the labour law protects the FACB rights of migrant workers, the lack of alignment between labour law and immigration law can permit private employers or recruitment agencies to insert restrictions on FACB rights in the labour contracts of migrants. In such cases, it is the immigration law that allows the insertion of such restrictions into the employment contracts or work permits.⁵⁶

Enhanced security powers based on immigration laws and targeted at migrants – such as granting broad arrest and deportation powers to law enforcement – can have a chilling effect on migrant workers exercising their right to organize or pursuing their rights through the judicial system. This is particularly true for undocumented workers. For example, in the Inter-American Commission on Human Rights case of *Undocumented Workers v. United States of America* the petitioners alleged that because employers were permitted to seek discovery of a worker's immigration status whenever a claim of workplace rights violation was made, migrant workers were discouraged from asserting their workplace rights (IACHR 2016). The Special Rapporteur on human rights of migrants has pointed out that “in countries where migration status takes precedence over rights redress, undocumented workers may doubt whether the fruits of their association and advocacy are worth the risk” (UN HRC 2020b, para. 43). The Special Rapporteur also highlighted that States that approach migration through a security-oriented lens effectively erect additional barriers to migrants' enjoyment of association rights.

⁵⁶ See CFA, Case No. 2637 (Malaysia), [Report No. 353](#), 2009, para. 1048, and [Report No. 397](#), 2022.

4.1.7. Omissions in bilateral and multilateral labour migration agreements

The CEACR's 2016 General Survey on instruments concerning migrant workers reported the existence of a multitude of diverse regional and bilateral agreements. While many contain references to the protection of migrant workers, some agreements do not contain any reference to labour rights or equal rights protection. A gaping omission in the contents of these agreements is the lack of reference, support or promotion of FACB rights for migrant workers. While the Model Agreement appended to Recommendation No. 86 mentions FACB rights, as a non-binding instrument, it does not require the inclusion of a clause protecting these rights. In an ILO review of bilateral agreements and memoranda of understanding, 77 per cent of agreements in Europe and the Americas contained specific reference to equal treatment of migrant workers, non-discrimination, or protection of migrant workers' rights, compared to 53 per cent of agreements in Africa and 21 per cent of agreements in Asia (ILO 2016b, 53).⁵⁷

The persistence of widespread abuses in some destination countries highlights that bilateral agreements with origin countries have not led to necessary reforms in national laws and practices. For agreements that do provide for the protection of FACB rights to be fully and effectively implemented, a significant law reform and reinforcement of the labour inspection system and workplace protection, and adequate mechanisms for lodging complaints and access to justice would be required in destination countries (ILO 2015g). The UN Network on Migration's recently adopted [Guidance on Bilateral Labour Migration Agreements](#) recommends that all BLMAs should respect, promote and realize all human rights, freedom of association and the effective recognition of the right to collective bargaining (Principle A.1).

► 4.2. Obstacles in practice

In many countries, even when FACB rights are recognized under domestic legislation, there are implementation gaps when it comes to their application in practice. This is true for all workers, but even more so for those who are members of vulnerable or marginalized groups of workers, such as migrant men and women, who would benefit most from the protection of association against discrimination, marginalization and intimidation, which commonly affect them in their destination countries. The ILO TUS 2021 identified diverse barriers to trade union support of migrant workers, including social and cultural barriers, gender-based barriers, and political and economic barriers. The low participation rates of migrants in trade unions attests to this (see also the Annex below for more details). In addition, the international supervisory bodies, and migrant worker organizations have emphasized that migrant workers face challenges concerning the exercise of their FACB rights in practice (ILO 2020b, para. 413). To enable migrant workers to exercise their rights, attention needs to be paid to the practical, as well as the legal, barriers that obstruct migrant workers' organizing and representation at the negotiating table.

Yet, a recent Solidarity Center and Civicus (2019) survey of migrant workers confirms that many of them want to exercise their rights and participate more fully in their new countries. They do not want to remain on the margins of host society. Migrant workers report that they want to have a voice in their communities and in their workplaces on issues affecting their lives. However, for many, they do not feel able or comfortable doing so. Other research shows that migrant workers want to join trade unions.⁵⁸

⁵⁷ See also ILO, *Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review*, 2015.

⁵⁸ See also ILRF 2020.

Through organizing, migrant workers can come together to share problems and find solutions to those problems. Trade union affiliation allows them to gain self-confidence, recognition and respect for their work, and to improve their working conditions. Trade unions also offer possibilities through training migrant workers to gain new skills and by filling knowledge gaps about their destination countries.

In the absence of legislative restrictions, why are migrant workers not exercising the FACB rights? One of the main reasons cited for migrant workers not joining trade unions when they are allowed to do so is fear of losing their jobs. Often, migrant workers who try to get organized are immediately dismissed by their employers (ILO 2013b). In other cases, migrant workers have no experience in organizing, and the precariousness of their employment makes them feel dependent on their employer, vulnerable and lacking in self-confidence. Migrant workers, particularly those in an irregular status, may also refrain from enjoying their FACB rights due to fear of anti-union discrimination, repatriation, detention or deportation, and might find it challenging to get organized due to lack of information, isolation, or language barriers (ILO 2017a; IHRB 2019). While acknowledging that obstacles to FACB rights vary across countries, this section sets out the nature of some of these actual and perceived practical barriers that occur in varying degrees to migrant workers beyond the restrictions imposed by law.

4.2.1. Anti-union discrimination and interference

One of the main reasons why migrant workers refrain from exercising their right to organize is due to fear of anti-union discrimination by employers or national authorities. It is worth recalling here that all migrant workers are protected under the under the ILO Constitutional principle on freedom of association, and under the terms of Convention No. 98, workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment (Article 1(1)), and such protection shall apply more particularly in respect of acts calculated to:

- a. Make the employment of a worker subject to the condition that he shall not join a trade union or shall relinquish trade union membership;
- b. Cause the dismissal of or otherwise prejudice a worker by reason of trade union membership or because of participation in trade union activities outside working hours or, with the consent of the employer, within working hours (Article 1(2)).

For instance, the CEACR has raised concerns about the existence of anti-union reprisals in the domestic work sector in Lebanon.⁵⁹ The CEACR also noted the concern raised by worker members of the International Labour Conference Committee that migrant workers in Malaysia faced a number of practical obstacles to collective bargaining, including the typical two-year duration of their contracts and their vulnerability to anti-union discrimination.⁶⁰

Anti-union discrimination may take the form of employers placing practical obstacles in the way of migrant workers organizing. For example, where the employer provides housing for migrant employees to live in, employers can hinder trade union organizers' access to the migrants through threats and intimidation. Employers may also deny migrant workers' access to trade unions by threats of retaliation. Employer retaliation may take the form of dismissal, changing work assignments, denying or requiring overtime, harassment, or other detrimental actions. The Special Rapporteur on the human rights of migrants noted that retaliation may also entail putting temporary migrant workers on a blacklist. Where a migrant worker's visa is connected to his or her employer, such as in the *kafala* system, retaliation in the form of dismissal can result in deportation (UN HRC 2020b, para. 56). The CEACR has found the practice of "blacklisting" trade union officers, activists or members within the context of hiring procedures is incompatible with the principles of Convention No. 98 (ILO 2012, para. 178).

⁵⁹ CEACR, [Observation – Convention No 98 – Lebanon](#), published 2019.

⁶⁰ CEACR, [Observation – Convention No. 98 – Malaysia](#), published 2017.

A recent survey of migrants and refugees conducted in five countries by the Solidarity Center and Civicus (2019, 27) found that “harassment or pressure from employers is perceived as a major barrier to the exercise of their freedom of association by migrant workers everywhere (78 per cent of respondents in Jordan, 74 per cent in Malaysia, 66 per cent in Kenya and 33 per cent in Mexico)”.⁶¹

In the ILO TUS 2021, trade unions reported that migrants were reluctant or afraid to engage with them for fear of losing their jobs or other legal repercussions, such as losing their work permits. A trade union in Kenya reported, “Sometimes migrant workers are suspicious of trade unions especially if they do not have freedom of association in countries of origin or are threatened by employers to terminate their services if they joined the union.”

In addition to anti-union discrimination and retaliation, another form of anti-union interference exists wherein employers attempt to replace independent trade unions with weak associations or employer-led associations that do not have the power to negotiate binding legal agreements. Such actions are in direct contravention of the provisions of Convention No. 98. Thus, committees or associations dominated by private sector actors, NGOs, employers or government agencies cannot be considered an adequate substitute for trade unions. However, in some situations and sectors where migrants are prohibited from forming trade unions, independent grassroots migrant workers’ organizations can play important roles in defending migrant workers’ interests.⁶²

4.2.2. Information and communication barriers

Language barriers are another operational constraint for migrant workers to organize, especially where migrant workers lack information on laws and procedures governing the exercise of FACB rights in the destination country. Language differences can be addressed through education as well as translation services. Migrant workers should be able to access all relevant documents in the required languages (UN HRC 2020b; Gopalakrishnan and Sukthankar 2012).

Lack of information on national or international human rights and labour laws, including FACB rights, as well as an unfamiliarity with trade unions’ cultures and practices can inhibit migrants from seeking out trade unions. The Solidarity Center and Civicus (2019) survey results showed that a majority of migrants are unaware of their rights concerning freedom of association. The ILO TUS 2021 reveals that many trade unions have the same impression on migrants’ lack of rights awareness. Raising awareness was described by trade union respondents as the most common activity directed at migrant workers.

In its 2021 Observation on Convention No. 98 for Mauritius, the CEACR called on the Government to strengthen labour inspection and information activities concerning collective bargaining in sectors employing migrant workers, such as the export processing zones (EPZs), sugar and manufacturing, particularly in light of COVID-19, which had affected these activities.⁶³

Many migrant workers also lack information on the trade unions operating in their sectors; how they are organized; or the possibilities of joining them. For example, in the results of a survey of migrant workers on trade union membership in Ireland, the majority of reasons given for not joining a trade union related to a lack of knowledge about trade unions in general, with some migrant workers indicating that they did not know why being a member of trade union would be relevant to them (Doras Luminí 2016). Research also shows that it is migrants who had been affiliated with trade unions in their country of origin who are most likely to seek out and join trade unions in destination countries (Solidarity Center and Civicus 2019).

⁶¹ Note that Germany only covered refugees, and so is not included in the results of the survey.

⁶² See ILRF 2020.

⁶³ CEACR, [Observation – Convention No. 98 – Mauritius](#), published 2022; and CEACR, [Observation – Convention No. 87 – Mauritius](#), published 2022.

4.2.3. The working environment and length of stay

Migrant workers who are admitted into countries as part of temporary migrant worker programmes are recognized as being among the most challenging groups of workers to organize. Their time-limited presence or contract duration in the destination country distinguishes them from migrant workers with longer-term residence periods. These workers often are not well integrated into their workplaces or the communities in which they work, and they have little time or opportunity to establish or join a trade union. The temporary nature of migrant workers' stay in a country was identified in the ILO TUS 2021 as an obstacle to trade unions' outreach to them. Research has shown that the longer a migrant worker stays in the country of destination and becomes increasingly acclimated to the local setting, the greater the likelihood of him or her becoming unionized (Kranendonk and De Beer 2016; Krings 2014).

The workplace isolation and informality of some sectors – such as domestic work, rural agriculture and construction – does not fit into the traditional model of workplace organizing, thereby constituting an obstacle to FACB rights in practice (Tayah 2016). On this subject, the CEACR has recalled that the specific characteristics of domestic work, which often involve a triangular employment relationship; a high degree of dependence on the employer, especially in the case of migrant domestic workers; and the frequent isolation of domestic workers in their workplaces – all factors that make it difficult for domestic workers to form and join workers' organizations or to collectively bargain.⁶⁴

Migrants who work long hours and overtime and have little time off may find it difficult to attend trade union meetings or events. Those who work in individualized and isolated situations may have little opportunity to make contact with persons or organizations outside of their workplace. For example, women migrant domestic workers have reported not being allowed to use the telephone, contact friends or write letters home (ILO 2003). In some situations, there may exist elements of coercion, intimidation and punishment that make migrant workers fear reaching out to organizations.

Agricultural workers, many of whom are migrant workers, also face significant challenges in the exercise of their right to freedom of association and their capacity to use their collective voice. Those working in rural areas far from city centres and without access to transportation have little, if any, information on or contact with trade unions. In many cases their work is seasonal or temporary and they do not stay in one place long enough to establish contact with existing trade unions or to try to form their own organizations. In rural areas, unionization levels are usually very low, and rural workers' organizations are often weak and fragmented. Labour organization tends to be stronger in large farms and when employment is stable and labour relations more formalized, as in plantations (ILO 2020b).

According to the UK (United Kingdom) trade union Unite, obstacles faced by rural workers are, in general, even worse for migrant workers because of language barriers, lack of information on and awareness of employment rights, indebtedness to agencies, traffickers, and physical and social isolation (ILO 2015a).

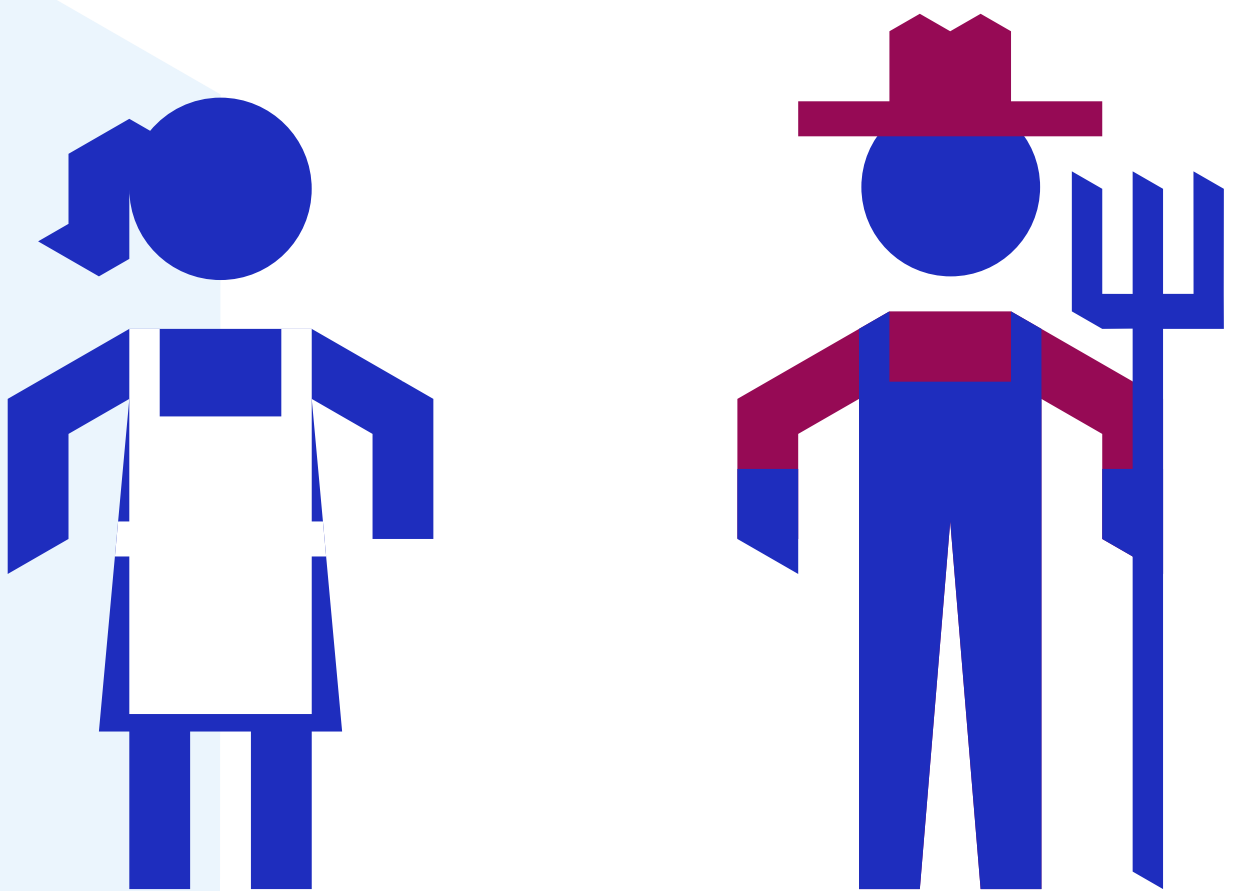
⁶⁴ See CEACR, [Direct Request – Convention No. 189 – Germany](#), published 2021; and CEACR, [Direct Request – Convention No. 189 – Ireland](#), published 2021.

4.2.4. Discrimination and cultural barriers

Discrimination, intimidation and harassment – including sexual harassment – have been seen to be used on factory floors to keep workers docile, including to prevent and repress the participation of women workers in trade unions. Patriarchal gender norms expect women to prioritize family over work or community engagement, and thus limit women’s participation in the public sphere. Gender norms regarding public/private divides and productive/reproductive work also bring challenges for women workers to balance work, family and activism.

Women migrant workers face multiple obstacles to exercising their FACB rights. They not only face anti-migrant attitudes and discrimination; they also face sexism and gender-based inequalities throughout the migration process. As referred to above, women migrant workers are often working in unprotected sectors and in informal working arrangements. Their working conditions can be more individualized, isolated, exploitative and restrictive than their male counterparts. These circumstances along with male-dominated organizations and attitudes inhibit women from even trying to exercise their FACB rights in practice.

The ILO Trade Union Survey presented in the Annex provides an overview of trade union views on the diverse challenges experienced by migrant women in respondents’ countries. These include issues related to social protection, employment structures, family responsibilities, poor conditions of work, intersectional discrimination, and violence and harassment. Surveyed trade unions also point out the isolation of migrant women and their reluctance to seek help, as well as the cultural and social expectations and limitations placed on where women should work and what responsibilities they should have. Box 4 provides examples of trade union’s concerns over the challenges faced by women migrant workers.



► **Box 4. Challenges experienced by women migrant workers: Voices from the field**

Trade union respondents to the ILO Trade Union Survey 2021 shared a variety of challenges experienced by women migrant workers in their countries. These challenges were diverse, and prompted the following comments from trade unions in a variety of countries:

"They lack social protection and security." (Trade union federation, Lesotho)

"Women and men migrant workers do not have access to publicly provided sexual and reproductive health care. Although migrant workers are required to hold private insurance, it is common for sexual and reproductive health care to be excluded from these policies." (Trade union federation, New Zealand)

"Little or no information received [by women migrant workers] about their rights in the workplace." (Trade union federation, Mexico)

"Lack of maternity protection, discrimination, sexual harassment." (Trade union federation, Zambia)

"The high cost of residence permits for them and their families." (Trade union federation, Mauritania)

"Risks for women largely arise in the service sector. Regarding the rights at work, women will often become [an] invisible workforce when they work for private households. The isolation of female migrant workers is a typical problem of female migration in general. Moreover, there are risks of violence and exploitation of this workforce." (Trade union federation, Kazakhstan)

"Women has faced the major brunt of the pandemic. Health crisis has both amplified existing gender dynamics and created new gender-biased outcomes that disproportionately impact upon women migrant workers. Discrimination, exploitation, harassment, gender-based violence and domestic violence has further aggravated the agony." (Trade union federation, India)

"Increased risk of sexual harassment and gender-based violence." (Trade union federation, Australia)

"Most of them [women migrant workers] have irregular status. They live in precariousness, without permanent employment." (Trade union federation, Senegal)

"Xenophobia and abuse by the employers." (Trade union federation, Panama)

Source: TUS 2021.

Migrant workers who are part of a minority group, such as LGBTI+ persons, may face additional discrimination and challenges to exercising rights of association. Transgender persons may find it difficult to access identity documentation needed for regular migration or the registration of an organization.

Migrant workers are often of a different origin, ethnicity or religious affiliation than the majority of citizens in the destination country where they work. Consequently, perceived and actual attitudes and practices based on racism, prejudice and intolerance may isolate migrant workers from traditional trade unions.

4.2.5. Anti-migrant attitudes and immigration status

Concern over loss of status, deportation or placement in a detention facility plays a major role in inhibiting migrant workers from exercising their FACB rights or from making complaints concerning labour rights violations. Where migrants may be arbitrarily stopped, detained and/or deported, they will refrain from taking actions that may put them on law enforcement's radar, and this interferes with organizing. As has been reported in the Solidarity Center and Civicus (2019) survey of migrants, they do not want to be seen as "trouble-makers". In countries where legislation or policies allow enforcement officers to arrest and deport migrants in many circumstances, migrant workers may be afraid to challenge authorities by exercising their FACB rights, with this being especially the case for migrants in an irregular situation (UN HRC 2020b).

4.2.6. Social dialogue

Social dialogue is key to the development of rights-based, transparent and coherent labour migration legislation and policies that also take into account labour market needs (ILO 2013, as cited in ILO 2017a, 26). The ILO instruments on migrant workers recognize the importance of consultations with representative organizations of employers and workers concerning:

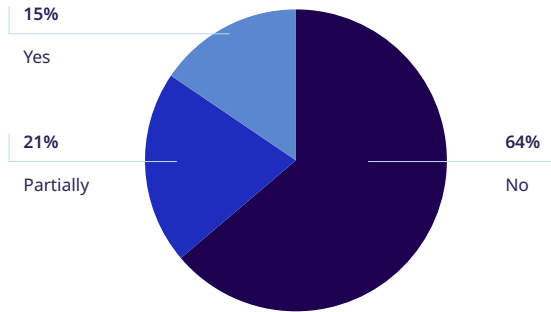
- The protection of migrant workers' rights in accordance with Conventions Nos 97 and 143;
- The development and implementation of migration policy; and
- The prevention and elimination of abuses to migrant workers.

The CEARC has stressed the pivotal role played by social partners in effective labour migration governance including, the adoption of legislation and promotion of equal opportunity and treatment for migrant workers. Other ILO policy instruments recognize and or call for social dialogue throughout the migration for work process. For example, the ILO General Principles and Operational Guidelines for Fair Recruitment call on governments to consult with organizations of employers and workers to ensure compliance throughout the recruitment industry with the relevant laws and regulations (Guideline IV. A4.2). The 2022 United Nations Guidance on Bilateral and Multilateral Agreements (BLMAs) affirms that social dialogue plays a key role in the preparation, effective implementation, and monitoring and evaluation of BLMAs.

In its 2016 General Survey the CEACR set out examples of employers' and workers' organizations participation in forums and committees on labour migration and of specific measures and mechanisms of consultation addressing legislative and policy reform concerning migrants.

Notwithstanding these examples, the 2017 International Labour Conference report *Addressing Governance Challenges in a Changing Labour Migration Landscape* pointed out that most labour migration policies are the mandate of ministries of interior, immigration or foreign affairs, all of which focus more generally on admission criteria for foreigners and security issues (ILO 2017a). Through the recently conducted ILO TUS 2021, trade unions revealed that they were rarely involved in social dialogue discussions concerning laws and policies governing the treatment of migrants (see figure 2 below). Moreover, the 2022 ILO Governing Body paper *Temporary Labour Migration* noted that organizations of workers and employers are not sufficiently consulted by governments when temporary labour migration programmes are designed and implemented, even though both groups considered their participation to be a precondition for making such programmes more efficient and fairer in line with international labour standards (ILO 2022f). Thus, institutionalized social dialogue on migration and the protection of migrant workers' rights appears to be the exception, and in many cases, even where there are institutional arrangements in place it is lacking in practice.

► **Figure 2. Participation by trade unions in social dialogue related to BLMAs or MOUs on labour migration**



Source: TUS 2021.

► 4.3. Trade unions and organizing migrant workers

The extent to which trade unions engage with migrant workers is influenced by many factors, including the obstacles already noted above. National political, social, economic and cultural contexts, including labour market transitions, have a significant impact on interactions between trade unions and migrant workers. It must be recalled that from the trade unions' perspective, the number one obstacle to organizing and representing migrant workers is the legal obstacles that place prohibitions and restrictions on them doing so (see figure 1 above). The TUS 2021 (see Annex of this report) provides reports by trade unions that from both a practical and a legal perspective, the way the industrial relations system in a country is organized may limit trade unions' ability to organize and represent many migrant workers, particularly those who are outside of formal employment frameworks. Trade unions may not be present in the sectors where migrants are working, such as in domestic work or in rural agricultural areas. Even if present, trade unions may not have the resources, expertise or capacity to reach out to the migrant workers. Depending on the political context, trade unions may be apprehensive to reach out to migrants, particularly undocumented migrants, for a variety of reasons, including fear of being accused of promoting illegal employment.⁶⁵ Moreover, an anti-migrant political context may have a chilling effect on trade union interactions with migrant workers.

While far from being the norm, it is recognized that in some countries, some trade unions may be known for their preference to organize and represent nationals over non-nationals. Such a preference may be based on seeing migrants as competition to the national workforce, driving down national workers' negotiating positions, including on wages, conditions of work and employment security. Even if such a preference does not exist, most trade unions are comprised of national workers, and, as such, may not place issues impacting migrant workers or their rights high on their agendas. In other words, where national members are fighting for their own human and labour rights at work, trade unions may pay less attention to the rights gap faced by migrants (Borang, Kalm, and Lindvall 2020; ILO 2022b, 127; Ford 2021, 107–108).

⁶⁵ See the Annex of this report, as well as UN HRC 2020b; ILO 2021h.

At the same time, in many parts of the world, the size, power and roles of trade unions are changing. Trade unions are already under pressure from declining rates of unionization due to reasons such as anti-union sentiment, labour segmentation and informalization, and declines in standard forms of employment where trade unions had been strong, among others. They have to engage in organizing and representing migrant workers and concluding collective agreements for a more flexible and diverse labour force, while also maintaining their relationship with their traditional rank and file membership. Existing and future strategies by trade unions in promoting migrant workers' FACB rights need to take this into account. Many sectors where migrant workers dominate, such as care and domestic work, are expanding and provide both challenges and opportunities for trade unions. Essentially, in some cases, as national workers make gains, trade unions may be in a better position to expand their agendas and include migrants. In other cases, trade unions may widen their agendas to address the rights gap between nationals and non-nationals as a strategy to strengthen their overall position for workers in the labour market (Borang, Kalm, and Lindvall 2020; ILO 2022b, 127).

However, recent studies, surveys, and initiatives by trade unions, as well as academic literature, demonstrate that increasingly trade unions are and should be expected to continue to advocate for equal rights for migrants. In particular, the European Trade Union Confederation (ETUC) and various global union federations have adopted positive stances on migrant workers and the protection of their rights. At the national level there are also positive examples of trade unions advocating for the FACB rights of migrant workers, as well as servicing, organizing and representing migrant workers, as set out in the next chapter of this report. In a recent article analysing ten years of fieldwork with global trade union federations in seven Asian countries, Ford (2021, 102) concludes that the involvement of the international labour movement has been the single-most important factor in convincing local trade unions that they should engage with temporary labour migrants.

While many trade unions and federations are stepping up their actions in advocacy and awareness-raising to promote labour rights protection of migrant workers, and to establish and strengthen the provision of services to migrant workers, the efforts to organize and integrate migrant workers as trade union members – while expanding – are less visible, particularly regarding migrants in low-skilled, precarious and temporary forms of work or those who are undocumented.

From the migrants' perspective, trade unions in some countries may not be visible, accessible or even attractive. Migrant workers may hold negative views of trade unions held over from their countries of origin. As indicated above, studies have shown that migrant workers former affiliation with workers' organizations in their country of origin is the biggest indicator of how they exercise their FACB rights in the destination country. Those who have had previous positive experiences will be more likely to engage in organizing activities or join a trade union as a migrant (Solidarity Center and Civicus 2019).

The challenge for trade unions is how to convey a more open and positive approach to migrant workers to entice them into exercising their FACB rights by joining trade unions. Reaching out to migrant workers through organizing and by extending collective bargaining agreements to cover them, as well as providing services, will help in the revitalization of trade unions to become stronger and more representative organizations. Many efforts being undertaken are included in Chapter 5 of this report; in addition, more trade union views on obstacles to migrant workers accessing their FACB rights are discussed in the Annex, which presents the findings of the ILO Trade Union Survey 2021 (TUS 2021).





5.

Examples of good practices promoting freedom of association and collective bargaining for migrant workers

► 5.1. Removing legislative restrictions on forming and joining trade unions and on full participation in trade union activities

The numerous types of legal restrictions and limitations on migrant workers' FACB rights set out in section 4.1 above can be addressed through legislative revision of Constitutions, labour codes and other employment-related laws. This can be achieved by removing the restrictions and inserting provisions that expressly grant to all migrant workers, regardless of their status, clear and unambiguous rights to freedom of association and the right to engage in collective bargaining on equal footing with national workers.

There are numerous examples of such legislative revisions having taken place:

- In Algeria, Act No. 22-06 of 25 April 2022 removed the nationality requirement provided under section 6 of Act No. 90-14, now allowing non-national employers and workers to form organizations and, subject to three years' residence and according to modalities established in the statutes, to become members of the executive board of a trade union.
- In Türkiye, the Trade Unions and Collective Agreements Act (No. 6356), which entered into force in 2012, eliminated the citizenship requirement for trade union founders and provided for the possibility of non-Turkish citizens to become founding trade union members (ILO 2016b, para. 408).
- In Spain, as noted above, Basic Act No. 2/2009 was revised to provide that foreign nationals have the right to organize freely or to join an occupational organization and to exercise the right to strike under the same conditions as Spanish workers (article 11).

Following the embodiment of FACB rights in the relevant legislation, it is important that governmental administrative and regulatory restrictions on workers, including migrant workers, establishing their own independent organizations of workers and trade unions be removed by amending those rules and regulations.

- For example, following the adoption of new legislation in Taiwan, China, allowing migrant workers to form trade unions, the Yilan Fishermen's Trade Union was created, making it the first trade union founded by migrant workers on the island. The trade union, composed of 89 Filipino migrant fishers, was formed to strengthen the voice of migrant fishers working in Taiwan, China, and to collectively negotiate with employers on longstanding issues, such as excessive working hours and unpaid overtime wages. Following the example of the Yilan Fishermen's Trade Union, other migrant worker associations in fishing towns such as Kaohsiung and Pingtung have indicated their interest in establishing their own trade unions (ILO 2014d).

Where legislative restrictions remain in labour-related and sector-specific laws, general principles of freedom of association contained in broader Constitutional or international human rights laws may be able to be relied on to establish FACB rights for at least some migrant workers.

- In France only a limited number of provisions of the Labour Code are applicable to domestic workers employed directly by private householders. However, their constitutional right to freedom of association is recognized and exercised in practice, and their working conditions are determined through collective bargaining. The three national collective agreements covering various segments of the sector have been extended to all workers and employers in the household workers sector (ILO 2022a, paras 998 and 1020).

The extension of labour law coverage to sectors that are dominated by migrant workers, such as EPZs, domestic work and agriculture, helps to ensure equality of treatment between migrants and national workers.

- ▶ In Guinea-Bissau, a new labour code was adopted that extends protections of freedom of association to dockworkers and agricultural workers and others, including foreign workers. The CEACR noted, however, that special regimes for such workers are also provided for in the new law and raised questions on their content.⁶⁶

▶ Box 5. Removal of legal restrictions in the Republic of Korea

In a case concerning the refusal of the Government of the Republic of Korea to register the Migrants' Trade Union (MTU), as well as allegations of generalized discrimination against and repression of migrant workers, the CFA determined that the situation effectively denied migrant workers the right to organize in practice. As such, the CFA urged the Government to:

- ▶ Undertake an in-depth review of the situation concerning the status of migrant workers in full consultation with the social partners concerned;
- ▶ Fully ensure and safeguard the fundamental rights to freedom of association and collective bargaining of all migrant workers, whether in a regular or irregular situation, in conformity with freedom of association principles; and
- ▶ Prioritize dialogue with the social partners concerned as a means to finding negotiated solutions to the issues faced by these workers.

On 25 June 2015, the Supreme Court of the Republic of Korea rendered a judgment in which it dismissed the Government's appeal against the Seoul High Court decision in favour of the MTU's registration and ruled that a foreign worker who does not have the status of sojourn may organize or join trade unions. The CFA welcomed the judgment of the Supreme Court and noted with interest some extracts of the Supreme Court Public Relations Bureau press release, including that "the act of organizing or joining a trade union cannot be prohibited simply because the person concerned is a foreign worker who does not have legitimate status of sojourn". The CFA noted with satisfaction the Government's indication that following the Supreme Court judgment, the Ministry of Employment and Labour examined the new bylaw submitted by the MTU and issued a certificate of registration on 20 August 2015.

On 20 April 2021, demonstrating its commitment to promoting freedom of association and collective bargaining and eliminating forced labour, the Republic of Korea deposited the ratification of Conventions Nos 87 and 98 as well as the Forced Labour Convention, 1930 (No. 29). The three Conventions will enter into force in the Republic of Korea on 20 April 2022.

Sources : CFA, Case No. 2620 (Republic of Korea), [Report No. 374](#) and [Report No. 377](#), 2016; ILO 2021d.

66 CEACR, [Observation – Convention No. 98 – Guinea-Bissau](#), published 2022.

► 5.2. Social dialogue, tripartite committees and collective bargaining

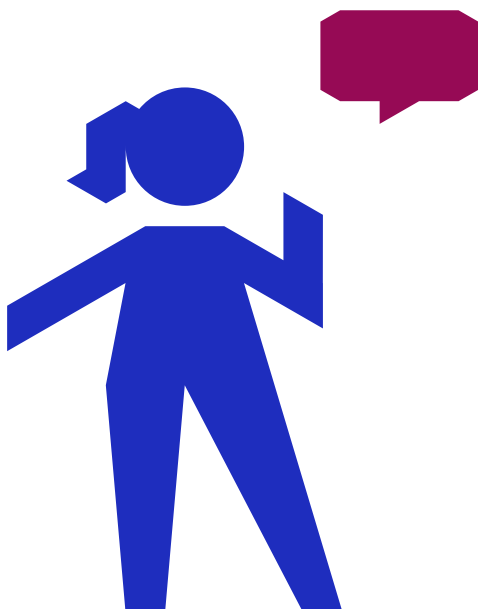
Given the low level of unionization in sectors dominated by migrant workers, such as domestic work, agriculture, and EPZs, the taking of legislative and institutional steps to promote collective bargaining in these sectors, occupations and types of work – such as the extension of collective bargaining agreements – has served to provide protection in migrant workers' terms and conditions of employment and to offer avenues of redress for non-compliance with such agreements. The undertaking of such measures should not only include the government, but rather necessitates the positive participation of trade unions and employers' organizations.

- In Italy a collective agreement regulating all aspects of domestic work was concluded at the national level and covers all domestic work relations in which the employer is a member of one of the employers' organizations that is party to the agreement or has signed a contract referring to it. The national collective labour agreement on domestic work relationships was last renewed in September 2020 (ILO 2022a, para. 1019, fn.1901).
- In Israel, the National Union of Agricultural workers and the Histradut (General Federation of Labour) concluded a collective agreement with the Farmers Association applicable to all workers (ILO 2022b, 49).
- In Nicaragua, in response to complaints concerning FACB rights in the EPZs, the Government established a tripartite labour committee for the zones to promote collective bargaining. As of June 2015, a total of 20 collective agreements had been signed covering around 48,200 workers in EPZs nationwide. In 2016, a new regulation on EPZs explicitly extended all labour protections to the EPZs in Nicaragua (ILO 2022b, 49).
- In highlighting the centrality of the social partners to the implementation of Conventions Nos 97 and 143, the CEARC noted the Government of Sweden's indication that trade unions had an important role in promoting equal rights and opportunities and combatting discrimination against migrant workers (ILO 2016b, para. 133).
- The Government of Panama reported the participation of the social partners in its Commission on Labour Migration as being key to the functioning of the Commission (ILO 2016b, para. 133).



Effective consultations, tripartite committees and collective bargaining that have served to protect migrant workers have been found in the domestic work sector:

- ▶ In Belgium, separate categories of domestic workers are covered by collective agreements concluded within the frameworks of specific joint committees. Those workers who are referred to as “domestic workers” in the labour legislation are covered by all the collective agreements adopted by Committee No. 323. The domestic workers employed through the voucher service system are covered by collective agreements concluded in Joint Committee No. 322.01. While the workers employed mainly or exclusively to perform gardening for households are covered by Joint Committee No. 145. All other domestic workers are covered by the collective agreements concluded in Joint Committee No. 337. The material scope of these collective agreements is broad and includes, inter alia, wages, social security, vocational and trade union training, and working time. The joint committees also play a role in tripartite social dialogue and contribute to the prevention and settlement of industrial disputes (ILO 2022a, para. 1019 and fn 1895–1899)
- ▶ In Argentina, the General Confederation of Labour of the Argentine Republic played an active role, together with other trade unions in the sector, in the consultations that preceded the adoption of the new regulatory framework for domestic work and resulted in the first collective bargaining process in 2015, which resulted in increased wages. In 2018, the tripartite National Commission on Private Household Labour (CNTCP) was created, which defines conditions of work and accommodation in the domestic work sector and organizes training programmes for workers’ and employers’ representatives, among other duties. In 2018, the CNTCP adopted a resolution defining hourly and monthly wages for workers in the domestic sector that apply the principle of equal remuneration (ILO 2022a, 415).
- ▶ In the Republic of Korea, in accordance with section 20 of the new Act on the Employment Improvement of Domestic Workers, policies related to the rights and interests of domestic workers are to be deliberated upon by the tripartite Employment Policy Council (ILO 2022a, 415).



▶ 5.3. Multilateral and bilateral agreements

Conventions Nos 97 and 143 are premised upon an expectation of cooperation between States. In its General Survey on concerning the migrant workers instruments (ILO 2016b), the CEACR noted a myriad of regional and bilateral cooperation agreements in relation to the governance of labour migration, some of which specifically address migrant workers' rights (although few specifically supported FACB rights – see box 6 below). Regional entities, governments, trade unions, employers' organizations and other organizations such as the International Domestic Workers Federation (IDWF) are parties to these agreements.

- ▶ The ILO's FAIRWAY Programme, an inter-regional initiative to improve labour migration conditions from Africa to the Arab States and to protect all vulnerable migrant workers in the Arab States, has been helping the IDWF to support domestic workers in Kuwait through organizing, and has led to the establishment of the Sandigan Kuwait Domestic Workers Association (SKDWA) in Kuwait's Philippines community (ILO 2020a).

▶ Box 6. Examples of bilateral agreements with references to international and national norms for protection of migrant workers' rights

- ▶ Memorandum of Understanding between Bangladesh and Jordan in the Field of Manpower, 2012, article 3: "Both parties undertake to preserve the rights of workers and employers by the legislation and the law in coherence with international standards and treaties in this regard."
- ▶ Memorandum of Understanding on Labour Mobility Partnership between the Republic of India and the Kingdom of Denmark, 2009, article 4: "Unless otherwise provided in this memorandum of understanding, the persons specified in Article 3, shall receive equal treatment with nationals of the Receiving State in the application of the relevant labour and employment laws of that Contracting State."
- ▶ Agreement on Bilateral Cooperation on Labour Migration between Italy and Sri Lanka, 2011, Preamble: "In compliance with the principles of the international provisions concerning the rights of migrants and the fundamental rights of workers..."
- ▶ New Zealand's agreements with Pacific Islands under the RSE provide a particularly good example: "Workers will enjoy the full protection of New Zealand employment and workplace legislation, in particular legislation concerning safe conditions of work and the payment of minimum wage rates will apply. Workers are eligible to join unions in accordance with those laws."
- ▶ The Agreement on Labour Cooperation between Canada and the Republic of Honduras (2013) states that "Each Party shall ensure that its labour law and practices embody, and provide protection for, the following internationally recognized labour principles and rights, particularly bearing in mind its commitments under the ILO 1998 Declaration: (a) freedom of association and the effective recognition of the right to collective bargaining;"

▶ 5.4. Trade union outreach to organize migrant workers and conclude agreements

To address practical obstacles to organizing migrants, trade unions have taken different initiatives and adopted innovative strategies to reach, organize and represent migrant workers.

- ▶ In Belgium, the Brussels branch of the Confederation of Christian Trade Unions (CSC) has established a “migrants unit” specifically dedicated to organizing, supporting and advising migrant workers of their rights (Staunton 2020).
- ▶ The Malaysian Trades Union Congress (MTUC) has developed guidance and strategies on organizing migrant workers. Some MTUC affiliates have introduced strategies to encourage migrant workers to join the trade union, such as waiving membership dues until a collective bargaining agreement has been signed, especially if workers are warned of/threatened with dismissal for joining a trade union. At an electronics manufacturing company in Penang where most employees are migrants, the MTUC helped organize 500 workers to join the Electronics Union (Marks and Olsen 2015).
- ▶ The MTUC, following examples from Hong Kong (China) and the Republic of Korea, also engaged an organizer from the country of origin of a key migrant group (Ford 2021, 114).
- ▶ In Hong Kong, China, local domestic workers joined Filipino, Nepali and Thai migrant women and formed the Federation of Asian Domestic Workers’ Unions (ILO 2022b).
- ▶ The Mozambique Workers’ Organization – Central Union (OTM-CS) has, at the federation level, recently taken a decision to amend its constitution during the next congress to include specific provisions on the protection of the rights of migrant workers and organizing them into the trade unions. Furthermore, in order to promote the active involvement of migrant workers in social dialogue processes, the OTM-CS has recently introduced a project targeting the active participation of migrant workers in trade union training, social dialogue and collective bargaining at the company and branch levels (Chinguwo 2022, 23).
- ▶ Deliberate policies have been developed and adopted by the Zimbabwe Congress of Trade Unions (ZiCTU) to integrate underrepresented groups, including migrant workers, in its activities. At the ZiCTU Elective Congress held in October 2021, delegates adopted internal policies on migrant workers and persons with disabilities, which affiliate trade unions are supposed to implement at sector level. In this regard, the National Union of the Clothing Industry has already embarked on internal processes to align its constitution and activities to the ZiCTU policies, and thus to include women, youth, migrant workers and persons with disabilities into the constitution and to establish trade union structures to represent the voices of these workers in the union’s decision-making (Chinguwo 2022, 27).
- ▶ France has some of the longest-standing collective bargaining practices related to domestic workers. The domestic work sector is covered by three agreements. The first (1999) covered privately paid workers employed by individual households. The second (2012), signed by six trade unions and two employers’ organizations, covers domestic workers placed in private homes by non-profit intermediaries. The third agreement (2014), signed by three trade unions and two employers’ organizations representing private companies, covers domestic workers who are employed in private enterprises (Spotlight Initiative 2021b, 46–47).

- In Italy, the agricultural branch of the General Confederation of Labour (CGIL) adopted a strategy called "sindacato di strata", which means "trade union on the road". The strategy includes trade unionists going to places where migrant workers are known to gather or where they are hired in order to meet these migrant workers, introduce the trade union to them and inform them of their employment rights. This strategy involves using digital technology to help locate and communicate with migrant workers (Staunton 2020).
- In the Republic of Korea, the Korea Confederation of Trade Unions (KCTU) are confronting the low level of trade union membership among migrant workers. The KCTU endeavours to organize migrant workers along with other unorganized workers. To support these efforts, training and trade union information documents have been translated into migrant workers' languages and social media outreach has been used. Successes include Indonesian migrant workers joining the Daegu Sam-woo Jungmil trade union following a strike and Vietnamese migrants working in construction joining the existing construction union. The Korean Metal Workers Union ensured that: (i) their collective agreement is applied to migrant workers equally, regardless of whether they are employed legally or illegally; (ii) migrant workers' trade union membership status is recognized; and (iii) the company shall not discriminate on grounds of nationality or race. The KCTU reported that a total of 16 collective bargaining agreements on migrant workers have been signed, and these agreements include issues of particular concern to migrant workers (ILO 2021g).
- The ASEAN Trade Union Council (ATUC) advocates for the recognition of the portability of the trade union collective bargaining rights of migrant workers to enable them to self-organize or to form and join trade unions wherever they are and whatever their employment status. This model is based on the principle of trade union autonomy, and would allow migrant workers to have the right to keep their trade union membership or affiliation in both countries of origin and destination (ATUC 2020, paras 10, 35–36).

With respect to organizing undocumented workers, trade unions are engaged in various activities of support:

- In Belgium, the CSC Bruxelles-Hal-Vilvorde has reported that the Council of Migrant and Undocumented Workers, with trade union support, enables undocumented migrants to organize themselves and stand up for their rights together with other workers.
- In Sweden, trade unions and the confederations LO and TCO have set up and managed the Trade Union Centre for undocumented migrants, where among other activities, they try to ensure that all migrant workers, regardless of their status, are recognized and paid according to collective agreements (ETUC 2017).

Trade unions in countries of origin are reaching out to migrant workers to inform and support them and to encourage them to engage with trade unions in destination countries. In addition to signing partnership agreements and participating in recruitment and departure information sessions, origin country trade unions are utilizing new methods and formats to reach out, such as performing dramas on public television and using social media platforms such as Facebook. As stated earlier in this report, migrant workers who have had positive contact with trade unions in their country of origin are more likely to engage with and become members of trade unions in destination countries.

- The Lao Federation of Trade Unions (LFTU) has launched radio and television programmes and used newspapers across the country to educate potential Lao migrant workers on safe migration and how to follow the rules in destination countries to protect themselves (Spotlight Initiative 2021a, 108).

- ▶ The Philippines Federation of Free Workers (FFW) has established a branch in Qatar (BMKQ), as its constitution permits membership by persons who are outside the country. The BMKQ is working with migrant construction workers in Qatar to provide post-arrival orientation seminars, training and legal assistance (Spotlight Initiative 2021a, 113–114).

Trade unions are establishing Migrant Worker Resource Centres (MRCs) and using them to support outreach and organizing of migrant workers in countries of origin and destination.

- ▶ The Confederation of Indonesian Workers Welfare Union supported successful MRC campaigns to attract migrant workers to join trade unions, and also conducts outreach, recruitment and organizing of migrant workers (ILO 2021h).

To intensify their efforts aimed at revitalization and transformation, trade unions are rethinking the ways in which they organize and mobilize workers. For example, a 2022 meeting of African trade unions organized by the ILO's Bureau for Workers' Activities (ACTRAV) called on trade unions to:

- ▶ Broaden the scope of their activities by seeking to recruit new members among vulnerable groups, such as informal workers, gig economy workers, young workers, migrant workers and workers with disabilities.
- ▶ Consider mapping the various categories of vulnerable workers and their respective needs in order to understand better how to effectively organize and provide tailored services to such members.
- ▶ Develop and pursue innovative strategies to continue and broaden trade unions' representation of workers in general and to effectively service underrepresented workers in particular – for example, through the use of social media, online counselling and the provision of legal assistance (ILO 2022d, 10).

To improve the effectiveness of outreach and organizing activities of migrant men and women workers, trade unions are building their own capacity through:

- ▶ Development of training materials and guides, such as that of the Spotlight Initiative (2021a)⁶⁷ and the 2008 ILO publication *In Search of Decent Work – Migrant Workers' Rights: A Manual for Trade Unionists*. The 2008 manual sets out a “four pillars” approach to the role of trade unions in protecting migrant workers, consisting of: (i) promoting a rights-based migration policy; (ii) creating a network between trade unions in countries of origin and destination; (iii) Reaching out to migrant workers; and (iv) education, training and advocacy (ILO 2008a).
- ▶ Development of training materials and conducting of training sessions on the Domestic Workers Convention, 2011 (No. 189), and the protection of domestic workers.
- ▶ Development of networking strategies by signing memoranda of understanding (MOUs) between trade unions from countries of origin and destination, as well as general MOUs with regional and subregional workers' organizations, to cover larger groups of migrant workers and to provide greater visibility and impact in advocacy and protection related to labour migration norms and governance.

⁶⁷ This manual, titled *Organizing Women Migrant Workers: Manual for Trade Unionists in ASEAN*, was prepared in collaboration with ILO ACTRAV.

▶ Box 7. Domestic worker organizing guidance

The IDWF emphasizes that the methods used to organize migrant domestic workers are, in essence, the same methods used in trade union organizing generally. The key aspects are:

- ▶ Engage in mapping groups and set up focal points.
- ▶ Train a small group as potential executive members.
- ▶ Give practical support, including regular contacts, and facilitate access to social or care services.
- ▶ Organize activities in a safe place, like a trade union building, which is especially important in working with migrant workers to reduce fear of the harassment by officials.
- ▶ Provide assistance in legal cases to facilitate access to justice (although not all countries provide avenues for such relief). Assist with interpretation and navigating legal procedures, as many countries do not guarantee translation.
- ▶ Support a unified stance on labour rights for all workers, regardless of immigration status. Study key laws and policies related to migration and how immigration policies may undermine protection of labour rights and/or guarantees under the constitution. While trade unions are well versed in the application of labour laws, in order to assist migrant domestic workers, they must build a knowledge base of immigration policies as well. It would be useful if trade unions collaborate with NGOs who specialize on these topics. Migrant worker leaders need help from both trade unions and NGOs. Trade unions hold key political power to change migration policy.
- ▶ Organize solidarity activities where migrant domestic workers may meet to connect and share stories, and utilize creative ways to share information and stories, such as performing dramas. Also allow migrant domestic workers to meet trade union members in other sectors and share their stories, which may also influence trade union members who are themselves employers of domestic workers.
- ▶ Advocate with employers about the value of domestic and care work, and facilitate discussions on the topics.

Source : Spotlight Initiative 2021, 137-138.

▶ 5.5. Trade union partnerships and networking

In the CEACR's 2016 General Survey, the importance of cooperation among workers' organizations was highlighted. For example, some workers' organizations indicated that they had concluded agreements with workers' organizations in other countries to exchange information, to defend the interests of migrant workers, or to provide information to migrants on regular migration (ILO 2016(b), para. 158).

The ILO Bureau for Workers' Activities (ACTRAV) and the International Trade Union Confederation (ITUC) elaborated a model agreement that can be used to support the establishment of agreements between trade unions in countries of origin and destination. The model agreement reaffirms that freedom of association is a central and non-negotiable principle and that the participation of migrant workers in

trade unions contributes to their integration in countries of destination. The signatories to the model agreement commit to promoting the ratification of and respect for ILO Conventions concerning migrant workers, and the model agreement emphasizes that the situation of migrant workers should be addressed through the principles of international trade union solidarity, social justice, equality of treatment, equal opportunity and gender equality (ITUC and ILO 2008).

- ▶ For instance, a binational workers agreement between domestic worker organizations and trade union confederations in Paraguay and Argentina was reached in 2014 to promote decent work for Paraguayan migrant domestic workers in Argentina. Likewise, in 2014, a declaration and joint action plan to promote decent work for migrant domestic workers were agreed between trade unions and domestic workers' unions from Lesotho, Zimbabwe and South Africa (ILO 2015d).
- ▶ The 2013 Philippines–Germany health professionals bilateral labour agreement is another example of good practice. Although it is not common for trade unions to be involved in multilateral and bilateral labour agreements between governments, after negotiating with the governments of the Philippines and Germany, the trade unions PSLink and Verdi from both countries were invited to become members of the Joint Committee, which was responsible for adopting guidelines, monitoring implementation, making proposals to amend the bilateral agreement, as well as conducting periodic meetings. The participation of trade unions in the agreement allowed Filipino nurses to gain access to PSLink and Verdi unions, who were able to inform and organize the workers (ILO 2020e, 7).
- ▶ As a result of the MOU signed between the Malaysian Trades Union Congress (MTUC) and the Confederation of All Indonesia Trade Unions (KSBSI), cases of Indonesian migrant workers in Malaysia have been able to be dealt with by the MTUC. Using a social media outreach initiative of the KSBSI, Indonesian migrant workers were able to contact the KSBSI directly through their Facebook page, the KSBSI were then able to assist and facilitate communication between these workers and the MTUC, who would provide support by contacting the Police Department and the Labour Department. Most of these cases involved unpaid wages claims made by domestic workers against private employers (Spotlight Initiative 2021a, 109).
- ▶ In June 2022 an MOU was signed between the Nigeria Labour Congress (NLC) and the General Federation of Bahrain Trade Unions (GFBTU) on advancing trade unions' effective contributions to the defence, protection and promotion of the human and labour rights of migrant workers, which includes "[o]rganising migrant workers into trade unions to give them a voice and representation" (see box 8). In September 2022, the General Union of Workers of Côte d'Ivoire (UGTCI) and the Tunisian General Labour Union (UGTT) signed the first intra-Africa cooperation agreement, encouraging workers from Côte d'Ivoire to organize and allowing them to join the UGTT.
- ▶ A multiregional trade union MOU was signed by the ASEAN Trade Union Council (ATUC), the South Asian Regional Trade Union Council (SARTUC) and the Arab Trade Union Confederation (TUC) to strengthen their partnership to protect the labour rights of migrant workers. This led to the establishment of a joint MRC in Amman, Jordan, in 2019 with the support of the ITCU Asia-Pacific. The MRC uses innovative video graphics to reach migrant workers and supports their filing of complaints and grievance handling.

► **Box 8. MOU between the Nigeria Labour Congress and the General Federation of Bahrain Trade Unions (GFBTU) on advancing trade unions' effective contributions to the defence, protection and promotion of the human and labour rights of migrant workers, June 2022**

The MOU recognizes that the living and working experiences of African migrant workers in the Middle East suggest that their human and labour rights have come under avoidable attack during recruitment and in the world of work. The NLC and the GFBTU believe that well-organized and coordinated collaboration between the two organizations can contribute meaningfully to reducing and ultimately eradicating these serious challenges. The NLC and the GFBTU understand that their cultures, languages and industrial relations contexts are different, but they see these differences not as barriers but as opportunities to learn from one another as workers' organizations committed to working class solidarity.

MOU objectives:

- To facilitate and enhance the understanding of the different historical and cultural backgrounds of the two organizations so as to contribute to deepening working-class solidarity and actions across regions.
- To provide the space and opportunity for formal collaboration between the two trade union organizations to work together to contribute tangibly and positively to the advancement of the human and labour rights of migrant workers.
- To contribute to halting the abuses of the human and labour rights of migrant workers, with considerable attention paid to domestic workers, and to contribute to the advancement of migrant workers' human and labour dignity
- To promote genuine and pragmatic collaboration aimed at improving international labour migration premised on pro-rights approaches.
- To open spaces for greater collaboration and to establish a working relationship between the two organizations that would be used to advance other mutual causes.

As per the MOU, the NLC and GFBTU agreed to undertake the following efforts and initiatives together:

1. Be champions and advocates for fair and ethical recruitment that will contribute to the reduction and ultimately lead to the elimination of exploitation of migrant workers in the entire recruitment process.
2. Support and facilitate access to justice for migrant workers to seek and obtain redress against infractions that they would have suffered in the course of their labour migration work relations.
3. To support migrant workers and members of their families actively, visibly and effectively in return and reintegration efforts in fair and human ways.
4. Take actions to ensure that migrant workers, notably women and members of their families, especially children, are not trapped and engaged in forced labour, child labour and human trafficking.
5. Use this collaboration to showcase and raise the visibility of trade unions as serious and credible non-state actors that can contribute tangibly to progressive labour migration governance practices and culture.



Box 8 (cont'd)

The actions the NLC and GFBTU agreed to undertake both individually and collectively include:

- a.** Develop and deploy fair recruitment awareness and education joint campaigns that will target potential labour migrants, migrants' communities, and recruitment agencies and governments.
- b.** The NLC to establish a migrants' committee that will include and work with migrants in providing pre-departure orientation and education training for migrants in Nigeria.
- c.** The GFBTU to establish a migrants' committee that will include and work with migrants in providing reception and welcome orientation and education training for migrants in Bahrain.
- d.** Be active participants in the development, signing and monitoring stages of BLMAs.
- e.** Organizing migrant workers into trade unions to give them a voice and representation and to support the integration of migrant workers from Nigeria in Bahrain and to support them during their return and reintegration in Nigeria.
- f.** The GFBTU to assist with the provision, where needed and sought, of support services such as language and communication training and consular and legal assistance to migrant workers, as well as helping to ensure that employers are responsible for repatriation and re-integration assistance.
- g.** Jointly undertake ratification campaigns to improve the body of labour standards necessary for the protection of migrant rights. Efforts will be made to achieve the ratification of Conventions Nos 143, 189 and 190 by both organizations in their respective countries.



► Box 9. Building transnational ties: The case of Utraven.Co as a migrant-focused union

The Union of Venezuelan and Colombo-Venezuelan Workers (Utraven.Co) was born out of the needs of Venezuelan workers and began with the initiative of a trade union movement in Colombia created by the CGT (Confederación General de Trabajadores) in coordination with the Venezuelan trade union movement the UNETE Federation. Utraven.Co emerged as a necessity for Venezuelan migrant workers, given the complex socio-political situation and humanitarian crisis in the Bolivarian Republic of Venezuela, which has led to mass migration to Colombia. Venezuelans have crossed the border in search of basic living conditions and opportunities for personal and family development, breaking the labour, professional, social and family ties they had in their home country. Colombia, due to its geographical, cultural and historical proximity; its economic development; and its democratic structure, has become a destination for many Venezuelans.

Utraven.Co's organizational philosophy corresponds to alternative trade unionism with a projection of reinvesting 100 per cent of trade union dues into services and benefits for its members. They are committed to the growth and development of their members, emphasizing a "member-service system" by providing them with ongoing training, both in technical and personal areas. Workers who are over 18 years old can join, regardless of immigration status or employment status. They can also join as collaborators, whether they are workers, businesspeople, entrepreneurs, representatives of an organization or any other figure, regardless of their country of origin; they can collaborate through their financial resources or by contributing to joint work.

Utraven.Co has played a key role in enhancing the situation of Venezuelan migrants, as it is the only trade union in Colombia who operates at the intersection of labour migration and employment. Utraven.Co acts in coordination with the CGT, which acts as a spokesperson for direct intervention at different national government bodies and, if necessary, directly convenes the organization for the relevant issues. In other words, Utraven.Co is represented through the CGT. Through its political advocacy work, Utraven.Co has had a fundamental role in the national efforts to establish an income generating strategy and also works in cooperation with Border Management. They have managed to bring the Venezuelan migrant community closer together and contributed to building trust.

Source: Adapted from ILO Technical Cooperation Project "Gobernabilidad de las migraciones mejorada en Colombia para promover empleos y trabajo decente".

Trade unions also engage in partnerships with other civil society organizations to promote migrants' FACB rights. This is a particularly important strategy where restrictions exist on migrants' forming and joining trade unions

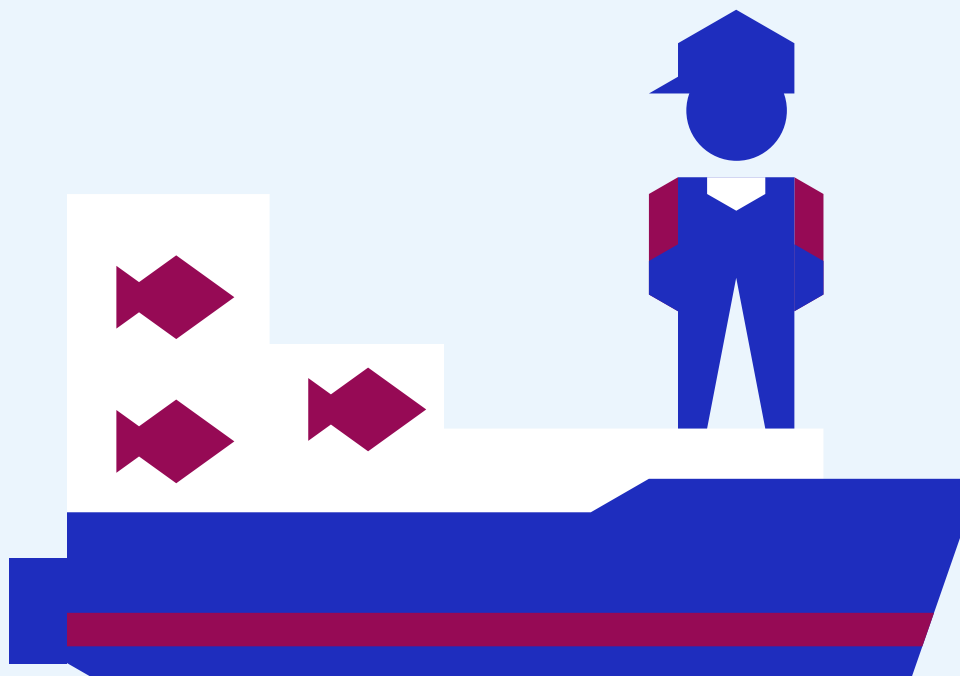
- In Malaysia, where domestic workers are prohibited by law from joining trade unions, the Indonesian Migrant Domestic Workers Association (PERTIMIG) was formed by migrant workers with the support of the International Domestic Workers Federation (IDWF) and the Malaysian Trades Union Congress (MTUC), and held their first Congress in 2021. PERTIMIG focuses on organizing migrant domestic workers, capacity-building, case handling and referral, and awareness-raising campaigns. They also continue to campaign on the recognition of domestic workers' rights to FACB (ILO 2021h).
- Trade unions such as BWI Asia and NGOs such as the Migrant Forum in Asia have signed cooperation agreements aimed at the protection of migrant workers. The Migrant Forum in Asia has also signed an MOU to promote migrant rights in Asia and the Pacific with BWI, UNI, and PSI Asia Pacific.

► Box 10. Fishers' Rights Network in Thailand

The Thailand-based Fishers Rights Network (FRN) was established in 2017 by the International Transport Workers' Federation (ITF) and is comprised of more than 2,000 migrant fishers from diverse nationalities. It was formed following many direct consultations with fishers when they came into port, which were facilitated through organizing centres set up in three different provinces. In order to build trust, overcome fear, and facilitate understanding of the purpose of a union and representation, the FRN has identified organizers who are migrant fishers themselves and who are independent and bold. They used small group sessions with fishers and video and audio messages to overcome literacy and language barriers. From the sessions, a common agenda of issues was compiled.

The FRN's work has propelled responsive action on many issues of concern to their members, including provision of first aid kits and emergency training, adherence to on time payments of salaries and benefits, pre-departure training in Myanmar, and the signing of an agreement with Greenpeace and Thai Union Group PLC on labour issues and environmental sustainability in the tuna industry. The Union Group has committed to supporting freedom of association and collective bargaining in its own facilities and throughout its global supply chain (ILRF 2020, 30–33).

It was with the support and guidance of the ITF that members of the FRN engaged in outreach and organizing, developed a common agenda of issues to support, built alliances with other organizations, democratically elected their own representatives, and wrote their own constitution and bylaws.



► 5.6. Migrant workers forming trade unions

Where existing trade unions are not present for migrant workers to join and where there is no collective bargaining coverage, there are examples of migrant workers organizing themselves to form trade unions to protect their labour rights and improve their conditions of work. These initiatives are usually supported by national and global trade unions, along with human rights organizations.

- In Indonesia, the Federation of Indonesian Migrant Workers Organization (SBMI) was established to focus on fulfilment of the labour rights of Indonesian migrant workers. The SBMI strategically promotes the organizing of Indonesian migrant workers in destination countries. It was established by a group of returned migrants, some of whom had been supported by the Indonesian Migrant Workers Union (IMWU) while they were working abroad as migrant labour. One of the founding members indicated that because of her own migration experience she could easily empathize with the feelings and needs of other migrant women and was aware of the frequent presence of gender-based inequalities and violence (Spotlight Initiative 2021a, 110). In the Republic of Korea, the KCTU supported the establishment and recognition of the Migrant Workers Union (MTU).
- In Colombia, the Central Workers' Union (CUT) supported the development of a new affiliate trade union, the Union for Platform Workers (UNIDAPP), to represent migrant and local food delivery workers who work for online platforms, many of whom are from the Bolivarian Republic of Venezuela. The initiative strengthens migrant worker power by integrating the claims of undocumented migrant workers with those of national workers (Connell 2020).
- In the fishing industry of Taiwan, China, a second migrant fishers trade union, the KMFU, was officially recognized in early 2022. Overcoming some regulatory challenges on who could become members of the trade union and which occupations were recognized for purposes of unionizing, the migrant workers in Taiwan, China, with the assistance of the first recognized migrant trade union in the fishing industry – the YMFU – persevered, collecting signatures and documents until they succeeded. Noting the dangerous conditions and abusive practices in the fishing industry, the President of the KMFU attributed the success of the organizing campaign to belief in the capacity of the trade union and its institutional power to pressure employers and labour brokers to obey the law and support migrant fishers (Kao 2022).
- In the United States, Justice for Janitors, the 20-year movement to unionize janitors, a majority of whom are migrants, has resulted in the establishment of numerous trade unions of these low-paid workers across the country.

▶ 5.7. Access to justice

To ensure that access to justice is real and effective, all migrants should receive information on how to access grievance and dispute settlement procedures, and they should be offered free or affordable legal assistance services and adequate language translation services (ILO 2017a, para. 57). Trade unions can provide needed assistance to migrants in understanding and protecting their rights, and in pursuing their grievances and securing adequate remedies such as back pay or reinstatement. There are many examples of trade unions providing assistance and representation to migrant workers in seeking access to justice and pursuing grievances. More detailed information on these actions is provided in the Annex of this report.

- ▶ In its 2016 General Survey, the CEACR welcomed information provided by the ITUC on the trade union Ver.di of Germany, which offers legal advice and assistance to migrant workers in an irregular situation.
- ▶ The Single Confederation of Workers of Colombia (CUT) helped to establish a specialized migration platform to defend the rights of migrant workers.
- ▶ The MTUC's industrial relations department has provided legal support to temporary migrant workers in Malaysia. For example, it filed a lawsuit for equal treatment of migrants and nationals in regard to wages and conditions of work.
- ▶ Many of the trade union-run MRCs support the filing of complaints and addressing the grievances of migrant workers.

With regard to language and cultural barriers, in certain countries, there is a legal obligation to inform specific categories of workers, such as migrants, of their labour rights in a language that they understand.

- ▶ France, for instance, has established this obligation through the Decree No. 2011-1693 of 30 November 2011, on the protection of the social and financial rights of irregular-status migrants and the suppression of illegal work (ILO 2014a).
- ▶ In Argentina, four orientation centres have been established to provide migrants with information on their rights and legal support, including on the prevention of institutional and gender-based violence, and providing training to facilitate insertion into the labour market (UN HRC 2021).

Migrant workers should be allowed to choose to be represented by representatives such as trade unions in seeking access to justice and in dispute settlement proceedings. In some countries the law specifically grants to migrants the right to be represented by trade unions.

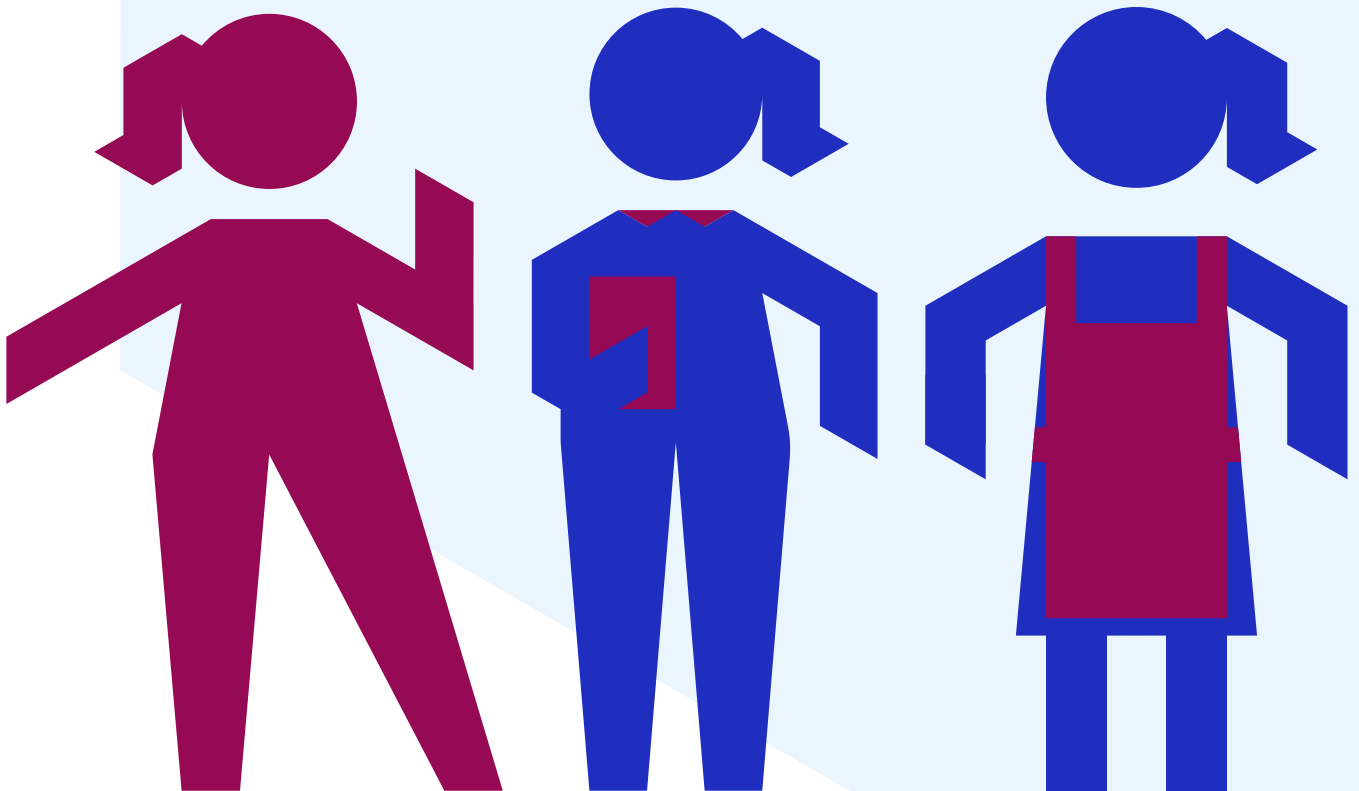
- ▶ In Trinidad and Tobago, the National Union of Domestic Employees (NUDE) is registered as a trade union and as such is able to represent domestic and other workers, including migrants, in pursuing their claims in dispute resolution forums, including before the Labour Tribunal.
- ▶ Belgian trade unions FGTB, CBSLB and CSC referred to trade union representation in a case before the Court of Appeal Brussels, which ordered an employment agency to pay damages for discrimination in the migration recruitment process (ILO 2016b, para. 490).

▶ 5.8. Initiatives targeting women migrant workers

Migrant women stand to gain from the benefits of a collective voice that can address individual problems. Trade unions can provide support and assistance in promoting safe, orderly and regular migration; improving conditions of work; addressing gender pay gaps and violence and harassment; and pursuing remedies and redress for grievances. Actions also are being taken to support trade union strategies to organize migrant women.

- ▶ Training materials have been developed and training sessions conducted on gender-based issues and topics of particular concern to migrant women. For example, collaboration between ILO ACTRAV and UN Women under the EU–UN Spotlight Initiative produced the trade union manual *Organizing Women Migrant Workers: Manual for Trade Unionists in ASEAN* (Spotlight Initiative 2021a). The manual highlights strategies to organize women migrant workers in the informal economy, including in the domestic work, entertainment, services, and home-based manufacturing sectors. The manual provides tools for trade unions in the Association of Southeast Asian Nations (ASEAN) and beyond to move towards better protection of the rights of women migrant workers.
- ▶ The International Domestic Workers Federation (IDWF), often in coordination with national trade unions, supports women domestic workers in destination countries through support, training and advisory services. Recognizing the seriousness of gender-based violence and harassment, IDWF has produced a training manual to assist women migrant workers in dealing with and remedying situations of violence and harassment in domestic work situations (IDWF, forthcoming).
- ▶ The activities of MRCs in Malaysia supported by the MTUC, include identifying women migrant workers to build networks and organize peer groups in order to later organize the workers into trade unions, and mapping organizing target areas and locations. MTUC-supported MRCs also conduct workshops on organizing migrant workers and increasing their participation in trade union activities (Spotlight Initiative 2021a, 112; ILO 2021g).
- ▶ The KSBSI in Indonesia train women to participate in collective bargaining to ensure that gender issues and priorities are included in collective agreements (Spotlight Initiative 2021a, 121).
- ▶ In Cambodia, the Cambodian Labour Confederation (CLC) supports and consults with the Women Migrant Network, a group of women migrant returnees who provide information and impart their experience to other women workers on safe migration and protection of labour rights.
- ▶ The International Trade Union Confederation (ITUC) provides extensive policy briefs and promotional material to address women worker issues and to promote women's representation within trade unions. The ITUC's "Count US In!" campaign promotes inclusive trade unions and organizing the unorganized. The campaign targets migrant workers; workers in the informal economy; workers in the gig economy; workers in precarious, temporary or agency work; and those in any other forms of work where women workers are deprived of their rights and protections.⁶⁸

68 For more information, see: <https://www.ituc-csi.org/count-us-in>.



Propuesta



Crear un

A hand is visible on the left side of the image, holding a whiteboard. The whiteboard has the letters 'S' and 'P' written on it in blue ink. The background of the image is a solid blue color.

6.

Lessons learned
and steps forward

This report has drawn attention to a range of legal and practical obstacles to migrant workers' effective enjoyment of the right to freedom of association and the effective recognition of the right to collective bargaining. In so doing it has pointed out gaps in law and in practice, as well as provided examples addressing those gaps. It has presented an overview of the international legal framework that provides protection of FACB rights to all persons including all migrant workers regardless of their status, and shown how international supervisory bodies, particularly those of the ILO, have assessed compliance with the relevant international Conventions. This last chapter provides some concluding remarks on the lessons learned and suggests steps that can be taken by governments and the social partners to promote the FACB rights of migrant workers. In addition, the Annex that follows builds upon the material above through the presentation of an extensive analysis of the responses to a recent ILO survey of national trade union confederations concerning their views, actions and experiences in engaging with migrant workers.

While this report is narrowly focused on the legal and practical obstacles to migrant workers enjoying and exercising their FACB rights in the world of work, it is recognized that the attainment and use of these rights does not take place in a vacuum. The adoption of fair migration policies and practices that incorporate human rights protections for migrant workers and their families in all areas of political, civil, economic, social and cultural life are crucial to laying the groundwork and reinforcing protection of FACB rights in the world of work. Migration flows, laws and policies impact how well migrants are able to integrate into and access their rights in destination countries.

There are also many factors that impact on interactions between trade unions and migrant workers. Depending on the national legal, political, economic, social and cultural context, the industrial relations system, the labour market situation and the power, size, roles and resources of the trade unions, different strategies and actions are deployed by trade unions to service, organize and represent migrant workers. Adopting innovative outreach strategies to organize migrant workers and expanding trade union membership of migrant workers can contribute to the revitalization of trade unions and expand their reach into traditionally non-unionized sectors, occupations and working arrangements. The international legal framework – especially international labour standards – clearly establish the right of all migrant workers to organize, to establish and join trade unions of their own choosing, and to freely engage in collective bargaining. While trade unions are entitled to establish their own rules, they must not serve to unnecessarily limit migrant workers' participation in trade union activities or the holding of trade union offices.

Despite the clarity of international law, the growing (albeit insufficient) number of ratifications of relevant Conventions, and the observations of international supervisory systems, there are far too many legal restrictions at the national level interfering with migrant workers' enjoyment of FACB rights and far too few instances of satisfactory removal of such restrictions. Without the benefit of a comprehensive survey on national laws, it appears from a general review of government reports and supervisory comments that the most significant issues are:

- Restrictions on foreigners establishing trade unions or workers' organizations;
- Use of work permits to limit migrant workers' rights; and
- Restrictions on undocumented workers enjoying any FACB rights.

Countries removing restrictions on documented foreigners joining and participating in trade union activities appears to be the most positive developments. There are many countries engaged in legislative reform of their labour codes, employment acts, industrial relations acts, and other relevant laws. Within these reform processes, greater attention needs to be paid to eliminating restrictions and prohibitions on migrant workers, including undocumented migrants, enjoying their FACB rights and to expressly providing for their rights to form and join trade unions and workers' organizations of their own choosing. The preparation of a compendium of national law and practice would enable the monitoring of progress in granting and ensuring the FACB rights of migrant workers.

In promoting and using international law to protect migrant workers' rights, actors and organizations involved in developing migration policy and defending migrants' rights and interests need to recognize the importance of trade unions and their roles. They must also recognize the importance of using the ILO principle on freedom of association stated in the ILO Constitution and Conventions Nos 87 and 98 as a keystone for the protection and promotion of migrant workers' enjoyment of FACB rights. In addition, due consideration must be given to other international labour Conventions on migrant workers and specific groups of workers, as set out in Chapter 3. By exercising their right to freedom of association, migrants are empowered to claim other rights and overcome jointly the challenges they face in the labour market and in regard to their terms and conditions of work. Worker solidarity enables the balancing of the power relations between employers and workers. Guaranteeing the right of migrants to form trade unions protects their ability to act in their own interests and enables them to reinforce the view that they are positive contributors to their workplace, community, and country of origin and residence.

▶ **The Solidarity Center and Civicus see the results of their surveys and research as**

an urgent call to action for unions and other members of civil society advocating for civic freedoms in their countries. Migrant workers and refugees want to participate in society. They want to have a say in the policies that impact on their communities and workplaces. They come to their destination or host countries with skills and experience in pushing for their fundamental civic freedoms. Unions and other CSOs should take advantage of this opportunity to help organise migrant workers and refugees, learn from their experiences and work together to push for enhanced space for civil society in destination countries.

Source: Solidarity Center and Civicus 2019, 9.

Trade unions play an essential role in strengthening the voice of migrant workers, and their absence makes migrant workers more susceptible to exploitation. Trade unions have demonstrated that they can enhance the protection of migrant workers by:

- ▶ Participating in legislative reform processes and migration policy development;
- ▶ Engaging in bilateral and regional cooperation agreements between trade unions in countries of origin and destination;
- ▶ Organizing migrant workers;
- ▶ Providing support services;
- ▶ Facilitating grievance handling; and
- ▶ Negotiating and concluding collective agreements representing migrants' interests.

The majority of trade union federation respondents to the ILO Trade Union Survey (TUS 2021) (see Annex below) reported that they address in some way migrant workers' issues. Depending on the national legal, political, economic, social and cultural context; the industrial relations system context; and their own resources, trade unions reported using different strategies and actions, and most employed multiple strategies to engage with migrant workers. Most trade unions' responses described successes related to running awareness campaigns, networking, being able to help migrants in periods of crisis, engaging in dialogue with employers, and establishing training programmes. Some emphasized the importance of targeting women migrants. However, some respondents reported that their trade unions have not experienced any successes, thus indicating a need for capacity-building of trade unions in making meaningful connections with migrant workers.

The ILO Trade Union Survey 2021 (TUS 2021) showed that the major obstacles that trade union representatives perceive as impeding their ability to support migrant workers are:

- ▶ Legal restrictions on migrants' participation in trade unions;
- ▶ Migrants' reluctance or fear of engaging with trade unions;
- ▶ Gender-based issues and dynamics;
- ▶ Anti-union political sentiment; and
- ▶ The nature of the work migrant workers are engaged in (seasonal, temporary, informal).

However, when migrant workers are working in standard employment where trade unions are present and there are no legal restrictions, trade unions reported including and representing migrant workers just as they do national workers. There was no indication of targeting migrants in organizing campaigns. Where legal barriers existed, trade unions reported using networking with other non-restricted organizations as a strategy to support migrant workers. In many parts of the world, the size, power and roles of trade unions are changing. Many sectors where migrant workers dominate, such as care and domestic work, are expanding and provide both challenges and opportunities for trade unions.

Even in the absence of legal restrictions, migrant workers often face other barriers in practice to organizing and joining trade unions, such as:

- ▶ Long working hours;
- ▶ Lack of days off;
- ▶ Isolated workplaces;
- ▶ Language barriers;
- ▶ Limited knowledge of their rights;
- ▶ Fear of anti-union reprisals by employers; and
- ▶ General reluctance to get involved with workers' organizations.

Many also fear losing their jobs or facing sanctions from local authorities. To a very large extent, the perspectives of trade unions and migrants dovetail and overlap when it comes to the legal and practical barriers that impede migrant workers exercising their FACB rights. The unfortunate outcome is that a very small percentage of migrant workers are in trade unions.

To fully promote and protect the FACB rights of migrants, the many legal and practical obstacles set out in this report need to be addressed through the strengthening of migrant workers' rights under fair migration policies, the strengthening of trade unions, and the extension of fundamental labour rights for all workers in all sectors and types of employment relationships. In other words, a comprehensive and coherent approach to migration, employment and industrial relations policies in accordance with the international human rights framework is required.

▶ 6.1. Suggested steps forward

Considering international standards and supervisory comments, trade unions' reported experiences from the 2021 Trade Union Survey, contributions from ILO offices around the world, and existing secondary literature and research, some suggested steps forward for governments, trade unions, and employers and their organisations, based on key lessons, have been identified to strengthen migrant workers' enjoyment and exercise of their FACB rights.

What can governments do?

Create an enabling environment for migrant workers to exercise FACB rights

- ▶ Through effective social dialogue, including consultations with social partners, create and maintain an enabling environment for the support and protection of freedom of association for workers' and employers' organizations and the effective recognition of the right to collective bargaining. Effective social dialogue structures are essential to achieving this.
- ▶ Ratify and implement the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).
- ▶ Ratify and effectively implement in law and in practice migrant workers Conventions including the UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; the ILO Migration for Employment Convention (Revised), 1949 (No. 97); and the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), as well as Conventions addressing specific categories of workers, including the Domestic Workers Convention, 2011 (No. 189); the Plantations Convention, 1958 (No. 110); and the Nursing Personnel Convention, 1977 (No. 149). In consultation with social partners, create and maintain an enabling environment for migrant workers' protection in conformity with international human rights law and other relevant international labour standards.
- ▶ Ensure coherence between migration laws/policy and labour laws, and in any conflict between immigration and labour law, ensure that the fundamental rights of migrant workers are not compromised or restricted.
- ▶ Assess and publicly disseminate information on the economic, social and cultural contribution of labour migration and migrant workers to the country.

Remove legal obstacles to migrant workers accessing their FACB rights

- ▶ Remove any restrictions in laws, policies or agreements on all migrant workers with respect to organizing, joining or participating in trade unions.
- ▶ Explicitly recognize in law and promote in practice that migrant workers, regardless of status, have a right to enjoy FACB through trade union representation.
- ▶ Extend labour protection in national laws to sectors and types of working arrangements dominated by migrant workers, such as domestic work, agriculture, fishing, EPZs and the informal economy, as well as to temporary and seasonal work, to ensure equal protection under the law.
- ▶ Ensure migrants' work visas or permits are issued with no effective restrictions on the migrant workers' right to freedom of association and collective bargaining, including the right to form and join trade unions.
- ▶ Ensure that migrants' visas or residence permits are not linked to individual employers and that a migrant's authorization to remain in the country of destination is not tied to their employer's good will.
- ▶ Strengthen prohibitions on anti-union discrimination or employers pressuring any worker – and in particular migrant workers – not to join trade unions, including the strengthening of legal penalties to ensure adequate remedies and effectively dissuasive sanctions for freedom of association violations.

Enable the formation of independent trade unions of migrant workers

- ▶ Ensure that the forming of independent trade unions of migrant workers is permitted and facilitated, including the registration process.

Enable collective bargaining and the conclusion of agreements

- ▶ Facilitate the extension of collective bargaining agreements and other measures of protection to cover non-unionized workers.
- ▶ Consider adopting specific rules for collective agreement machinery in largely non-unionized sectors dominated by migrant workers, such as domestic work.
- ▶ Develop model individual work contracts that contain clauses referring to the collective agreements in force, national charters or other means of universal coverage, including laws.⁶⁹

Promote social dialogue and tripartite mechanisms

- ▶ Establish and operationalize institutionalized social dialogue mechanisms on migration, employment and labour protection of migrant workers involving ministries responsible for labour and other relevant parts of government with the full participation of employers' and workers' organizations.

⁶⁹ See ILO, *Securing Decent Work for Nursing Personnel and Domestic Workers, Key Actors in the Care Economy*, ILC.110/III/(B) (2022), para. 1021. See also the Collective Agreements Recommendation, 1951 (No. 91), Paragraph 5.

Ensure governance and access to justice for the protection of migrant workers' FACB rights.

- ▶ Promote the application of labour inspection Conventions and strengthen the labour inspectorate to undertake inspections of places where migrant workers are routinely employed to secure enforcement of legal provisions relating FACB rights as well as other labour rights.
- ▶ Train labour inspectorates on migrant workers' FACB rights and on their primary duty to protect migrant workers, regardless of their status, while engaged in their work.
- ▶ Ensure that effective administrative or judicial dispute resolution bodies are accessible to migrant workers in order to address any grievances or violations of migrants' right to freedom of association, regardless of their migration status.
- ▶ Train administrative and law enforcement officials to respect the right of migrants, including those in an irregular situation, to freedom of association.
- ▶ Establish and enforce sanctions against employers or any other private or public actor who retaliates, or engages in threats, intimidation, harassment or use of violence against migrant workers who exercise their rights to organize or join trade unions.
- ▶ In countries of origin prior to departure and in destination countries, ensure that migrant workers and refugees have access to full, accurate and clear information in languages they can understand on all their employment and labour rights, including their FACB rights, as provided for in domestic and international law and standards. Such information should facilitate their understanding of FACB rights and include references on and contact information for trade unions.

Tackle discrimination and xenophobia

- ▶ Ensure that migrant workers are protected as workers, irrespective of their race, colour, religion, ethnicity, nationality, gender and any other qualifications, including intersectional discrimination grounds such as disability, gender identity, health-related status, and so.
- ▶ Promote a widespread public awareness campaign, in collaboration with the social partners and civil society organizations to send a strong message that hate speech, racism and xenophobia against migrant workers and refugees will not be tolerated.
- ▶ Assess and address differential and discriminatory impacts of legislation, policies and programmes on different groups of migrant men and women in order to empower migrant women to understand, access and exercise their FACB rights to improve their terms and conditions of work.

Collect information

- ▶ Strengthen collection of statistics and information on FACB rights of migrant workers, including the number of migrants in trade unions, the number of migrant workers covered by collective bargaining provisions, and the number of trade unions registered.
- ▶ Monitor on a regular basis the exercise of migrant workers' trade union rights.

Bilateral and multilateral labour migration agreements

- ▶ Include social partners in social dialogue processes in the design, development, implementation, evaluation and monitoring of bilateral and multilateral labour migration agreements.
- ▶ Ensure conformity of bilateral agreements and multilateral agreements on labour migration with international norms relating to the human and labour rights of migrant workers. In many respects, this is linked to the ratification of relevant international Conventions by all States Parties to the agreement (see UN Network on Migration, Guidance on Bilateral Labour Migration Agreements, 2022).
- ▶ Include explicit provisions in BLMAs on the protection of FACB rights for migrant workers covered by the agreements. Note, however, that referencing international labour standards and including FACB rights in BLMAs is not an adequate substitute for the adoption of laws protecting FACB rights in both the origin and destination countries.
- ▶ Include non-discrimination clauses, concrete complaints and dispute resolution procedures, redress mechanisms, and model employment contracts in BLMAs with explicit attention paid to gender. In addition, provide gender sensitivity training for staff involved in the implementation of the agreements.

What can the social partners do?

International and national trade unions and employers' organizations should consider submitting to the CEACR and CFA more observations on the application of Conventions Nos 87 and 98 and other relevant Conventions with respect to migrant workers' FACB rights in law and in practice so as to enable review by the ILO supervisory system. They also can submit information in collaboration with NGOs to the UN treaty bodies supervising the ICCPR, ICESCR, ICRMW, CEDAW and ICERD.

What can trade unions do?

- ▶ Participate in the recruitment process and in the pre-departure briefings and government-organized arrival briefings of regulated recruitment processes. As part of participating in these briefings, encourage and enable migrants to join further training sessions at the pre-departure and arrival stages.
- ▶ Continue to build their own capacity to organize and conduct outreach to migrant workers and effectively advocate to promote respect for their labour rights.
- ▶ Adopt innovative strategies to reach migrant workers in isolated and dispersed settings, such as private households. For example, trade unions can reach out to migrant domestic workers through distribution of leaflets in places where domestic workers congregate, such as shops, playgrounds, parks, markets and at public transit stops where migrant workers commute.
- ▶ Undertake diverse methods of connecting to migrant workers. Digital tools may be beneficial in trade unions' efforts to connect with and support migrant workers.
- ▶ Adopt strategies in collective bargaining practices to cover non-unionized and unrepresented sectors, such as domestic and care work. Trade unions can use an incremental approach to cover these sectors as set out above in France (see section 5.4 above).

- ▶ Undertake awareness-raising and organization strategies that explicitly target women workers and address their concerns, such as reducing gender pay gaps; increasing pay and benefits; improving working conditions, safety and health; maternity protection; and preventing gender-based violence and harassment, discrimination and exploitation.
- ▶ Follow up the awareness-raising strategies with organizing strategies that take into account migrant workers' diverse identities, such as gender and language skills, when reaching out to connect with them. Undertaking consultations and entering into agreements with trade unions from countries of origin can facilitate bridging the culture knowledge gap.
- ▶ Translate all organizational documents into languages migrant workers understand.
- ▶ Engage in trade union-to-trade union cross-border networking by signing MOUs or other types of agreements to protect migrant workers' rights throughout the migration cycle, including pre-departure and possibly after return to the country of origin. This also includes the possibility to facilitate joint research, share good practices and engage in capacity development initiatives.
- ▶ Network and engage in partnerships with civil society, including migrant workers' rights organizations, where appropriate – especially where legal restrictions prohibit migrant workers from joining trade unions.
- ▶ In working as genuine independent and representative trade unions, demonstrate an understanding of migrant workers' concerns and be able to bargain collectively on those issues with employers.

What can employers and employers' organizations do?

- ▶ In line with ILO standards, refrain from engaging in any acts involving threats, intimidation, blacklisting, violence, or harassment towards migrant workers in an effort to discourage or prevent their making contact with existing trade unions or to discourage or prevent them from exercising any of their FACB rights.
- ▶ Share information with migrant workers about their rights at work, workplace rules, and terms and conditions of employment in a format and languages they understand.
- ▶ Recognize independent and representative trade unions formed in their workplace; negotiate with them in good faith; and engage in effective collective bargaining with them.
- ▶ Engage in social dialogue both tripartite and bipartite, to learn more about and address challenges that migrant workers are facing.
- ▶ In origin and destination countries, cooperate and play a pro-active role in advocacy for the effective implementation of BLMAs to ensure good governance of labour migration processes and protection of migrant workers.
- ▶ Encourage employers in individual households and other remote sectors to join employers' organizations.



The image features a large, solid blue diagonal shape that covers the right and bottom portions of the frame. The background, which is visible on the left and bottom-left, is a blurred photograph of a clothing store. It shows shelves with various items, including what appears to be a hat and some bags, and a person's arm in a brown jacket in the foreground. The word "References" is written in a bold, yellow, sans-serif font across the blue area.

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Annex.

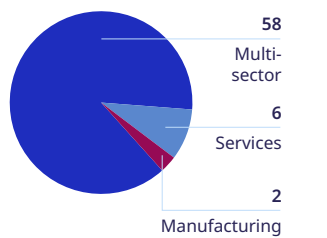
ILO Trade Union Survey
2021: Trade union
perspectives on securing
freedom of association
and collective bargaining
for migrant workers

► Introduction

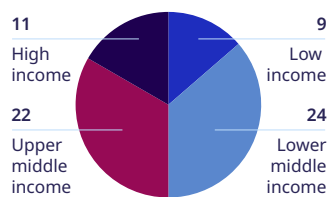
This Annex draws primarily from the ILO Freedom of Association and Collective Bargaining for Migrant Workers Trade Union Survey 2021 (TUS 2021) to identify key obstacles faced by trade unions in connection with migrant workers, as well the actions that trade unions are taking to support migrant workers.⁷⁰

The insights and information showcased throughout this annex are drawn from the TUS 2021 responses of 66 national trade union federations⁷¹ from 56 countries. These trade union federations cover a number of sectoral focuses (figure A1), country income groups⁷² (figure A2), and geographic regions⁷³ (figure A3). Additionally, ILO units from headquarters and offices around the world provided inputs and existing research was also reviewed.

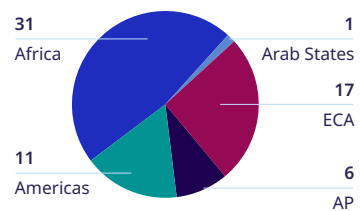
► **Figure A1.**
Trade Union Federations
by sectoral focus (n=66)



► **Figure A2.**
Trade Union Federations
breakdown by countries'
level of income



► **Figure A3.**
Trade Union Federations
by region



Source: TUS 2021.

70 The TUS 2021 was a collaborative effort between the ILO's Labour Migration Branch (MIGRANT) and ILO ACTRAV. See the final section of this Annex for information about the survey methodology.

71 These trade union federations are umbrella organizations that represent various national trade unions. A total of 72 responses were received for the TUS 2021, as there were instances of multiple individuals from the same organization completing the survey.

72 This chapter draws on World Bank (n.d.) country income group categorizations, which are based gross national income per capita as follows:

- low income: US\$1,045 or less;
- lower-middle income: US\$1,046 to US\$4,095;
- upper-middle income: US\$4,096 to US\$12,695; and
- high income: greater than \$12,696.

73 The ILO works in five global regions: (i) Asia and the Pacific; (ii) Europe and Central Asia; (iii) the Americas; (iv) the Arab States; and (v) Africa.

► Navigating challenges: How trade unions support migrant workers

Trade unions present varying approaches to dealing with migration (Marino, Roosblad, and Penninx 2017b). A supportive approach has increasingly been superseding some trade unions' earlier resistance to migration, which has included pushing for policies that restrict immigration and taking actions that prioritize national workers over immigrants (for example, seeking to safeguard privileges of national workers). When trade unions are supportive towards migrant workers, their actions can vary in extent vis-à-vis levels of representation and inclusion. Support can also be targeted towards incoming migrants as well as national emigrants working within host countries. Most trade union federation (88 per cent) who chose⁷⁴ to respond to the TUS 2021 indicated that they address migrant workers' issues.

The trade unions who indicated that they do not provide support to migrant workers shared several reasons. These include working in sectors that do not have many migrant workers, being a new trade union, lack of interest from migrant workers who have been approached, and lack of information about migrant workers. Only one of the eight trade unions who reported not currently addressing migrant worker issues indicated that they do not plan to incorporate these issues in the future. This was an Eastern European trade union that said they do not have many migrant workers in the sectors they represent.

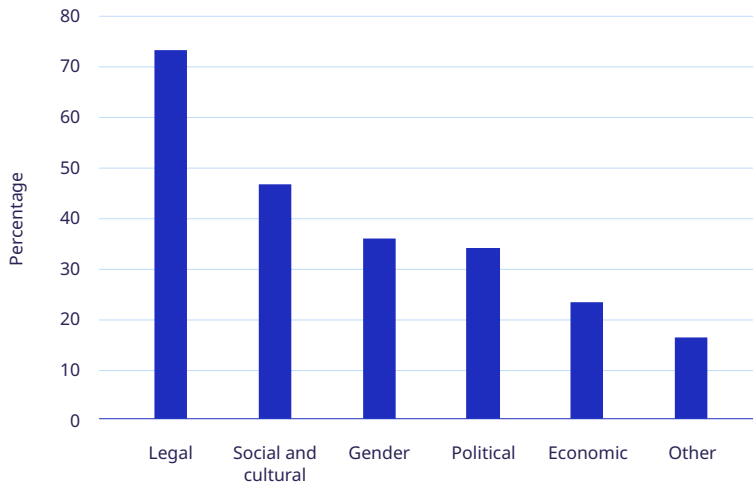
The discussion below focuses on those trade unions that indicated they address migrant workers' issues.⁷⁵ Slightly more than half (55 per cent) of the trade unions who reported addressing migrant workers' issues indicated that they have migrant workers in their trade union structures. Roles that trade union federations reported as being played by migrants include being members, mobilizing other migrants, shop stewards, representing other migrants, advisors, facilitators, "the exact same as any other worker", supporting other migrant workers, and helping to keep records of migrant workers. Migrant participation was also specifically reported in specialized migrant-focused trade unions, trade committees, executive committees, and inter-union committees focused on migration. Among unions that reported having migrants in their trade union structures, almost all (94 per cent) indicated that these roles involved both men and women.

Barriers to freedom of association and collective bargaining among migrant workers

Trade unions can experience diverse barriers in relation to supporting migrant workers to exercise their FACB rights. These barriers can emerge from a variety of sources; for example, they can be based on legal frameworks, including labour migration schemes, the nature of industrial relations systems, levels of national development, and level of trade union presence. Survey respondents identified a number of specific obstacles that they face (figure A4). In addition, respondents shared a variety of challenges through their responses to open-ended questions.

⁷⁴ It is important to note that trade unions who address migrant workers' issues were likely more inclined to complete the survey than those who do not.

⁷⁵ Unless otherwise indicated, figures in this section describe respondents within the group of trade unions that indicated they provide support to migrant workers (n=58).

▶ **Figure A4. Obstacles to protecting FACB rights of migrant workers, according to trade unions**

Source: TUS 2021.

Legal

The most commonly cited obstacle was “legal” challenges, which was expressed by 73 per cent of respondents. Examples of legal challenges shared by trade unions include:

- ▶ The withholding of work permits for workers joining trade unions;
- ▶ Lack of social security;
- ▶ Visas tying workers to their employers, which create fear of deportation for expressing challenges;
- ▶ Authorities not recognizing the issues of returnees as there is no employer;
- ▶ Labour laws being weakened by the current government;
- ▶ Laws giving preference to the hiring of national workers;
- ▶ Certain ILO Conventions not being ratified;
- ▶ High levels of migrants working in the informal economy;
- ▶ Lack of regional integration allowing for freedom of movement;
- ▶ Anti-union policies;
- ▶ Legal restrictions on migrants fully participating in trade unions or in some cases barring them from participating at all;
- ▶ Migrants’ labour contracts having limited guarantees under current legislation; and
- ▶ Temporary labour migration schemes.

The following are some of the TUS 2021 participants' open-ended responses concerning legal barriers:

“Barriers include visa conditions that effectively bond migrant workers to their employers, where they risk deportation if they speak out about exploitation.” (Trade union federation, Australia)

“It has been very challenging to help migrant workers, especially in matters of dismissal, as many of them have contracts with very limited guarantees under current labour legislation.” (Trade union federation, Cabo Verde)

“It is forbidden for unions to meet with immigrants, especially unions that are independent or not affiliated with the governmental union, by the security.” (Trade union federation, Egypt)

Nevertheless, while legal challenges were broadly reported, some respondents specifically stated that their country does not have legal barriers impeding their engagement with migrants. In these cases, trade unions cited other problems, as discussed below.

Social and cultural

The second-most frequently selected obstacle was “social and cultural” barriers, which were cited by 46 per cent of respondents. Multiple trade unions expressed that migrants were reluctant or afraid to engage with trade unions. Reasons included fear of losing their jobs and fear of legal repercussions, such as losing work permits. Other social and cultural obstacles shared by respondents include:

- ▶ Migrants focusing on working and not wanting to unionize;
- ▶ Migrants coming from countries where unionization is not the norm;
- ▶ Language barriers;
- ▶ Migrants' lack of knowledge of rights;
- ▶ Migrants' mistrust of the local population; and
- ▶ Migrants experiencing discrimination.

“National laws allow freedom of association to all workers. However, [a] majority of migrant workers are afraid of joining the union because of their migration status (most of them are irregular migrants).” (Trade union federation, Malta)

“Migrants themselves are insecure to participate in union issues[;] they prefer to organize as country associations, however law does not prohibit them from organizing.” (Trade union federation, Botswana)

“Sometimes migrant workers are suspicious of trade unions especially if they do not have freedom of association in countries of origin, or are threatened by employers to terminate their services if they joined the union.” (Trade union federation, Kenya)

“When speaking with some of them they clearly expressed [the] opinion that they wanted only [to] make some money and [are] not interested to [be] unionized.” (Trade union federation, Montenegro)

Gender

Selected by 36 per cent of respondents, “gender” was also identified as a key obstacle to accessing FACB rights. Migration is often a gendered activity. For example, in the Association of Southeast Asian Nations (ASEAN) region, women are strongly represented in migration related to domestic work, nursing and entertainment, and men are prominent in construction, manufacturing, agriculture, fisheries and forestry (Bal and Gerard 2018). Women’s experiences as migrants can also be connected to challenges that are particular to their gender.

Trade unions shared a variety of challenges experienced by women migrant workers in their countries, including:

- ▶ Lack of social protection;
- ▶ Dealing with social and cultural expectations that lead to be women being placed in particular segments of the labour market;
- ▶ Lack of skills;
- ▶ Reluctance of migrant women to seek help;
- ▶ Motherhood;
- ▶ Working hours;
- ▶ Legal and regulatory issues;
- ▶ Isolation;
- ▶ Violence and harassment;
- ▶ Exploitation;
- ▶ Employment structures; and
- ▶ Gender-based discrimination.

The following are some of the TUS 2021 participants’ open-ended responses concerning gender-based barriers to FACB:

“They lack social protection and security.” (Trade union federation, Lesotho)

“Women and men migrant workers do not have access to publicly-provided sexual and reproductive health care. Although migrant workers are required to hold private insurance, it is common for sexual and reproductive health care to be excluded from these policies.” (Trade union federation, New Zealand)

“Little or no information received [by women migrant workers] about their rights in the workplace.” (Trade union federation, Mexico)

“Lack of maternity protection, discrimination, sexual harassment.” (Trade union federation, Zambia)

“The high cost of residence permits for them and their families.” (Trade union federation, Mauritania)

“Risks for women largely arise in the service sector. Regarding the rights at work, women will often become [an] invisible workforce when they work for private households. The isolation of female migrant workers is a typical problem of female migration in general. Moreover, there are risks of violence and exploitation of this workforce.” (Trade union federation, Kazakhstan)

“Women have faced the major brunt of the pandemic. Health crisis has both amplified existing gender dynamics and created new gender-biased outcomes that disproportionately impact upon women migrant workers. Discrimination, exploitation, harassment, gender-based violence and domestic violence have further aggravated the agony.” (Trade union federation, India)

“Increased risk of sexual harassment and gender-based violence.” (Trade union federation, Australia)

“Most of them [women migrant workers] have irregular status. They live in precariousness, without permanent employment.” (Trade union federation, Senegal)

“Xenophobia and abuse by the employers.” (Trade union federation, Panama)

In terms of trade unions’ ability to reach women migrant workers, one respondent noted that women migrants involved in domestic work can be hard to identify. Other issues mentioned include that women migrant workers are reluctant to come forward when they experience problems and that they do not know where to bring their complaints.

Political

“Political” issues were identified by 34 per cent of responding trade unions. Some trade unions described tumultuous political situations in their countries making their work difficult. Trade unions also provided examples of political suppression of their activities, which included the following comments.

“Free and independent trade unionism is considered subversive and its members harassed and repressed.” (Trade union federation, African country)

“Political authorities create tremendous difficulties with the arrest of trade union leaders, threats of all kinds, blocking of salaries and suspension from duties without disciplinary proceedings.” (Trade union federation, African country)

Economic

Additionally, “economic” challenges to trade unions assisting migrant workers to secure their FACB rights were reported by 23 per cent of trade unions. Several trade unions reported having a lack of resources to implement plans. Another issue mentioned was that temporary migrants are often not trade union members and trade unions have limited funds to support and assist non-members. One respondent stated that migrant workers tend to face multiple challenges, which require multiple interventions. Another respondent noted that when members emigrate, the trade union lacks the resources to support them in their host countries.

“Many temporary migrant workers will not be union members and unions have limited resources to provide support to non-members.” (Trade union federation, New Zealand)

Additional challenges

While only 16 per cent of respondents selected the option of “other” challenges, responses to open-ended questions elicited a variety of examples of “other” challenges. Additional obstacles mentioned include:

- Employers preventing migrants from organizing;
- Employment structures, particularly noting problems created through short-term contracts;
- Lack of data on migrants and difficulty identifying them;
- Reaching migrants being a low priority of the trade union; and
- Having difficulty carrying out cross-border work (which is discussed in more depth below in the section on networking).

“The lack of freedom of association on the part of private employers not only restricts migrants, and does not allow unionization, if they [are] a migrant it’s worse.” (Trade union federation Paraguay)

“Most unions and their leaders do not see migrant workers to be a priority or a core business.” (Trade union federation, Ghana)

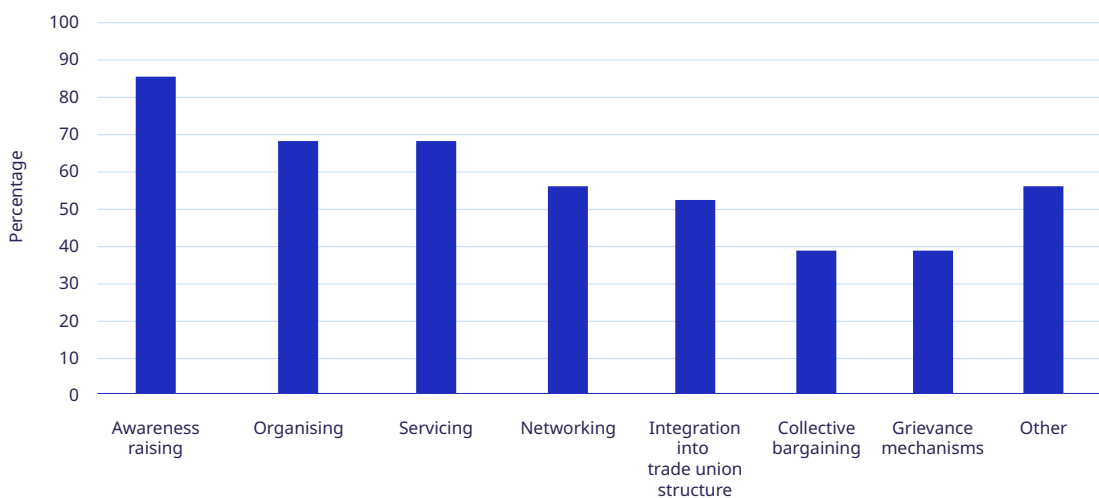
“Since ... most of them [migrant workers] are employed in touristic and construction sectors (both with highly expressed seasonal character here) they stay for [a] short period of time.” (Trade union federation, Montenegro)

“The length of residence (sometimes they tell you that they will not participate because they will return to their states or countries).” (Trade union federation, Mexico)

Strategies used to support migrant workers

Despite facing the challenges described above, trade unions still provide a wide range of support to migrant workers around the world. In the TUS 2021, national trade union federations reported using a variety of pre-identified activities to support migrant workers (see figure A5). These trade unions federations also shared insights into their experiences providing support to trade unions through answering open-ended questions.

► **Figure A5. Types of activities put in place by trade unions to support migrant workers**



Source: TUS 2021.

Awareness-raising

The most commonly reported activity was “awareness-raising” which was reported as being used by 86 per cent of responding trade unions. Trade unions described a variety of activities that they use to raise awareness among migrant workers, which include:

- Opening centres for migrants to access information;
- Running a radio programme;
- Monthly meetings;
- Running seminars, lectures, and conferences; and
- Organizing a mobile theatre.

Awareness-raising can also involve promoting migrants’ issues in broader societal forums. For example, trade unions in France, Germany, Italy and the United Kingdom have supported national campaigns opposing xenophobia and nationalism (Marino, Roosblad, and Penninx 2017b).

“The association for domestic workers recruits domestic workers both in Lesotho and South Africa. The organization was established only in July 2021. So, the concentration is on membership growth. We have radio programmes to educate them [domestic workers] about their rights.”
 (Trade union federation, Lesotho)

“We have held seminars, lectures, conferences and seminars with the support of IOM [International Organization for Migration] and ILO. On awareness-raising.” (Trade union federation, Panama)

“We meet group of workers from different countries and companies once a month for our Awareness-Raising Session.” (Trade union federation, Mauritius)

Organizing

A majority of the trade unions also reported engaging in “organizing” (68 per cent). Organizing can involve both internal activities (such as, empowering and mobilizing current members) and external activities (such as, recruiting new members, encouraging self-organization, and mobilizing members to achieve targeted outcomes) (Hurd 2004 as cited in Marino, Roosblad, and Penninx 2017b). Several survey respondents described seeking to recruit migrant members. Sometimes they described partnering with other organizations to carry out such recruitment. Reaching migrant workers was described as a process that has the potential to be rather difficult. Additionally, one trade union said that migrants join a trade union and “wage their own struggles”.

“We network with NGOs and communities to reach out to, as much as possible, to migrant workers.” (Trade union federation, Malta)

Trade unions also described organizing both nationals before they emigrate and migrants who have arrived in their country.

“We only organize migrant workers when they come to work in Zambia under the Zambian Labour Laws” (Trade union federation, Zambia)

“We organize Kenyan nationals/prospective migrants.” (Trade union federation, Kenya)

Trade unions also expressed a variety of challenges related to organizing:

“Lack of funds/resources to implement plans, lack of participation in mobilization activities.” (Trade union federation, Botswana)

“Language barrier, discrimination issue.” (Trade union federation, Central African Republic)

“Migrant workers are very hard to organize since they are largely employed outside the formal sector.” (Trade union federation, Armenia)

Servicing

“Servicing” was also reported by a majority (68 per cent) of the trade unions. Servicing involves providing services to members. In some cases, these services can be quite diverse, such as trade unions developing land-leasing schemes, transport and service stations, banks, laundromats, stores, medical services, and insurance programmes (Morris 2002). Servicing activities described by TUS 2021 respondents included bringing cases to a human rights commission, providing assistance to migrant workers who seek help, and providing legal aid.

“Providing legal aid to solve their problems in the way they work and the consequences of exploitation.” (Trade union federation, Russian Federation)

Networking

In addition, a little more than half of the trade unions reported engaging in “networking” (56 per cent), which can include collaborating with other trade unions as well as other actors, such as NGOs and faith centres. Networking was described as taking place with a diverse array of organizations. Some trade unions described supporting other organizations:

“We are trying with some NGOs and associations to raise awareness about their cases and to prosecute when the abuses are flagrant but it is very difficult.” (Trade union federation, Senegal)

Additionally, some trade unions described seeking help from other organizations:

“We have adopted the policy of organizing in order to jointly try to obtain support from NGOs operating in the country.” (Trade union federation, Cabo Verde)

Due to the substantial number of migrant workers crossing national borders, addressing migrant workers’ issues often involves international cooperation. This cooperation can be global, regional or bilateral. Facilitating cooperative processes, a variety of institutions work across borders to address migrant issues.

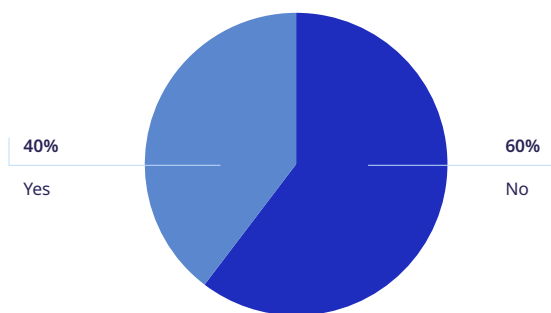
Global trade union federations and their affiliates are key actors involved in international cooperation among trade unions. Notably, 81 per cent of the trade union respondents who said they support migrant workers are members of global federations.⁷⁶ Global trade union federations have been playing a key role in shaping debates over international labour migration through:

- Participation in various forums such as the Global Forum on Migration and Development;
- Actively engaging in negotiations toward the adoption of the UN Global Compact for Safe Orderly and Regular Migration; and
- The Council of Global Unions, which provides policy advice and guidance to affiliates around the world on various issues, including migrant workers.

⁷⁶ In addition, seven of the eight national trade union federations that indicated in the TUS 2021 that they do not support migrant workers are also members of global trade union federations.

Another way that trade unions can engage in international cooperation is to sign cross-border agreements with other trade unions. To enable such agreements and to facilitate their effective creation, the International Trade Union Confederation (ITUC) has adopted a model agreement for cross-border collaboration among trade unions, and ILO ACTRAV has provided support in the establishment of such agreements. Less than half (40 per cent) of trade union respondents to the TUS 2021 indicated that they had signed such an agreement (see figure A6). An example of this type of agreement is the cooperation agreement between the TUC (United Kingdom) and CGTP-IN (Portugal), which seeks to encourage trade union membership and organization among Portuguese and Portuguese-speaking workers in the United Kingdom.

▶ **Figure A6. Signed cross-border agreements with other unions**



Source: TUS 2021.

Cross-border agreements were described by survey respondents as including a variety of provisions, including:

- ▶ Information sharing;
- ▶ Accessing services (for example, training, financial and legal services, welfare benefits, counselling);
- ▶ Building solidarity;
- ▶ Coordinating actions (for example, campaigns, training programmes, promoting public policies, record keeping, and lobbying); and
- ▶ Regional planning.

The following are some of the TUS 2021 participants' responses concerning the aims of their networking endeavours as they relate to addressing migrant workers' issues:

“Data exchange and pleading for a bilateral agreement between the two countries on the social protection of migrant workers.” (Trade union federation, Morocco)

“Exchange of details on the workers and sharing of information.” (Trade union federation, Namibia)

“To discuss the problems faced by migrant workers.” (Trade union federation, Cameroon)

“Accessing the trade unions (TUs) services in the destination countries and departure training and information sharing between the TUs.” (Trade union federation, Ethiopia)

“Awareness-raising on irregular migration, technical and material support, sharing of experiences, financial and legal assistance.” (Trade union federation, Senegal)

“Health and safety, organizing, CBA [collective bargaining agreement] and welfare benefits.” (Trade union federation, Israel)

“Respect the entry and exit of workers mainly at the borders with Argentina and Brazil.” (Trade union federation, Paraguay)

“Trade union strengthening, solidarity and cooperation between the Haitian and Dominican trade union centres to advocate for the eradication of child labour, training, discussion of bilateral government agreements, environment, labour and trade union rights with a gender perspective with the support of TUCA/ITUC/ILO.” (Trade union federation, Dominican Republic)

“Enhancing the role of trade unions and the effectiveness of measures taken to regulate relations between workers and employers, including migrant workers and members of their families, based on the interests of working people, as well as promoting the role of trade unions in the development of labour and democratic relations in society as a whole.” (Trade union federation, Tajikistan)

“Mutual record-keeping of members and their representation vis-à-vis employers and control bodies.” (Trade union federation, Russian Federation)

“Contacts, exchange of experience, delegations, important and useful information, short-term and subject-specific support to those in need etc.” (Trade union federation, Azerbaijan)

“Exchange of experiences and interviews between laws governing workers, especially labour law, trade union regulations law, insurance and pensions law.” (Trade union federation, Egypt)

One trade union stated that the topics addressed by networking change over time:

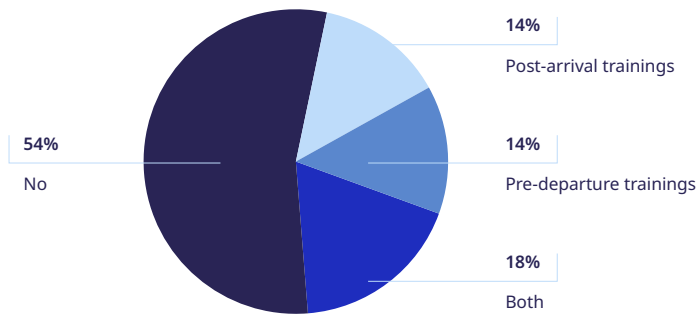
“The subjects dealt with depend on current events (seasonal work, cross-border work, rescue at sea, reception of migrant workers, etc.)” (Trade union federation, France)

Of the 22 trade union federations that indicated that they had signed cross-border agreements, slightly less than half (45 per cent) reported providing pre-departure training, post-arrival training or both (see figure A7).⁷⁷ Target groups for such training were reported as including migrant workers involved

⁷⁷ In actuality, 23 trade union federations had signed cross-border agreements and were asked this question, but only 22 provided a response.

in domestic work, construction, hotels, care giving, tourism, agriculture, and agroindustry. Trade unions also described that they provided training for refugees, migrant workers, and formal and informal workers.

► **Figure A7. Provision of training by trade unions to migrant workers (n=22)**



Source: TUS 2021.

Overall, trade unions' cross-border collaborations can take multiple forms. Respondents shared a variety of experiences of cooperating with trade unions in other countries:

“We form a legal council linking the unions with other unions to exchange experiences as well as adopt labour problems in the country of the workplace.” (Trade union federation, Egypt)

“Advocate rights-based approach whereby all workers of any origin should have equal rights and duties; hold campaigns to support the ratification and practical implementation of relevant ILO and UN conventions; arrange a dialogue with employer organizations (national, international) and authorities to control migration flows and prevent human trafficking and any abuse of human poverty which could result in violation of basic human and labour rights; support cooperation and country aid programmes to lay down a brickwork for sustainable economic development for decent work of all, eradication of poverty and oppression; contribute to cooperation between trade union centers and sectoral federations through bilateral and multilateral agreements to support migrant workers and recruit them into trade unions; support the creation of information centers for migrants to make them aware of their rights and organize recruitment campaigns; fight any manifestation of intolerance, nationalism, racism and xenophobia; uphold national and international law and regulations to facilitate social integration of migrant workers in host countries or support refugees, forced migrants, displaced persons and asylum-seekers.” (Trade union federation, Russian Federation)

“We organize workers when they are in Mauritius. But we work also with NGOs in Madagascar and Bangladesh for pre departure or issues when the worker is sent back.” (Trade union federation, Mauritius)

“[We have] cooperation with some unions from the origin countries.” (Trade union federation, Namibia)

“We have collaborations with Malian trade unions and we often organize bilateral meetings to deal with problems encountered by Malian nationals in Mauritania.” (Trade union federation, Mauritania)

“We have managed to organize [migrant workers] and inform them of their rights for those who receive the H2A visa and are going to work in the USA, and we have also sought out the unions that protect them in the neighbouring country and we have managed to combine and collaborate to obtain positive results in the protection of the rights of the workers who provide their services in their country.” (Trade union federation, Mexico)

“We are part of the Regional Inter-Union Committee, and through this mechanism, we provide attention in the country of origin and destination, we act in coordination.” (Trade union federation, Panama)

“When a migrant applies, we contact and work with the trade union centre of his or her country of origin.” (Trade union federation, Azerbaijan)

Trade unions also described the difficulty involved with taking actions outside of their own borders:

“We do not currently have capacity to organize migrant workers in their country of origin, but would be interested in developing this further, especially in the Pacific and Asia-Pacific regions.” (Trade union federation, New Zealand)

“It is not easy to organize [migrant workers] when in the other country. There is need to have agreement with trade unions of the receiving countries.” (Trade union federation, Lesotho)

Integration into trade union structure

“Integration into union structure” was also reported by more than half of respondents (53 per cent). As mentioned above, a similar proportion of the trade unions reported having migrants in their union structure. This can be a way to better understand migrants’ challenges and to incorporate activities that address migrants’ needs.

“We have integrated migrant workers into our own trade union structures at the level of the professional unions.” (Trade union federation, Djibouti)

Collective bargaining

Less than half (39 per cent) of trade unions reported engaging in “collective bargaining” on behalf of migrant workers. In some cases, they stated that migrants are automatically covered by general agreements. In other cases, trade union respondents described engaging in efforts to ensure that migrants will be covered by collective agreements.

“If they are employed in an organized work place, we make sure they are covered by the collective agreement.” (Trade union federation, Ethiopia)

“They are part of the unions as per their respective sectors.” (Trade union federation, Namibia)

“The unions have been demanding inclusion of migrant workers in their recognition and collective agreements.” (Trade union federation, Australia)

“Unions that bargain collectively do not exclude migrants from benefits, but there is no specific treatment for their status as migrants in collective bargaining.” (Trade union federation, Dominican Republic)

Grievance mechanisms

The same proportion (39 per cent) of trade unions also reported establishing “grievance mechanisms” to address migrant worker complaints. Several respondents described seeking to be open to hearing challenges faced by migrant workers. Some respondents shared that they help migrant workers to bring their grievances to the public sector authorities. A reported challenge with developing effective grievance mechanisms for migrant workers was that, in some cases, migrants are reluctant to share their problems.

“We regularly collect complaints from migrant workers to make referrals to the labour administration.” (Trade union federation, Mauritania)

“A listening centre to receive their complaints, but these workers generally do not come forward.” (Trade union federation, Democratic Republic of the Congo)

Additional activities

Furthermore, a majority of trade unions (56 per cent) reported engaging in “other” activities to support migrant workers. Examples of these were diverse, some of which are outlined below.

Advocating for migrants' rights with employers

One action includes advocating for migrants' rights directly with employers on particular issues affecting working conditions, for example:

“The union has advocated for the employers to give special incentives to migrant women workers while on maternity leave to enable them taking their children to daycare centers.” (Trade union federation, Montenegro)

Ensuring existing labour laws are being enforced

Another activity that trade unions engage in is ensuring existing labour laws are being enforced.

“The activation of laws on the ground and not just writings.” (Trade union federation, Iraq)

Research

Another activity that multiple trade unions mentioned was engaging in research:

“Research is being conducted on forced labour which [will] lead to development of [a trade union] guide for education, collective bargaining, etc., in all sectors.” (Trade union federation, Sierra Leone)

Playing a welfare role

Some trade unions described playing a welfare role (Morris 2002). This involves providing support services and was mentioned several times in relation to helping migrants during the COVID-19 pandemic:

“Distribution of school, health and food kits to migrant workers.” (Trade union federation, Côte d’Ivoire)

Helping migrants to find jobs

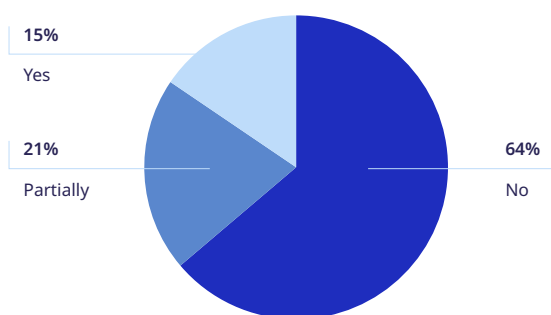
Trade unions can also assist migrants with finding jobs:

“We strive to find them employment in the formal economy.” (Trade union federation, Ethiopia)

Shaping government policy and programmes

One key way that trade unions have been able to address migrant workers’ issues is through involvement in shaping government policies and programmes. Trade unions have long been considered to have important roles in national politics (Ahlquist 2017). Various trade unions described engaging in actions intended to influence government policies related to migrant workers and labour migration. Some of the issues that trade unions reported engaging with include facilitating the administrative process for asylum applications; facilitating the administrative process for work permits; supporting the development of migration policies; and seeking to shape labour laws.

► **Figure A8. Participation by trade unions in social dialogue related to BLMAs or MOUs on labour migration**



Source: TUS 2021.

One activity that trade unions can pursue to support migrants is participating in social dialogue related to the forming of government-to-government bilateral labour migration agreements (BLMAs) and MOUs on labour migration. About a third (36 per cent) of trade unions reported contributing to such agreements (see figure A8). Notably, however, only 15 per cent said they fully participated in social dialogue related to the design, negotiation, implementation, evaluation, and follow up of a government-to-government BLMA or MOU on labour migration, with an additional 21 per cent only having more limited participation in these processes.

Several of the trade unions that indicated only making a “partial” contribution to social dialogue around BLMAs and labour migration MOUs felt that their efforts were not very successful. Difficulties that trade unions shared in relation to participating in BLMAs and MOUs included:

- Not being able to have their voices heard;
- Lack of communication with government;
- Having agreements actually enforced in reality;
- Lack of attention paid to migrants;
- Agreements not being passed; and
- Prioritization of national employees.

“Government don’t share bilateral agreements.” (Trade union federation, Mauritius)

“The difficulty is to apply them here in [this country] where the government participates in these processes but does not want to apply anything.” (Trade union federation, African country)

Supporting specific groups of migrant workers

Strategies to support migrant workers vary in their scope and scale. While many strategies are broad reaching, programmes have also been designed to target specific groups of migrant workers. For example, dedicated programmes have been developed to work with seasonal migrant workers in the Pacific (see box 11).

► Box 11. Seasonal workers in the Pacific

Australia’s Seasonal Worker Programme (SWP) and New Zealand’s Recognised Seasonal Employer (RSE) scheme are available to citizens of Pacific Island Countries (PICs). These schemes provide restricted market access to workers from PICs to work in seasonal jobs in horticulture, viticulture, accommodation, aquaculture, and some broader agricultural areas.

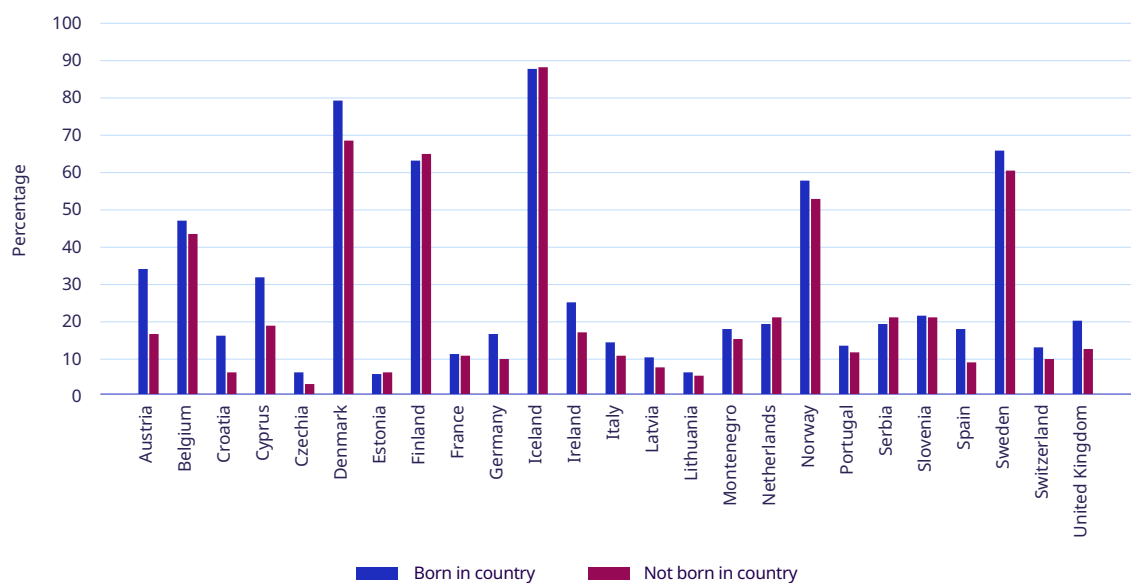
Both Australia and New Zealand have put in place provisions to ensure freedom of association for migrant workers. Trade unions contributed to designing revised temporary migrant policies in New Zealand, which were introduced in 2021, to provide better support for migrant workers. Additionally, the Australian Workers Union is campaigning for the Government to ensure transportation safety for migrant workers being brought to and from work.

Source: ILO 2022c.

Connections between context and behaviour

Trade unions’ behaviours can be connected to the contexts in which they operate. Past research has shown that trade unions vary in how they deal with migrant workers and that these differences have been shaped by national institutions (Gorodzeisky and Richards 2013; Gumbrell-McCormick, Hyman, and Bernaciak 2017; Marino, Roosblad, and Penninx 2017b; Ford 2019). For example, legal systems, as previously discussed, play a strong role in shaping trade unions’ experiences. Another key factor that can differ across countries is trade union density – notably, these rates can differ between migrant and non-migrant workers in a given country (see figure A9). Unionization levels of migrant workers can also be shaped by a country’s industrial relations regime (Kranendonk and De Beer 2016).

► **Figure A9. Trade union membership in select EU countries in 2018**



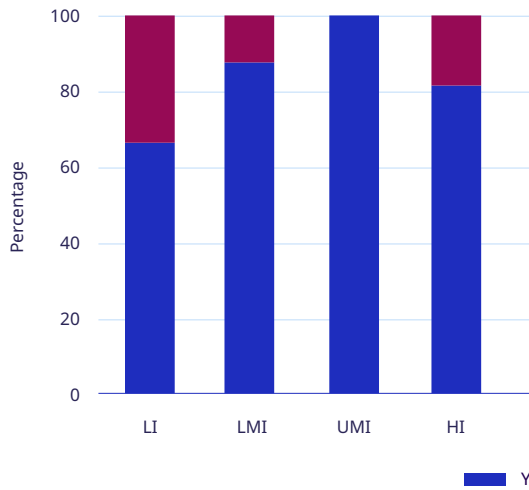
Source: European Social Survey 2018.

The above being the case, this section focuses on exploring the connections between national context and trade unions’ behaviour, based on the responses to the TUS 2021. Across all income groups and regions, most of the trade unions who responded to the survey reported engaging in activities to support migrant workers (see figures 10 and 11).⁷⁸ The discussion below focuses on those trade union federations that reported that they are addressing migrant worker issues.⁷⁹ A key consideration is how the characteristics of various national industrial relations systems shape trade unions’ activities.

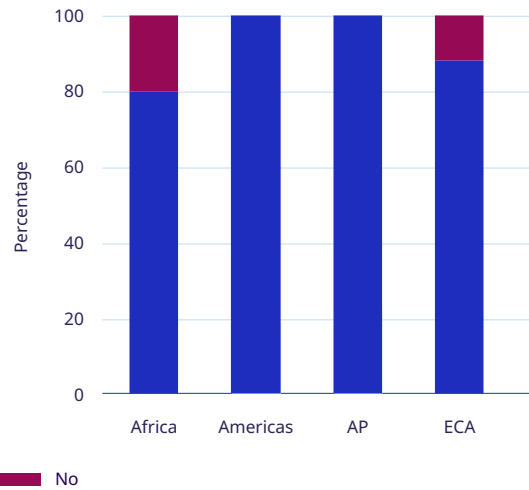
78 All figures which depict regions exclude the Arab States, as there was only respondent from this region.

79 Unless otherwise indicated, figures in this section describe respondents within the group of trade unions that indicated they provide support to migrant workers.

► **Figure A10. Trade union federations addressing migrant workers' issues by country income group (n=66)**



► **Figure A11. Trade union federations addressing migrant workers' issues by region (n=65)**

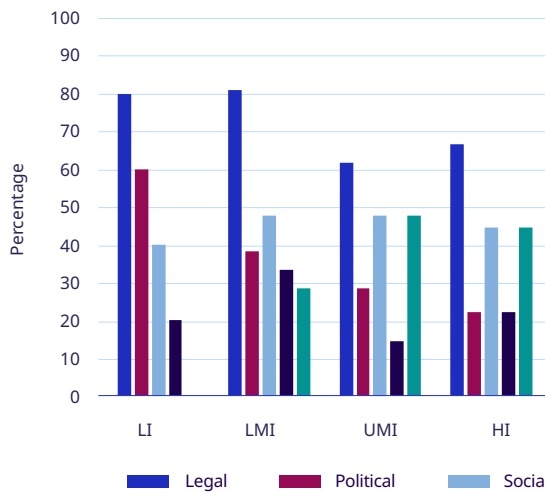


Source: TUS 2021.

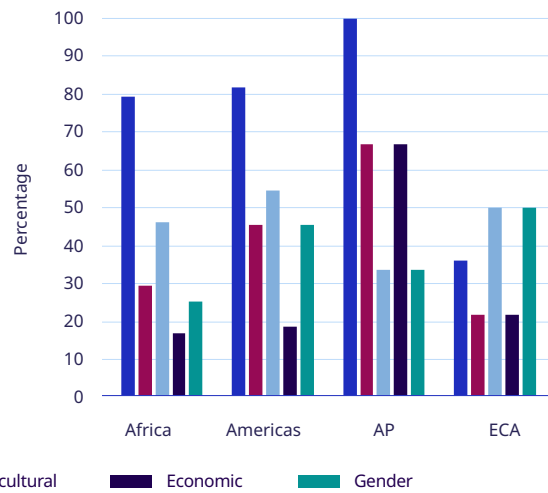
Obstacles to migrant workers' FACB rights: Variation by region and income group

As noted above, trade unions can experience different challenges in securing the FACB rights of migrant workers depending on where they are located. These challenges are displayed in figures A12 and A13 below, which present the obstacles to migrant workers' accessing their FACB rights as reported by trade unions in different country income groups and regions of the world. Highlighting once again the importance of the issues discussed in the previous section, "legal" obstacles were the most cited across all income group and across all regions, with the exception of Europe and Central Asia, where socio-cultural and gender-based obstacles were the most commonly reported.

► **Figure A12. Obstacles to freedom of association and collective bargaining rights for migrant workers according to trade unions, by country income group (n=58)**



► **Figure A13. Obstacles to freedom of association and collective bargaining rights for migrant workers according to trade unions, by region (n=57)**



Source: TUS 2021.

Considering differences related to country income group, trade unions from upper-middle income and high income countries both had “social and cultural” tied with “gender” as the second-biggest obstacles. Trade unions from lower-middle income countries also had “social and cultural” obstacles rated second, but “gender” was the least common challenge mentioned. For low income countries, the second-most commonly mentioned challenge was “political”. Table A1 shows the obstacles reported by at least half of the respondents in each country income group. Notably, low income countries, with their frequent reporting of “political” obstacles, were the only group where more than half of the respondents reported a challenge other than “legal” obstacles.

► **Table A1. Types of obstacles to securing migrant workers’ FACB rights reported by a majority of respondents in each country income group**

Income group	Obstacles reported by 50% or more trade union federations
Low income	<ul style="list-style-type: none"> • Legal • Political
Lower-middle income	<ul style="list-style-type: none"> • Legal
Upper-middle income	<ul style="list-style-type: none"> • Legal
High income	<ul style="list-style-type: none"> • Legal

Source: TUS 2021.

Regional differences can also be seen in the obstacles identified. As mentioned above, Europe and Central Asia is the only region in which legal obstacles were not the most commonly selected barrier, with “social and cultural” and “gender” challenges being tied as the most common obstacles. “Social and cultural” issues were second-most common in Africa and the Americas; while in Asia and the Pacific, “political” and “economic” obstacles tied for second. Table A2 shows the challenges reported by at least half of respondents in each region.

► **Table A2. Types of obstacles to securing migrant workers' FACB rights reported by a majority of respondents in each region**

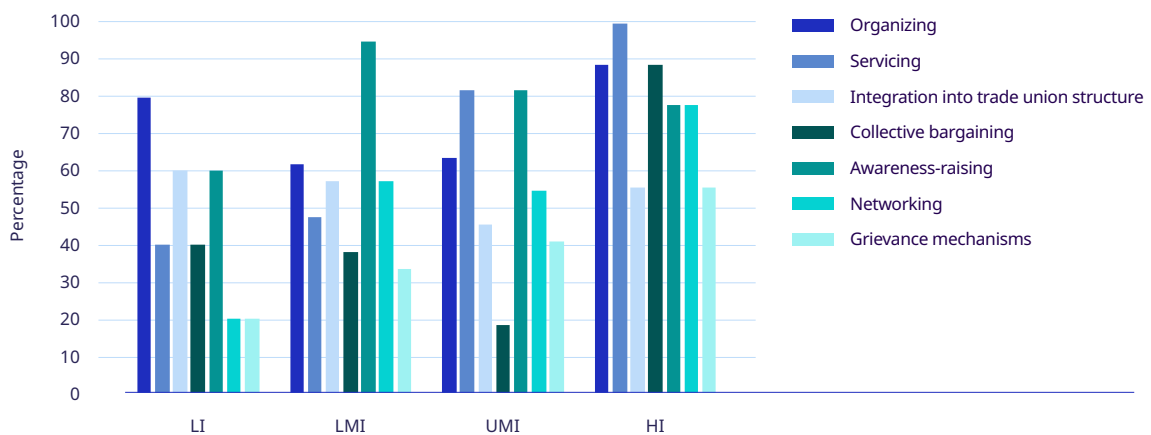
Region	Obstacles reported by 50% or more trade union federations
Africa	• Legal
Americas	• Legal • Social and cultural
Asia and the Pacific	• Legal • Political • Economic
Europe and Central Asia	• Social and cultural • Gender

Source: TUS 2021.

Trade union activities to support migrant workers: Variation by region and income group

The prevalence of various trade union activities used to support migrant workers varies greatly when considering country income groups (see figure A14). Across all groups “organizing” was the first or second-most common activity cited by respondents. “Awareness-raising” was the first or second-most common activity among trade union federations in low, lower-middle and upper-middle income countries. “Servicing” was the most popular activity in high income countries and tied for first in upper-middle income countries, but less prevalent for lower income countries. “Collective bargaining” was tied for the second spot among trade union federations in high income countries, but was much less popular among respondents from all other income groups. Finally, “integration into trade union structure” was relatively prevalent for trade unions in low and lower-middle income countries. Table A3 shows which activities were identified by more than half of the trade unions in each income group. Notably, all of the activity types were reported by more than half of trade unions in the high income group.

► **Figure A14. Activities undertaken by trade unions to support migrant workers, by income group**



Source: TUS 2021.

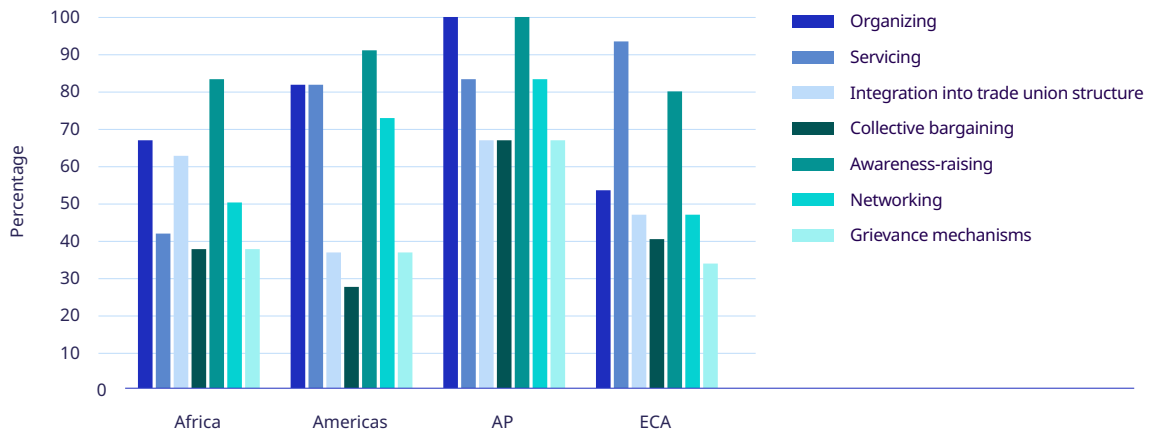
► **Table A3. Types of activities to support migrant workers reported by a majority of respondents in each country income group**

Income group	Obstacles reported by 50% or more trade union federations
Low income	<ul style="list-style-type: none"> • Organizing • Integration into trade union structure • Awareness-raising
Lower-middle income	<ul style="list-style-type: none"> • Organizing • Integration into trade union structure • Awareness-raising • Networking
Upper-middle income	<ul style="list-style-type: none"> • Organizing • Servicing • Awareness-raising • Networking
High income	<ul style="list-style-type: none"> • Organizing • Servicing • Integration into trade union structure • Collective bargaining • Awareness-raising • Networking • Grievance mechanisms

Source: TUS 2021.

Trade unions’ activities to support migrant workers were also found to differ across regions (see figure A15). “Awareness-raising” was the first or second-most popular activity across all regions. “Organizing” was tied for most popular in Asia and the Pacific and came in second in the Americas and Europe and Central Asia. “Servicing” was the most popular activity in Europe and Central Asia and second-most popular in the Americas and Asia and the Pacific. Finally, “networking” was tied for the second-most popular activity in Asia and the Pacific. Table A4 shows the activities that were reported by more than half of the trade unions in each region. This table shows that all activities were reported by more than half of trade unions in Asia and the Pacific.

► **Figure A15. Activities undertaken by trade unions to support migrant workers, by region**



Source: TUS 2021.

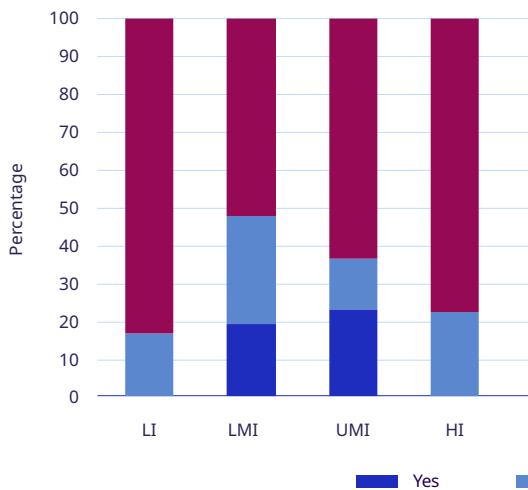
► **Table A4. Types of activities to support migrant workers reported by a majority of respondents in each region**

Region	Activities reported by 50% or more trade union federations
Africa	<ul style="list-style-type: none"> • Organizing • Integration into trade union structure • Awareness-raising • Networking
Americas	<ul style="list-style-type: none"> • Organizing • Servicing • Awareness-raising • Networking
Asia and the Pacific	<ul style="list-style-type: none"> • Organizing • Servicing • Integration into trade union structure • Collective bargaining • Awareness-raising • Networking • Grievance mechanisms
Europe and Central Asia	<ul style="list-style-type: none"> • Organizing • Servicing • Awareness-raising

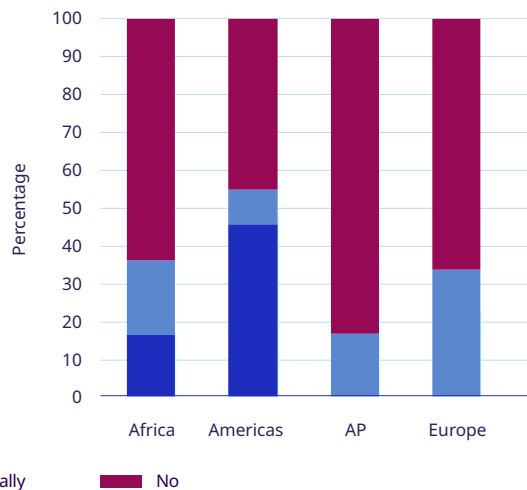
Source: TUS 2021.

Across all income groups, trade union participation in social dialogue related to government-to-government bilateral labour migration agreements (BLMAs) or MOUs was not reported at high levels (see figure A16). Considering responses by region, this type of involvement was most reported by trade unions in the Americas and least reported in Asia and the Pacific (see figure A17).

► **Figure A16. Trade union participation in social dialogue related to government-to-government BLMAs or MOUs, by country income group**



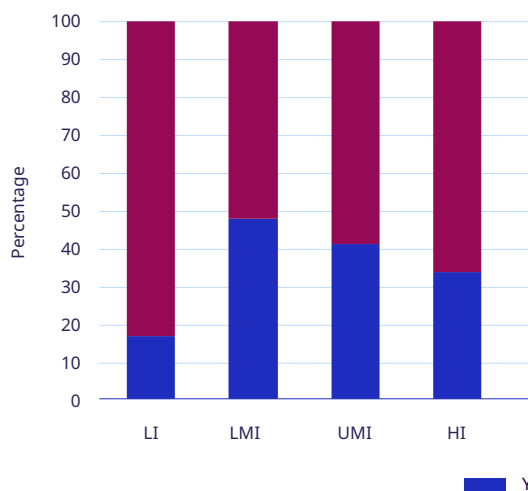
► **Figure A17. Trade union participation in social dialogue related to government-to-government BLMAs or MOUs, by region**



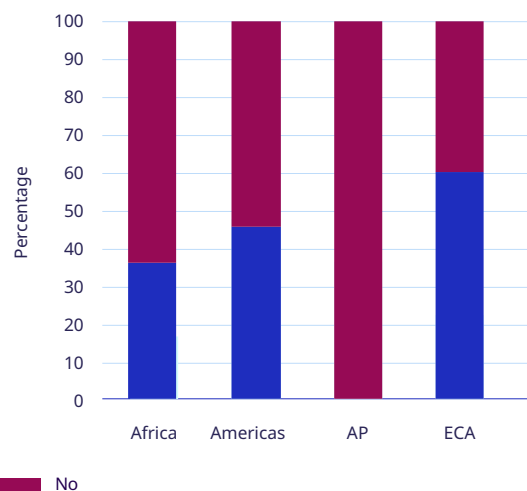
Source: TUS 2021.

Cross-border agreements with other trade unions were least common among trade union respondents in low income countries (see figure A18). Notably, none of the respondents in Asia and the Pacific indicated that they had signed this type of agreement (see figure A19). However, this is due to the small size of the sample, as it is known that some cross-border agreements between trade unions have been created in this region.

► **Figure A18. Signed cross-border agreement(s) with other trade unions, by country income group**



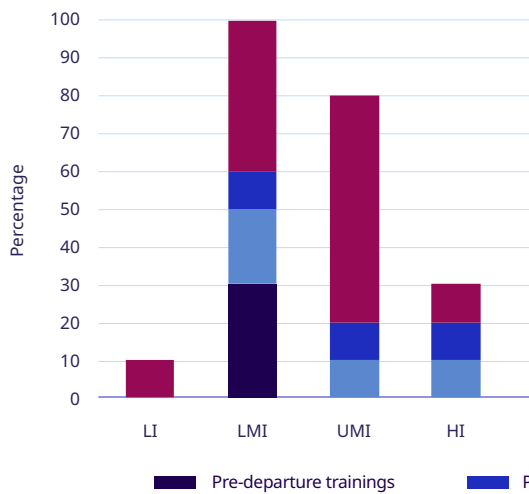
► **Figure A19. Signed cross-border agreement(s) with other trade unions, by region**



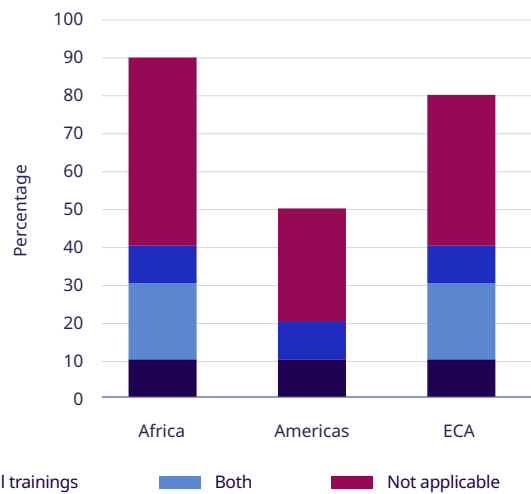
Source: TUS 2021.

As mentioned above, the trade unions that indicated that they had signed cross-border agreements with other trade unions were asked about the provision of training to migrant workers. While this was a small group, differences by country income group and region were found in the prevalence of pre-departure and post-arrival trainings provided (see figures A20 and A21). While it is notable that no trade unions from low income countries indicated that they provided such training, only one trade union from a low income country was asked this question.

► **Figure A20. Format of training for migrant workers provided, by country income group (n=22)**



► **Figure A21. Format of training for migrant workers provided, by region (n=22)**



Source: TUS 2021.⁸⁰

Connections between obstacles and activities

Furthermore, an association can be identified between the types of activities trade unions engage in with the obstacles that they reported. A statistically significant relationship was found between several obstacles and activities (see figure A22).⁸¹ Specifically, reporting “economic” challenges was connected to being more likely to report “integration into trade union structure”. Reporting “legal” obstacles was connected to being more likely to engage in “networking” and developing “grievance mechanisms”. Furthermore, reporting “political” or “social and cultural” challenges was also associated with greater levels of developing “grievance mechanisms”.

80 As no trade unions from Asia and the Pacific indicated they signed cross-border agreements with other trade unions, no trade unions in this region were asked about the provision of training.

81 See the methodology section at the end of this Annex for an overview of statistical tests.

► **Figure A22. Connections between reported obstacles and reported activities**

Obstacles		Activities
Economic	◀◀◀▶▶▶	Integration into trade union structure
Legal	◀◀◀▶▶▶	Networking Grievance mechanisms
Political	◀◀◀▶▶▶	Grievance mechanisms
Social and cultural	◀◀◀▶▶▶	Grievance mechanisms

Source: TUS 2021.

Trade unions’ achievements

Through open-ended questions in the TUS 2021, trade unions shared a variety of achievements. Several trade unions reported success in relation to tackling legal issues. This included examples of being able to effectively influence the legal situation to be more favourable to migrant workers, as well as being able to help migrants navigate the existing legal system.

“The migration policy which will soon be [an] act of Parliament.” (Trade union federation, Sierra Leone)

“We explained on the case of the Malagasy female workers. We brought the case before the Human Rights Commission in Mauritius and also raised many issues.” (Trade union federation, Mauritius)

“The positive impact has been that the authorities of the Ministry of Labour, as soon as a complaint is lodged, it is given the corresponding processing. They give them the same treatment as nationals.” (Trade union federation, Panama)

“Legal support for their problems, especially legal entry into the country and prevention of human trafficking.” (Trade union federation, Iraq)

Some trade unions also described success in being able to have provisions included in government-to-government BLMAs and MOUs on labour migration. Examples included the introduction of elements related to occupational health and safety, social welfare, working hours, equal pay, and increasing penalties for unlawful employment of migrants. Specific examples of provisions included in agreements were described by respondents as involving: ensuring no distinction is made between migrants and other workers; access to healthcare; and provision of sanitary facilities, as well as being able to include a plan for migrant worker training.

“In the first national migration management strategy of 2011, we introduced a component for the defence of migrant workers’ rights.” (Trade union federation, Djibouti)

“That migrant workers be included in the social security system, the most important thing is the bilateral agreement on social security in Mercosur, with Spain and other countries of the world.” (Trade union federation, Panama)

In addition to actions related to legal issues, several trade unions described having success through running awareness-raising campaigns.

“Mobile theatre created in 2017 as part of the ILO-supported campaign “Step out of the shadow! Work Legally!” to raise awareness, especially in remote areas of Tajikistan, of informal sector employment and benefits of formalization. The mobile theatre is used to raise awareness on informal employment and the unions’ role in promoting formalization.” (Trade union federation, Tajikistan)

“Trade Union Caravans through migrant communities in the country.” (Trade union federation, Senegal)

Trade unions also described having success with networking. This can be seen through their experiences with cross-border cooperation. Examples of such cases are described above in the section on networking. As shown above, trade unions have been able to create cross-border agreements with other trade unions that provide wide-ranging benefits. Trade unions also expressed instances of successful cooperation with other actors:

“Awareness-raising workshops in articulation with the education and health system and research work in conjunction with universities.” (Trade union federation, Argentina)

“Organising has been successful through community-based networks without a requirement for formal membership, but this is difficult for unions to resource on a sustainable basis.” (Trade union federation, New Zealand)

Furthermore, trade unions described being able to address challenges during periods of crisis. Across 2020 and 2021, migrant workers have often faced unique challenges caused by the COVID-19 pandemic. For multiple trade unions, this crisis has affected their interactions with migrants, and in some cases, trade unions developed customized approaches to support migrant workers during the crisis (see box A1). In addition, trade unions also shared information about providing support for refugees (see box A2).

► Box A1. Trade unions supporting migrant workers during the COVID-19 pandemic

Respondents to the TUS 2021 indicated varying experiences related to the COVID-19 pandemic. During this time migrants often faced severe challenges. For instance, migrants working in informal jobs during the lockdown period were often excluded from public support. In some instances, trade unions organized dedicated outreach for migrant workers during this period. Examples of trade unions' activities during the pandemic include registering more migrant members, getting government assistance for informal workers, finding accommodation for migrants who could not return home due to travel restrictions, awareness-raising about COVID-19 prevention measures, and providing support through access to hygiene products.

Source: TUS 2021.

► Box A2. Trade unions supporting refugees

Trade unions from different regions described providing support for refugees. They also indicated that instability was increasing and driving an increased flow of refugees entering their countries.

“If they are un-documented they are afraid to report abuse as they will be deported. if they are economic migrants, asylum-seekers and refugees and are in a formal job, they should receive the same treatment as the rest of the work force. if the place of work is organized in our trade union we make sure that they are covered by the collective agreement. The obstacle we face if the place of work is not organized. Sometimes, they are abused and threatened they will reported to police if they complain.” (Trade union federation, Malta)

“Migrant workers is a new phenomenon with many refugees coming from border countries following the security instability.” (Trade union federation, Central African Republic)

“We have been working in support of migrants, as guidance, courses and technical support, because beyond the humanitarian crisis we are experiencing a refugee crisis where thousands have lost their lives fleeing conflict and resulting calamities as the only means of survival, in search of better living conditions and work.” (Trade union federation, Brazil)

“Uphold national and international law and regulations to facilitate social integration of migrant workers in host countries or support refugees, forced migrants, displaced persons and asylum-seekers.” (Trade union federation, Azerbaijan)

Finally, trade unions described other diverse examples of success. These include being able to engage in dialogue with employers and establishing training programmes.

However, also notable is that when asked to share examples of success related to supporting migrant workers, several trade unions said they have not had any success.

“We don’t have one.” (Trade union federation, Colombia)

“We have no positive response, we can only continue to fight to recover our gains and defend the labour rights of migrant workers.” (Trade union federation, Panama)

“No event has been observed to have a major positive effect.” (Trade union federation, [Azerbaijan])

Summary

This Annex has shared challenges that trade unions have identified in relation to their ability to support migrant workers in exercising the right to freedom of association and participate in collective bargaining. Emphasizing its critical importance, the obstacle most commonly cited in the TUS 2021 was “legal” barriers. This was not only the most common overall, it remained the most common obstacle when the results were broken down by country income group and region, with the exception of the responses from trade unions in Europe and Central Asia.

“Social and cultural” obstacles were the second-most commonly selected barrier overall. However, the prevalence of these obstacles differed across country income groups and regions. They were the second-most common barrier reported by trade unions in all income groups except for those in low income countries. Additionally, social and cultural obstacles were the most commonly reported challenge by trade unions in Europe and Central Asia and the second-most common in Africa and in the Americas. A critical social and cultural challenge that was reported was that migrants are reluctant to join trade unions and often are afraid of facing repercussions for doing so.

Overall, “gender” was the third-most commonly identified obstacle. However, gender was among the first or second-most reported challenge for trade unions in upper-middle income countries, high income countries, and those in Europe and Central Asia. A number of respondents stated that it was more difficult to reach women migrant workers.

This Annex has also presented an overview of strategies that have been used by trade unions in their efforts to support migrant workers around the world. The most commonly reported strategy was “awareness-raising”, with “organizing” and “servicing” tied for second. Overall, trade unions tended to report using multiple strategies to support migrant workers. Across all income groups and regions, more than half of trade unions selected three or more strategies from the list provided in the survey.

Also considered were the connections between different contexts and the types of activities that trade unions report engaging in. Connections were explored between how strategies used related to country income level, region, and the reported obstacles. A statistically significant connection was found between trade unions reporting economic challenges and them reporting “integrating migrants into trade union structures”. This is in line with the reported challenge of it being expensive for trade unions to

support migrants who are not members. Additionally, the use of grievance mechanisms was found to be connected to reporting legal, political, and social and cultural challenges. This shows that trade unions are developing targeted tools to deal with migrant workers in contexts where they face challenging circumstances. Finally, a significant connection was also found between reporting legal challenges and engaging in networking. For these trade unions, using networking as a strategy can be a way to work with other organizations that may not experience the same legal barriers.

In line with the sizeable importance that responses clearly place on legal barriers, trade unions described trying to shape and reshape national policies. However, they often reported struggling to have their voices heard. Nevertheless, some trade unions shared experiences of being able to successfully influence public policy and of being able to help migrant workers to navigate existing legal frameworks.

Trade unions also described successes related to running awareness campaigns, networking, being able to help migrants in periods of crisis, engaging in dialogue with employers, and establishing training programmes. In contrast, some respondents reported that their trade unions have not experienced any successes at all in relation to supporting the FACB rights of migrant workers.

Trade union survey: Methodology and questionnaire

In November 2021, the ILO Trade Union Survey 2021 was sent by ILO ACTRAV to 436 national trade union federations. The response rates by region were: Africa 31/135; Asia and the Pacific 6/67; Americas 11/124; Arab States 1/11; and Europe and Central Asia 17/99. In all, 72 responses were received that covered 66 trade union federations. A breakdown of the respondents is outlined in Table A.1 below. The responses cover trade unions in all ILO regions. However, it is important to note that this is not a representative sample.

The questionnaire was offered in six languages (English, French, Spanish, Portuguese, Russian and Arabic). It included closed and open-ended questions. Responses were all translated into English. Quantitative responses were reviewed and analysed using SPSS software, and qualitative responses were reviewed and analysed with the assistance of Nvivo software. Key findings from the survey are shared in the report. These include original and translated quotes, as well as summaries of quantitative data. For the reporting on quantitative data, unless otherwise indicated, differences between different groups (that is, regions and country income groups) are not necessarily statistically significant. The quantitative and qualitative information from the TUS 2021 shared in this Annex is solely intended to provide an illustration of the variation in responses received and to give insight into the experiences of individual trade union federations.

► Table A5. Overview of TUS 2021 respondents

Region	Country	Respondent name	Sector	Global union affiliation	Respondent No.
Africa	Angola	Forca Sindical Angolana Central Sindical (FSA-CS)	Multi-Sector	WFTU	#59, #60
	Botswana	Botswana Federation of Trade Unions	Multi-Sector	ITUC-Africa	#02
	Burundi	Confédération Syndicale du Burundi (CSB)	Public	ITUC	#28
	Cabo Verde	UNTC-CS	Multi-Sector	n/a	#57
	Cameroon	General Union of Cameroon Workers (UGTC)	Multi-Sector	WFTU	#29
	Cameroon	Confédération des Syndicats Autonomes du Cameroun (CSAC)	Multi-Sector	ITUC	#35, #43
	Cameroon	CTUC (CONFÉDÉRATION DES TRAVAILLEURS UNIS DU CAMEROUN)	Multi-Sector	WFTU	#36
	Cameroon	Union des Syndicats Libres du Cameroun (USLC)	Banking & Finance	ITUC	#41
	Central African Republic	Organisation Démocratique Syndicale des Travailleurs de Centrafrique (ODSTC)	Multi-Sector	WFTU	#37
	Chad	UNION DES SYNDICATS DU TCHAD	Trade & Industry	ITUC-Africa	#44
	Côte d'Ivoire	CENTRALE SYNDICALE HUMANISME (CSH)	Multi-Sector	ITUC	#30
	Democratic Republic of the Congo	Confédération Syndicale du Congo (CSC)	Multi-Sector	ITUC, IndustriALL, ITF, I.E.	#40
	Djibouti	Union Djiboutienne du Travail (UDT)	Multi-Sector	ITUC, ITUC-Africa	#33
	Egypt	Egyptian Democratic Labour Congress	Garments	ITUC	#70, #72
	Ethiopia	EDLC	Multi-Sector	n/a	#05
	Ethiopia	Confederation of Ethiopian Trade Unions (CETU)	Multi-Sector	n/a	#01
	Gabon	Horn of Africa Confederation of Trade Unions (HACTU)	Multi-Sector	WFTU	#45
	Ghana	UTG (Union des Travailleurs du Gabon)	Multi-Sector	PSI, EI, BWI, ITF, IndustriALL, IUF	#10
	Guinea-Bissau	Trade Union Congress (TUC - Ghana)	Multi-Sector	ITUC, ITUC-Africa	#58
	Kenya	União Nacional dos Trabalhadores da Guiné-Central Sindical	Multi-Sector	ITUC-Brussels, ITUC-Africa, OATUU, TUFEA, EATUC	#07
Lesotho	Central Organization of Trade Unions - Kenya	Domestic Workers	n/a	#11	
Mauritania	(COTU-K)	Multi-Sector	ITUC	#34	
Mauritius	Kopanang Domestic Workers Association affiliated to Lesotho Trade Union Congress	Multi-Sector	ITUC	#71	
Mauritius	Confédération Générale des Travailleurs de Mauritanie (CGTM), Mamadou NIANG	Multi-Sector	ITUC	#04	

Region	Country	Respondent name	Sector	Global union affiliation	Respondent No.
Africa	Morocco	Democratic Confederation of Labour	Multi-Sector	ITUC	#39
	Namibia	Trade Union Congress of Namibia	Multi-Sector	ITUC-Africa	#32
	Niger	Confederation Démocratique Des Travailleurs du Niger (CDTN)	Multi-Sector	ITUC	#42
	Senegal	Confédération nationale des travailleurs du Sénégal forces du changement	Services	n/a	#09
	Senegal	Union démocratique des travailleurs du Sénégal (UDTS), Papa SENE	Multi-Sector	ITUC	#22
	Sierra Leone	Sierra Leone Union of Postal and Telecommunication Employees SLUPTTE	Multi-Sector	ITUC	#42
	Zambia	Zambia Congress of Trade Unions	Services	n/a	#09
	Zambia	Zambia Congress of Trade Unions	Multi-Sector	ITUC	#22
Americas	Argentina	Unión Obrera de la Construcción de la República Argentina (UOCRA) (affiliated with CGT – National conf)			#55
	Brazil	UGT - União Geral dos Trabalhadores do Brasil	Manufacturing	BWI	#61
	Chile	Central Autonoma de Trabajadores de Chile (CAT)	Multi-Sector	ITUC	#48
	Colombia	Confederacion de trabajadores de Colombia (CTC)	Multi-Sector	n/a	#46
	Dominican Republic	Confederación Nacional de Unidad dad Sindical (CNUS)	Multi-Sector	ITUC	#54
	Haiti	Confédération des Travailleurs et Travailleuses des Secteurs Public et Privé (CTSP)	Multi-Sector	IFJ	#38
	Mexico	Confederación Revolucionaria de Obreros y Campesinos (CROC)	Multi-Sector	ITUC	#47
	Panama	Confederación de Trabajadores de la República de Panamá (CTRP)	Multi-Sector	n/a	#49
	Panama	CONFEDERACION UNIÓN GENERAL DE TRABAJADORES (CUGT)	Multi-Sector	ITUC	#51, #52, #53
	Panama	Confederación de Trabajadores/as Convergencia Sindical	Multi-Sector	n/a	#56
	Paraguay	CENTRAL GENERAL DE TRABAJADORES (CGT)	Multi-Sector	ITUC	#50
Asia and the Pacific	Australia	Australian Council of Trade Union (ACTU)	Multi-Sector	n/a	#21
	Cambodia	Cambodian Labour Confederation (CLC)	Multi-Sector	ITUC	#18
	India	Indian National Trade Union Congress (INTUC)	Multi-Sector	ITUC, IndustriALL	#25, #26
	India	Self Employed Women Association	Multi-Sector	ITUC, BWI, IndustriALL, IUF	#27
	New Zealand	New Zealand Council of Trade Unions Te Kauae Kaimahi (NZCTU)	Multi-Sector	ITUC	#23
	Sri Lanka	National Trade Union Federation	Multi-Sector	ITUC, ITUC-AP	#24

Region	Country	Respondent name	Sector	Global union affiliation	Respondent No.
Arab States	Iraq	General Union of Iraqi Trade Unions (GFITU)	Multi-Sector	ITUC, ATUC	#69
Europe and Central Asia	Armenia	Confederation of Trade Unions of Armenia (CTUA)	Multi-Sector	ITUC	#63
	Azerbaijan	Azerbaijan Trade Union Confederation (AHIK)	Multi-Sector	ITUC, GCTU	#67
	Bulgaria	Confederation of Independent Trade Unions of Bulgaria (CITUB)	Multi-Sector	ITUC, ETUC	#20
	Estonia	Estonian Confederation of Trade Unions	Multi-Sector	ITUC, ETUC	#14
	France	CGT-FORCE-OUVRIERE	Multi-Sector	ITUC	#31
	Greece	Greek General Confederation of Labour (GSEE)	Multi-Sector	ITUC, ETUC	#19
	Hungary	Forum for the Cooperation of Trade Unions (SZEF)	Multi-Sector	ETUC	#13
	Iceland	Icelandic Confederation of Labour - ASI	Multi-Sector	n/a	#15
	Israel	HISTADRUT	Multi-Sector	ITUC, IUF, ITF, BWI, UNI, IndustriALL	#17
	Kazakhstan	Federation of Trade Unions of Kazakhstan (FPRK)	Multi-Sector	ITUC	#64
	Malta	General Workers' Union	Multi-Sector	ITUC, ETUC	#06
	Montenegro	Confederation of Trade Unions of Montenegro (SSCG - CTUM)	Multi-Sector	ITUC	#08
	Russian Federation	Confederation of Labour of Russia (KTR)	Multi-Sector	IUF, UNI	#66
	Russian Federation	Federation of Independent Trade Unions of Russia	Multi-Sector	ITUC	#68
	Sweden	The Swedish Confederation of Professional Associations, Saco	Multi-Sector	ITUC	#16
	Tajikistan	Federation of Independent Trade Unions of Tajikistan FITUT	Multi-Sector	GCTU	#62
Uzbekistan	Federation of Trade Unions of Uzbekistan (FTUU)	Multi-Sector	GCTU	#65	

Questionnaire templates

The ILO Plan of Action to follow-up on the Conference Conclusions concerning Fair and Effective Labour Migration Governance (2017) requested the Office to work with constituents to produce a Report on key obstacles to, and good practices on, freedom of association and collective bargaining (FACB) for migrant workers. The main objective is to collect concrete and specific information about the barriers encountered on the ground to the full realization of these fundamental rights for migrant workers, and to identify effective measures strategies and practices to overcome these obstacles, in line with the ILO's work on SDG target 8.8 (ILO Plan of Action (GB/INS/4/1)). Your responses to this questionnaire are of key importance for the delivery of this Report.

The questionnaire should not take more than 15 minutes to complete.

Thank you so much for your responses

PROFIILE OF THE TRADE UNION CONFEDERATION

Name:

Sector:

Country:

Affiliated to Global Union Federation: _____ Which one(s)? _____

Do you keep record of members who are migrant workers?

If yes: Can you provide the number of migrant worker members?

DO YOU ADDRESS MIGRANT WORKERS' ISSUES? YES/NO

IF NO, WHY?

Are you planning to incorporate migrant workers' issues in the future? How?

IF YES, (CONTINUE FORM)

- Do you have migrant workers in your trade union structures?
- If yes, Men and Women?
- What roles do migrant workers have in your structure (if any)?
- Do you keep data, disaggregated by sex and migrant status, on membership?

ON BARRIERS TO FREEDOM OF ASSOCIATION and THE PROTECTION OF THE RIGHT TO ORGANIZE (C87) and RIGHT TO ORGANIZE AND COLLECTIVE BARGAINING (C98)

1. What are the main obstacles you identified to protect freedom of association and collective bargaining rights of migrant workers?

- ▶ **Legal** (e.g., in Immigration Law, Security Law, Criminal Law, Labour Law (right to organize, protection against anti-union discrimination, collective bargaining) access to leadership positions, affiliate or establish trade unions, limitations regarding immigration status etc...)
- ▶ **Political** (e.g., civil liberties, protection against acts of interference, dissolution or suspension of organizations, administrative barriers)
- ▶ **Social and Cultural** (e.g., language, fear of migrant workers, stigmatization etc., gender and social norms)
- ▶ **Economic** (extra charges, fees, etc.)
- ▶ **Gender** issues
- ▶ **Other**

2. What is your experience within the TU movement for organizing migrant workers? What type of issues emerge?

3. Please also provide information on whether and how the COVID-19 pandemic has had an impact on the questions above.

4. What are the challenges affecting women migrant workers in particular?

ON ADDRESSING BARRIERS

A. Trade Union Engagement

1. What activities have you put in place to address migrant workers' issues, including those targeting women migrant workers? Please elaborate with relevant examples

- Organizing
 - Do you organize migrant workers in origin/destination country?
- Servicing, including legal aid
- Integration into the trade union structure
- Collective bargaining (within the broader regular process of collective bargaining or specific to migrant workers)
- Awareness-raising
- Networking – collaboration with other actors (NGOs, Faith Centres, etc.)
- Grievance mechanisms
- Other

Overview of chi-squared test of association results

The responses from each question about identifying obstacles were compared to the responses for each question about strategies. A Chi-Squared Test of Association was used to compare whether the respondents were more or less likely than expected by chance to engage in each strategy based on whether they reported each obstacle. Table C.1 provides an overview of which results were significant for the alpha level of 0.5 and which results could not be assessed because they did not have expected frequencies of at least 5 for 80 per cent or more of cells. Overall, there was a significant association between:

- integration into trade union structure and economic obstacles for protecting freedom of association and collective bargaining (FACB) ($X^2(1) = 4.285, p = 0.038$).
- networking and legal obstacles for protecting FACB ($X^2(1) = 5.268, p = 0.022$).
- grievance mechanisms and legal obstacles for protecting FACB ($X^2(1) = 6.738, p = 0.009$).
- grievance mechanisms and political obstacles for protecting FACB ($X^2(1) = 6.871, p = 0.009$).
- grievance mechanisms and social and cultural obstacles for protecting FACB ($X^2(1) = 4.314, p = 0.038$).

Relationship	Significant	Chi-squared test invalid because expected frequency was below 5 for over 20% of cells
Organizing * obstacle for protecting FACB: legal		√
Organizing * obstacle for protecting FACB: political		
Organizing * obstacle for protecting FACB: social & cultural		
Organizing * obstacle for protecting FACB: economic		√
Organizing * obstacle for protecting FACB: gender		
Servicing * obstacle for protecting FACB: legal		
Servicing * obstacle for protecting FACB: political		
Servicing * obstacle for protecting FACB: social & cultural		
Servicing * obstacle for protecting FACB: economic		√
Servicing * obstacle for protecting FACB: gender		
Integration into trade union structure * obstacle for protecting FACB: legal		
Integration into trade union structure * obstacle for protecting FACB: political		
Integration into trade union structure * obstacle for protecting FACB: social & cultural		
Integration into trade union structure * obstacle for protecting FACB: economic	√	
Integration into trade union structure * obstacle for protecting FACB: gender		
Collective bargaining * obstacle for protecting FACB: legal		

Relationship	Significant	Chi-squared test invalid because expected frequency was below 5 for over 20% of cells
Collective bargaining * obstacle for protecting FACB: political		
Collective bargaining * obstacle for protecting FACB: social & cultural		
Collective bargaining * obstacle for protecting FACB: economic		
Collective bargaining * obstacle for protecting FACB: gender		
Awareness-raising * obstacle for protecting FACB: legal		√
Awareness-raising * obstacle for protecting FACB: political		√
Awareness-raising * obstacle for protecting FACB: social & cultural		√
Awareness-raising * obstacle for protecting FACB: economic		√
Awareness-raising * obstacle for protecting FACB: gender		√
Networking * obstacle for protecting FACB: legal	√	
Networking * obstacle for protecting FACB: political		
Networking * obstacle for protecting FACB: social & cultural		
Networking * obstacle for protecting FACB: economic		
Networking * obstacle for protecting FACB: gender		
Grievance mechanisms * obstacle for protecting FACB: legal	√	
Grievance mechanisms * obstacle for protecting FACB: political	√	
Grievance mechanisms * obstacle for protecting FACB: social & cultural	√	
Grievance mechanisms * obstacle for protecting FACB: economic		
Grievance mechanisms * obstacle for protecting FACB: gender		

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