



International
Labour
Organization



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

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.

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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:

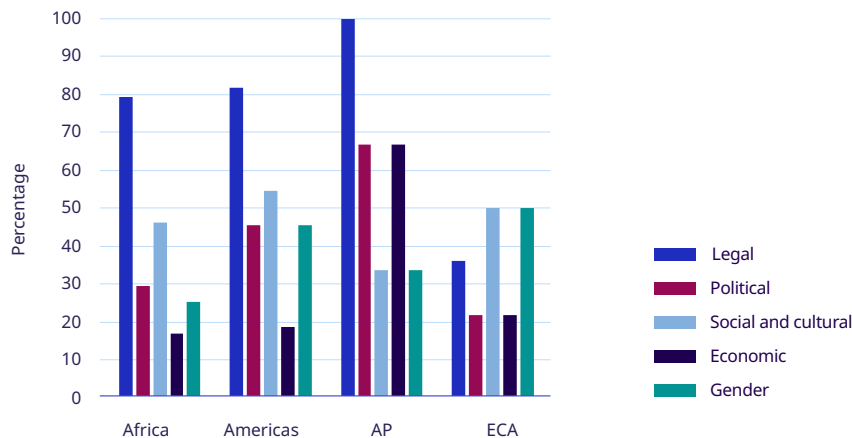
- Some or all migrant workers based on their nationality, residence, work permits or reciprocity;
- Undocumented workers;
- Sectors where migrant workers constitute a high proportion of workers, such as domestic work, agriculture and export processing zones, and where labour law may not apply at all;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

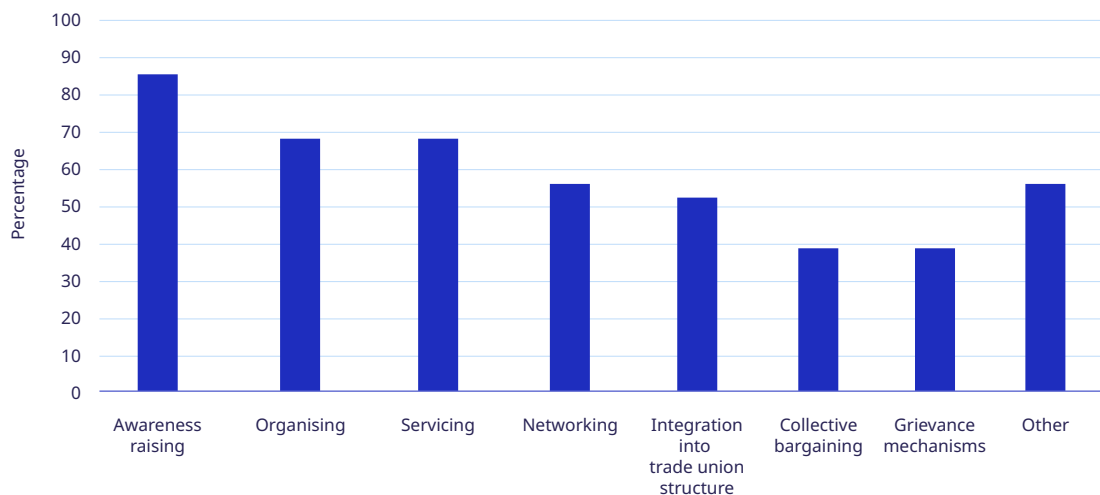
- Restrictions on foreigners establishing trade unions or workers’ organizations;
- Use of work permits to limit migrant workers’ rights; and
- Restrictions on undocumented workers enjoying any FACB rights.

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.

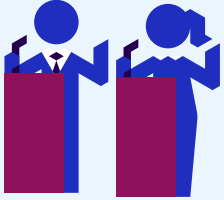
Depending on the context and their resources, trade unions reported using different strategies and actions, and most employed multiple strategies to engage with migrant workers. Most trade unions’ responses described successes related to running awareness campaigns, networking, being able to help migrants 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.

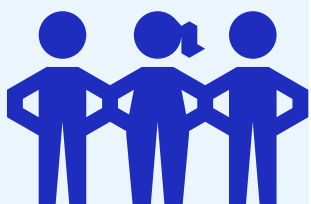




What can trade unions do?

- ▶ 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.

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