

The role, challenges, and impact of trade unions among migrant workers in MIDEQ destination countries

WORKING PAPER



AUTHOR

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Author's note

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The responsibility for opinions expressed in this study rests solely with the author, and publication does not constitute an endorsement by the International Labour Office of the opinions expressed in it.

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EXECUTIVE SUMMARY

To better understand the challenges that migrant workers often face in accessing and enjoying their freedom of association and collective bargaining (FACB) rights, this report explores the experiences of migrants in Brazil, Côte d'Ivoire, Ghana, Jordan, Malaysia, and South Africa. The report is the result of a collaboration between the Migration for Development and Equality Hub (MIDEQ) and the International Labour Organization (ILO). The report covers the six MIDEQ destination countries with a focus on migrant workers' experiences from the MIDEQ origin countries.¹ The material is based on key informant interviews, a review of published material, and a migrant survey conducted by MIDEQ in 2021.

The report considers the roles played by two of the ILO's three constituents (governments and trade unions) and a selection of other relevant stakeholders (e.g., civil society organisations (CSOs) and international organisations) who shape the national contexts that migrant workers experience. Each of these actors have a different role to play. However, they often interact and have overlapping roles.

Public policy, strategies, and programmes, along with governments' role in shaping public discourse and messaging related to migrant workers, play key roles in determining migrant workers' access to FACB. National policies can be shaped by participating in global agreements, such as ratifying and implementing international labour standards, which include the ILO's Conventions, Protocols, and Recommendations. In particular, the promotion and ratification of Conventions and Protocols that are part of the ILO's Fundamental Principles and Rights at Work (FPRW) are highly important, with 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) being especially relevant for FACB rights. In addition, migrant workers' experiences are shaped by countries' engagement in diverse regional, multilateral and/or bilateral agreements, including those explicitly focused on labour migration.

Overall, countries can vary in their support for FACB rights for all workers, including migrant workers. This report provides various examples of features of different national systems across the destination countries covered. In some cases, migrant workers' access to these rights are more restricted than national workers. Ways that migrant workers' rights can be restricted can be based on the sectors they work in, the types of contracts they have (e.g., temporary workers), their countries of origin (e.g., the host country may have regulations that vary according to workers' citizenship), their identity as migrants, and their migration status (e.g., in possession of a work permit, being a refugee, being undocumented or having irregular status).

¹ The migration corridors covered are: Haiti to Brazil, Burkina Faso to Côte d'Ivoire, China to Ghana, Egypt to Jordan, Nepal to Malaysia, and Ethiopia to South Africa.

For example, in Jordan, where many domestic workers are migrants, domestic workers' organisations face legal restrictions from registering as unions (ILO 2022a, para 1001, as cited in ILO 2023a). Restrictions that can be applied to migrant workers based on their identity as migrants include ineligibility to join unions, ineligibility to hold union leadership roles, and ineligibility to form new unions. Another issue, which can affect migrant workers, is whether national industrial relation systems entail agreements covering all workers or only those that are members of unions. This is important because migrants often have lower levels of union membership than other workers.

Together with the importance of official elements of legislation and programmes, the way that laws and programmes are implemented and enforced can lead to migrant workers not receiving equality of treatment and opportunities when compared to national workers. Within a country, the policy environment shaping migrant workers' experiences typically involves multiple governmental agencies. A key issue is coordinating the actions of relevant agencies in order to ensure that migrant workers' rights are respected. Furthermore, policies, strategies and programmes can be created which provide additional support to migrant workers who may struggle to access their rights, such as offering services in languages that migrant workers understand.

Governments also play a role shaping public perception of migrant workers. With a global increase in resentment towards migrants, public sector agencies can play an important role in counteracting this narrative. However, in some cases, public agencies and officials are taking actions to stoke increased resentment and xenophobia. For example, some political parties have platforms that create narratives that blame migrants for economic challenges.

In addition to the roles played by destination country governments, home country governments can also play a role in respecting migrant workers' access to FACB and the other categories of FPRW. This role can include support from embassies and consulates in the destination countries. Home country governments can also sign agreements with destination countries and facilitate pre-departure training for migrant workers.

Trade unions form the second group of actors that are considered in this report. These organisations also play a large role in promoting and protecting migrant workers' access to FACB rights. Unions play a key role in organising migrant workers through activities such as outreach campaigns. However, these activities can face challenges. For example, these challenges can include language barriers and migrant workers being in roles that leave them isolated, such as being domestic workers or working in the maritime industry. Furthermore, migrant workers can be hesitant to join unions for many reasons, which can include prioritising working the maximum number of hours possible or feeling excluded from worker communities. In

some cases, trade unions' efforts to reach migrant workers involve transnational cooperation, such as coordinating pre-departure training for migrant workers. Such transnational efforts can be particularly helpful for supporting migrant workers. An example of transnational union cooperation is the Timber Employees Union Peninsular Malaysia (TEUPM) working with the Nepalese Central Union of Painters, Plumbers, Electro and Construction Workers (CUPPEC) to help to organise Nepalese migrant workers in Malaysia (Global Unions 2008; Ford 2013).²

Across the roles of both governments and workers' organisations, social dialogue is a key activity. Social dialogue is defined to include, "all types of negotiation, consultation or information sharing among representatives of governments, employers and workers or between those of employers and workers on issues of common interest relating to economic and social policy" (ILO 2013). It can be bipartite, between workers and employers, or tripartite, including government. Social dialogue is based on the rights of FACB, with national institutions facilitating the process shaped by countries' cultural, historical, economic and political contexts (ILO, n.d.-a). Social dialogue includes: negotiation, consultation and information exchange between and among the different actors; collective bargaining between representatives of employers and of workers; dispute prevention and resolution; tripartite social dialogue on matters of economic and social policy; and other instruments of social dialogue, including international framework agreements (ILO, n.d.-a). The process can only function effectively with: strong, independent workers' and employers' organisations with the required technical capacity and access to information; political will and commitment to engage in social dialogue on the part of all the parties; respect for the fundamental rights of FACB; and an enabling legal and institutional framework (ILO 2016 as cited in ILO n.d.-a). As this report does not cover the roles of employer organisations, more research is necessary to explore these dynamics further.

Finally, the roles of CSOs and other types of international organisations are also considered in this report. At a national level, CSOs provide a wide range of support to migrant workers. However, in recent years these organisations have often faced increasing barriers to providing support as many governments have grown more hostile to migrants. National CSOs can be founded by migrant workers themselves and can be formal or informal organisations. Multiple global non-governmental organisations and intergovernmental organisations also provide support to migrant workers. These organisations can work directly with migrant workers or in collaboration with domestic organisations. Where trade unions are operating, such organisations can and should liaise with these unions when it comes to the promotion and protection of migrant workers' rights.

² This working paper uses 'Nepalese' and 'Nepali' interchangeably to refer to individuals or entities from Nepal.

Based on reviewing the roles of governments, workers' organisations and a selection of other relevant organisations operating in each of the destination countries considered, the report identifies key features of each country's national context (see Annex A). In addition, key barriers that migrant workers face in terms of accessing FACB rights are identified. These include:

- legal,
- xenophobia and prejudice,
- lack of resources (e.g., information or language skills),
- cultural norms,
- fear,
- being members of additional groups that experience discrimination,
- the nature of migrant workers' jobs, and
- variations in individual proclivity to join unions.

These barriers, whether external or internal to the migrant workers, can interact and overlap with each other. Despite the wide variety of barriers, across MIDEQ's destination countries successful examples of established trade unions supporting migrant workers and migrant workers engaging in self-organising are identified.

Key takeaways

A number of potential actions are identified which may support migrant workers in having increased access to FACB rights.

1) For all actors

Actions that can be taken by any actor include:

- i. seeking to remove the identified barriers to FACB;
- ii. conducting further research; and
- iii. collaborating with diverse stakeholders.

2) For governments

Potential legal reforms that can be undertaken by public sector actors are identified as:

- i. questioning and modifying legal frameworks to reduce legal barriers;
- ii. ratifying and implementing relevant ILO Conventions and Protocols and other relevant global conventions and agreements; and
- iii. following ILO guidance when developing migration agreements.

Public sector actors can provide additional support to migrant workers, such as:

- i. monitoring the national situation in relation to migrant workers' access to FACB rights and consulting with relevant stakeholders when taking actions that may affect migrant workers;
- ii. creating public messaging that supports migrant workers to better access their FACB rights;

- iii. providing more effective implementation of existing laws to support migrant workers' access to FACB in cases where enforcement is low and promoting norms which benefit migrant workers; and
- iv. developing policies and programmes which provide support to migrant workers.

3) For workers' organisations and workers

Trade unions can increase their support for migrant workers through:

- i. strengthening organisational capacities to protect migrant workers' rights;
- ii. advocating for legal reforms;
- iii. cooperating with domestic and international organisations, including international union federations, and engaging in social dialogue; and
- iv. making concerted efforts to connect with more migrant workers and provide services targeted at migrant workers.

Individual migrant workers can continue to provide support to each other by:

- i. working together to access FACB rights and to fulfil other types of support needs, especially in cases where migrant workers are not part of unions.

4) For other domestic and international organisations

Other domestic and international organisations, such as CSOs and intergovernmental institutions, can also provide additional support to migrant workers by:

- i. providing assistance to migrant workers in order to help them access FACB rights, particularly in situations where they cannot or do not receive support from trade unions;
- ii. cooperating with and supporting trade unions where they are operating; and
- iii. advocating for improvements to the laws that are stifling organisations from supporting migrant workers and preventing migrant workers from accessing their FACB rights.

ACRONYMS

ABIN	Brazilian Intelligence Agency
ACOMAD	African Coalition on Migration and Development
ACT/EMP	ILO Bureau for Employers' Activities
ACTRAV	ILO Bureau for Workers' Activities
AFL-CIO	American Federation of Labor and Congress of Industrial Organizations
AGU	Federal Attorney's Office
ArabTUC	Arab Trade Union Confederation
ASEAN	Association of Southeast Asian Nations
ATUC	ASEAN Trade Union Council
AU	African Union
CAMJBCI	Le Collectif des Associations et Mouvements de Jeunesse Burkinabè en Côte d'Ivoire
CAN	Confederation of Agriculture and Livestock of Brazil
CBA	Collective Bargaining Agreement
CCMA	South Africa's Commission for Conciliation, Mediation, and Arbitration
CDHIC	Center for Human Rights and Immigrants Citizenship
CEACR	ILO Committee of Experts on the Application of Conventions and Recommendations
CEDAW	Committee on the Elimination of All Forms of Discrimination against Women
CITEF	Le Comité Intersyndical pour la Transition vers l'Economie Formelle
CFA	ILO Committee on Freedom of Association
CGIg	Brazil's General Immigration Coordination Office

CLT	Consolidated of Labor Laws
CNC	National Confederation of Trade in Goods, Services and Tourism
CNDP	National Commission for Population and Development
CNF	National Confederation of Financial Institutions
CNI	National Confederation of Industry
CNIg	Brazil's National Council of Immigration
CNT	National Confederation of Transport
CONTICOM/CUT	National Confederation of Construction and Wood Industry Workers
CoRMSA	Consortium for Refugees and Migrants in South Africa
COSATU	Congress of South African Trade Unions
CSO	Civil Society Organisation
CTB	Workers' Union of Brazil
CUPPEC	Central Union of Painters, Plumbers, Electro and Construction Workers
CUT	Unified Workers' Union
DEL	South Africa's Department of Employment and Labour
DHA	South Africa's Department of Home Affairs
Disque 100	Disque Direitos Humanos
DPF	Federal Police Department
DPU	Federal Public Defender's Office
ECOWAS	Economic Community of West African States
EPZ	Export Processing Zone
FACB	Freedom of Association and Collective Bargaining
FEDUSA	Federation of South Africa Trade Unions

FESACI	Federation of Autonomous Trade Unions
FITU	Federation of Independent Trade Unions
FFMRC	Finish-French Migrant Resource Centre
FoA	Freedom of Association
FS	Union Force
FWSC	Fair Wages and Salaries Commission
GEA	Ghana Employers Association
GEFONT	General Federation of Nepalese Trade Unions
GNMC	Ghana National Migration Commission
GRB	Ghana Refugee Board
GUF	Global Union Federation
GUTA	Ghana Union of Traders Association
HRAC	Human Rights Advocacy Centre
ICCPR	International Covenant on Civil and Political 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
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
IMDH	Migration and Human Rights Institute
ITUC	International Trade Union Confederation
KSBSI	Confederation of All Indonesia Trade Unions
LHR	Lawyers for Human Rights
MAPA	Brazil's Ministry of Agriculture, Livestock and Food Supply

MAPO	Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants
MCTI	Ministry of Science, Technology and Innovation
MDIC	Brazil's Ministry of Development, Industry and Foreign Trade
MELR	Ghana's Ministry of Employment and Labor Relations
MIDEQ	Migration for Development and Equality Hub
MEC	Brazil's Ministry of Education
MGCSP	Ghana's Ministry of Gender, Children and Social Protection
MIWUSA	Migrant Workers Union of South Africa
MJ	Brazil's Ministry of Justice and Public Security
MLGWUI	Migrant Labour General Workers' Union International
MoFARI	Ghana's Ministry of Foreign Affairs and Regional Integration
MOU	Memorandum of Understanding
MPF	Public Prosecution Office
MPT	Public Labour Prosecution Office
MRC	Migrant Resource Centre
MS	Brazil Ministry of Health
MTE	Brazil's Ministry of Labor and Employment
MTPS	Ministry of Labour and Social Security
MTUC	Malaysian Trades Union Congress
Mtur	Brazil's Ministry of Tourism
MWWR2R	Migrant Workers' Right to Redress Coalition
NCST	New Workers' Union
NEDLAC	South Africa's National Economic Development and Labour Council
NGO	Non-governmental Organisation

NPC	Ghana's National Population Council
NSI	North South Initiative
OAS	Organisation of American States
ONEF	Observatoire National de l'Emploi et de la Formation
PCSM-CI	Trade Union Platform on Migration – Côte d'Ivoire
RedeMir	Solidarity Network for Refugees and Migrants
RMPR	Refugee and Migrant Rights Programme
SADC	South African Development Community
SAHRC	South African Human Rights Commission
SAMIN	Southern Africa Migration Network
SAMWU	South African Municipal Workers Union
SARTUC	South Asian Regional Trade Union Council
SBPC	Brazilian Society for the Progress of Science
SDH/PR	Special Secretariat For Human Rights
SEPP/PR	Secretariat for the Promotion of Racial Equality
SPM	Serviço Pastoral dos Migrantes
SPM/PR	Special Secretariat for Women's Policies
SPPS/MPS	Secretariat for Social Security Policies
STICC POA	Trade Union of Workers in the Civil Construction of Porto Alegre
Tamkeen	Tamkeen for Legal Aid and Human Rights
TEUPM	Timber Employees Union of Peninsular Malaysia
TUA	Malaysian Trade Unions Act
TUC	Trade Union Congress
UGT	General Workers' Union

VITA	Vulnerable Communities in Côte d'Ivoire
WFTU	World Federation of Trade Unions
WH4C	Workers Hub for Change

1. INTRODUCTION

International migration is a major global phenomenon that is growing increasingly diverse and complex (ILO 2017a). In 2021, the ILO (2021a) released global estimates stating that there were 169 million migrant workers. These workers can be particularly vulnerable to exploitation in the workplace (United Nations Human Rights Council (UNHRC) 2020). Consequently, access to freedom of association and collective bargaining (FACB) rights is crucial for such workers. For migrant workers, having their voice represented by trade unions helps to secure their access, enjoyment and respect of their other human rights. It can also provide “protection against discrimination, marginalization and scapegoating.” (Pousadela et al. 2019). Collective bargaining is also crucial for achieving decent work including fair wages and labour conditions. Migrant workers directly contributing to these processes can be more effective than efforts of others, as they have better access to their peers and understanding of the challenges they face (UNHCR 2020). Across different contexts, migrant workers have varying levels of access to FACB rights and trade unions. For example, in some cases, migrant workers benefit from trade unions creating forums for them to discuss their own challenges and requirements for good governance of migration processes. While in other situations, migrant workers remain relatively isolated with limited access to FACB rights.

To build an understanding of factors shaping migrant workers’ effective enjoyment of FACB rights, this report maps and explores access to these rights in Brazil, Côte d’Ivoire, Ghana, Jordan, Malaysia, and South Africa. This mapping is done in a context in which increased hostility towards migrants, as well as trade unions and civil society organisations (CSOs) that seek to protect migrants’ rights, has been reported globally. This development has often involved new restrictions on freedom of association (FoA) for migrant workers and their defenders (UNHCR 2020).

This report presents the results of a study that has been carried out as a collaboration between the Migration for Development and Equality Hub (MIDEQ) and the International Labour Organization (ILO). MIDEQ is a coalition that seeks to unpack the complex and multi-dimensional relationships between migration, inequality, and development in the context of the Global South, focusing on migration experiences across six corridors (see Box 1). They aim to translate evidence-based knowledge into concrete policies and practices which improve the lives of migrants, their families and the communities in which they live. The ILO is a tripartite organisation that brings together workers’ and employers’ organisations with states to set international labour standards and support decent work. The focus of this report is the six MIDEQ destination countries with a particular consideration of the experiences of migrant workers from MIDEQ’s origin countries. The nature of migration across these corridors differs, with migrant workers leaving their countries as refugees in some circumstances and, in others, they are choosing to seek new opportunities. Some movements involve legal processes, such as work permits,

while others do not and can involve migrant workers living and working in irregular situations. This report covers diverse experiences around the world. The content is based on interviews with key stakeholders, survey data, and a review of published materials.³

BOX 1. MIDEQ'S MIGRATION CORRIDORS



Haiti → Brazil: After a large earthquake in Haiti in 2010, many Haitians moved abroad (Marcelin, n.d.). A key destination has been Brazil, where 62,000 Haitians were recorded as working in 2022 (OBMigra 2023). Many of these migrants are young men who find jobs in meat production, construction, and other service activities (David et al. 2023).

Burkina Faso → Côte d'Ivoire: Côte d'Ivoire has relied heavily on migrant labour with the notion of “the Ivorian Miracle” creating a draw (International Centre for Migration Policy Development and IOM 2015; Bonayi and Soumahoro, n.d.). Over one million Burkinabè were recorded as living in Côte d'Ivoire in 2020 (United Nations Population Division 2020). Burkinabè mainly work in the agricultural sector (Devillard et al. 2015).

China ↔ Ghana:* An estimated 10,000 to 30,000 Chinese migrants are living in Ghana. Migrants often work in the informal economy in construction, mining, commerce (trading), hospitality, and agriculture (Teye and Lu, n.d.).

Egypt → Jordan: Over 100,000 Egyptians were recorded as living in Jordan in 2020 (United Nations Population Division 2020). Egyptians often work in the Jordan's agricultural, service and construction sectors (Awad and Eyadat, n.d.).

Nepal → Malaysia: Large numbers of Nepalese work in Malaysia with over half a million identified as living in Malaysia in 2020 (United Nations Population Division 2023). Key sectors of employment for Nepali workers in Malaysia are manufacturing, construction, agriculture, and services (e.g., security) (Ghimire, n.d.).

Ethiopia → South Africa: Ethiopians have been entering South Africa at high levels, often through irregular migration (Feyissa and Garba, n.d.). In 2021, approximately 103,000 Ethiopians lived in South Africa, with 90% being men (Ministry of Planning and Development Ethiopian Statistics Service 2021). Many of these migrants start their own small-scale retail businesses or find retail jobs.

*While this corridor involves migration in both directions, this report focuses on Chinese migration to Ghana.

³ See Annex B for details of methodology

A key contribution of this report is mapping actions of key stakeholders in facilitating migrant workers' FACB rights. Governments are addressed first with a focus on their creation of regulatory contexts and contribution to shaping public perceptions. This is followed by a discussion of how trade unions operate within these contexts using a variety of strategies to reach out to migrant workers (see ILO 2023a). These first two actors, two of the ILO's constituents, contribute to supporting social dialogue that is essential to facilitating migrants' access to FACB rights. Finally, the roles of other selected organisations, including domestic CSOs and global institutions, are considered.

The experiences of migrant workers are also discussed below. Migrant workers navigate through new contexts to gain access to their rights in environments that have varying levels of barriers. In some cases, these workers join existing trade unions, in others they form new organisations, while in others they can be isolated with limited ability to associate with other workers or other potential sources of support.

Overall, this study finds low levels of union engagement and membership levels for most migrant workers in the six MIDEQ destination countries. Across the migration corridors, migrant workers face various challenges in relation to FACB. For example, previous research has shown that in Malaysia fewer than 3% of documented migrant workers are members of unions (Chung 2019). A variety of barriers to migrant workers' access to FACB rights can be identified. In some countries, migrant workers' ability to integrate into existing trade unions is limited by regulatory issues. Legal challenges often present a major hurdle. Additionally, instances of xenophobia also often create challenges at multiple levels. Further barriers for migrant workers include lacking access to resources (e.g., information and support), cultural norms, feeling fear, being members of additional groups that experience discrimination, the nature of their jobs, and individual proclivity to join unions. A set of potential actions to address key barriers are provided in the conclusion.

2. ACCESS TO FACB FOR MIGRANT WORKERS

Migrant workers' access to FACB is shaped through the roles of multiple organisations. Key organisations include government agencies, trade unions, employers, and other facilitating organisations, such as domestic CSOs and international organisations. An overview of the roles of selected key actors (governments, trade unions, and other domestic and global organisations) and examples of their activities within each destination country is provided below.

2.1 EXISTING PUBLIC POLICY

National institutions and regulations shape the ways in which migrant workers can access FACB. One element is ratifying ILO Conventions. The MIDEQ destination countries have varying levels of ratification of the ILO's 10 fundamental Conventions⁴ and the Forced Labour Protocol (P029) (see Table 1). These conventions and protocol cover subjects that are fundamental principles and rights at work. Additional ILO Conventions that are particularly relevant for migrant workers are the Migration for Employment Convention (Revised), 1949 (No. 97); and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143). However, none of the countries in this study have ratified these. Further relevant International Labour Standards for migrant workers include those covering: domestic workers, nursing personnel, and rural and plantation workers; the informal economy; employment and decent work for peace and resilience; and violence and harassment (ILO 2023a). In addition, agreements developed by other global actors are also relevant for migrant workers (see Table 2 for examples).

Ratifying conventions can be based on national dynamics. For example, relationships between unions and key actors have shaped Malaysia's ongoing consideration of ILO's Convention 87 (Interview Data⁵). Countries can also experience pressure from trading partners to ratify ILO conventions.

Countries are also members of diverse regional, bilateral, and multilateral agreements which impact migrant workers. Such agreements often have provisions related to freedom of movement and access to work. These international agreements can also shape national legal frameworks in other ways, such as through harmonizing standards. Examples include Ghana and Côte d'Ivoire being members of the Economic Community of West African States (ECOWAS), which facilitates the movement of people within the region. Other key relationships of the case study countries include South Africa being a member of the South African Development Community (SADC), Brazil being a member of Mercosur and the Organisation of American States (OAS), Malaysia being a member of the Association of Southeast Asian Nations (ASEAN), and Jordan being part of the Agadir Agreement, a free trade agreement involving Egypt, Morocco, and Tunisia, and having a trade agreement with the United States.

⁴ The ILO's fundamental Conventions are: the Freedom of Association and Protection of the Right to Organise Convention, 1948 (C087); the Right to Organise and Collective Bargaining Convention, 1949 (C098); the Forced Labour Convention, 1930 (C029); the Abolition of Forced Labour Convention, 1957 (C105); the Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, 1951 (C100); the Discrimination (Employment and Occupation) Convention, 1958 (C111); the Minimum Age Convention, 1973 (C138); the Worst Forms of Child Labour Convention, 1999 (C182); the Occupational Safety and Health Convention, 1981 (C155); and the Promotional Framework for Occupational Safety and Health Convention, 2006 (C187).

⁵ Data that was shared by key informants is listed as 'Interview Data', without any specific identifiers to protect the confidentiality of the informants.

TABLE 1. RATIFICATION OF THE ILO'S 11 FUNDAMENTAL INSTRUMENTS

Country	FoA		Forced Labour			Discrimination		Child Labour		Occupational Safety & Health	
	C087	C098	C029	P029	C105	C100	C111	C138	C182	C155	C187
Brazil	--	In Force	In Force	--	In Force	In Force	In Force	In Force	In Force	In Force	--
Côte d'Ivoire	In Force	In Force	In Force	In Force	In Force	In Force	In Force	In Force	In Force	In Force	In Force
Ghana	In Force	In Force	In Force	--	In Force	In Force	In Force	In Force	In Force	--	--
Jordan	--	In Force	In Force	--	In Force	In Force	In Force	In Force	In Force	--	--
Malaysia	--	In Force	In Force	In Force	Not in Force	In Force	--	In Force	In Force	--	In Force
South Africa	In Force	In Force	In Force	--	In Force	In Force	In Force	In Force	In Force	In Force	--

Source: ILO, n.d.-b

TABLE 2. RATIFICATION OF SELECTED ADDITIONAL GLOBAL CONVENTIONS

Country	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families ⁶	International Convention on the Elimination of All Forms of Racial Discrimination
Brazil	No Action	State Party
Côte d'Ivoire	No Action	State Party
Ghana	State Party	State Party
Jordan	No Action	State Party
Malaysia	No Action	No Action
South Africa	No Action	State Party

Source: Office of the United Nations High Commissioner for Human Rights (OHCHR), n.d.

⁶ This convention represents an advancement of migrants' rights but has been criticized for promoting fewer human rights for undocumented workers and promoting standards below the international human rights baseline (Pousadela et al. 2019).

Inter-country agreements can also be specifically focused on migrant labour, such as the 2018 memorandum of understanding (MOU) signed between the government of Nepal and the government of the Malaysia which addresses the recruitment, employment and repatriation of Nepali migrant workers (Global Forum on Migration and Development 2019). In addition, Jordan and Egypt have formally cooperated on the topic of Egyptians becoming migrant workers in Jordan for many years, with the first bilateral agreement signed in 1985 (Awad as cited in Abdelfattah 2019). The two countries have gone on to sign an MOU in 2007 and a Labour Agreement in 2016 (Global Forum on Migration and Development 2018).

Each country has to grapple with diverse global and domestic pressures when formulating its own legal framework that shapes migrant workers' access to FACB. Global pressures include countries' varying participation in diverse international agreements, which can shape domestic policy (Mayer 2009; ILO 2016), as well as countries potentially feeling pressured to have weaker labour regulation in order to attract international investment (Im and McLaren 2023). Domestic pressures can originate from diverse national stakeholders. For example, in South Africa, a country with high levels of unemployment, the government seeks to find a balance between protecting domestic employment and pressure to treat all immigrants decently (OECD 2018a). The resulting national legal and regulatory frameworks can shape the processes through which migrant workers enter new countries and their experiences while working in these countries (see Box 2). A selection of elements of key national public policy frameworks in the MIDEQ destination countries is provided in Annex C.⁷

BOX 2. BRAZIL'S FACB LEGAL PROFILE

In Brazil, the law allows for freedom of association for all workers (except members of the military, military police, and firefighters) and the right to collective bargaining (with some restrictions), while prohibiting antiunion discrimination. However, union formation is restricted through a rule that stipulates the existence of one union per occupational category at each level (e.g., municipal, inter-municipal, state or federal). Unions negotiate on behalf of all workers, regardless of their union membership. Although, government actors can object to collective bargaining agreements if they violate public

Sources: USDoS 2022d; ITUC 2023

An important consideration is that the way that different agencies interact can shape the impact of laws and policies. Brazil's National Council of Immigration (CNIg) has been cited by the ILO (2021b) as a good example of a cooperative policy making process. This council involves a quadripartite structure composed of federal government, workers, employers and civil society representatives under the Ministry

⁷ Annex C is not comprehensive. More information on national legal frameworks is available from IRLex and Natlex.

of Labor and Employment (MTE) that coordinates migration policy and has the administrative support of the General Immigration Coordination Office (CGI). They are responsible for formulating Brazilian migration policy and the issuance of Normative Resolutions.

Countries' levels of support for FACB can affect both domestic and migrant workers' experiences. Notably, when countries have strong collective agreements and wide union coverage, trade unions often help migrant workers (OECD 2018b). As outlined by the ILO (2023a, p. 46), key challenges that unions can face, that also impact migrant workers are:

- insufficient legislative protections;
- imposed trade union monopoly;
- trade union registration requirements that obstruct registration of trade unions in practice (e.g., high minimum numbers of workers, prohibitions and restrictions of trade unions at different levels, complicated procedures, administrative approval requirements);
- restrictions on trade union activity and rights to organise their own activities;
- interference in trade union activities;
- insufficient protection against anti-union discrimination by national authorities and employers (e.g., through dismissal, demotion, transfer, intimidation, or harassment);
- 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.

The case study countries' range of legal frameworks result in diverse experiences of national unions (see Annex A). For example, legal barriers to FACB have been noted in Malaysia. The US Department of Security (USDoS 2022a) describes that Malaysian union officials claim legal requirements for strikes are almost impossible to meet. Furthermore, in Malaysia the Trade Unions Act (TUA) requires that trade unions seek prior permission before affiliating with any "consultative body...established outside of Malaysia" (ITUC 2023).

Another example of a barrier is that the USDoS (2022b) found that unions in Ghana were asked to pay excessively high annual fees to the Chief Labor Officer. In Jordan, employers can terminate workers who participate in unauthorized strikes if they are absent for more than 10 consecutive days (USDoS 2022c). Furthermore, forming new trade unions is highly restricted in Jordan where only 17 unions are officially recognized and efforts to create new unions have been stifled (Interview Data). While several unofficial trade unions formed the Jordanian Federation of Independent Trade Unions (FITU) in 2013, these organisations, lacking official

status, cannot establish headquarters, collect fees from their members, or engage in collective bargaining (Freedom House 2023).

Access to FACB rights can also vary for different groups within a country, such as through sectoral variation (UNHRC 2020), or differences related to employee status. In Ghana, workers in decision-making or managerial roles have the right to FoA. However, they do not have the right to engage in collective bargaining (USDoS 2022b).

Sectoral restrictions are commonly found. For example, domestic workers' organisations face restrictions from registering as unions in Jordan (ILO 2022a, para 1001, as cited in ILO 2023a). In some cases, migrant workers are disproportionately represented in sectors that face such restrictions (ILO 2023a).

Access to rights can also vary based on location of work, such as employment within an export processing zone. Rights access can also be restricted based on type of employment contract, such as temporary workers or those hired through agencies. Previously, migrant workers in Malaysia were often hired through outsourcing companies, which limited their ability to join unions. However, this practice has been phased out since 2019 (Interview Data). Furthermore, a court in Malaysia found that migrant workers on fixed-term contracts in the paper industry could not benefit from conditions negotiated through collective agreements (CEACR, Observation – Convention No. 98 – Malaysia, published 2017 as cited in ILO 2023a). Overall, migrant workers are often employed in types of jobs that face FACB restrictions.

Collective bargaining agreement (CBA) coverage also takes different forms across nations. In some cases, national systems of collective bargaining entail union advances automatically covering all workers, even those who are not union members. For migrant workers, who may be less likely to join unions, as discussed below, such structures help to ensure better working conditions. For example, as mentioned in Box 2, collective bargaining agreements in Brazil cover all workers in an occupational category. Agreements can be sectoral or company based. Countries can also have mixed systems. All workers, including migrants, are covered by CBAs in the agricultural and garment sectors in Jordan. However, sectoral collective bargaining is not the norm in Jordan where company-based agreements are more prevalent (Interview Data). As most collective bargaining occurs in large firms in the formal sector in Jordan, small firms, which make up approximately 98% of firms, many of which work in the informal economy and which employ about 70% of private sector employees, often do not participate in CBAs (Danish Trade Union Development Agency 2023).

Another big area of concern is that some countries' legal frameworks restrict migrant workers' access to FACB rights based on their identity as migrants. Three key areas where migrant workers face restrictions in relation to union activity are eligibility to be

members, access to leadership positions and the ability to form new unions. Countries can have varying restrictions for each of these practices.

In all of the case study countries, migrant workers are eligible to join unions. For example, in Côte d'Ivoire migrant workers can join unions and have equal rights and protection, including the right to receive the same salary for equal work (OECD 2018c). While migrant workers in Jordan faced legal barriers to joining unions in the past, national law was amended in 2010 to allow migrant workers, who make up a large portion of the workforce, to join existing trade unions (ILO 2023a). However, they continue to be denied the right to vote in union decisions (Tamkeen 2021).⁸ Furthermore, in some of the country cases, as discussed further below, the right for migrant workers to join unions may not apply to specific groups of migrant workers, such as those that are undocumented or on temporary contracts.

Some of the case study countries place restrictions on migrant workers holding leadership positions within trade unions. Both Jordan and Malaysia currently have restrictions for migrant workers holding posts within unions. In Malaysia, for migrant workers to hold such positions, they must seek government approval (CEARC 2021 as cited in ILO 2023a), while in Jordan they are restricted from holding trade union posts (ILO 2023a).⁹ Such restrictions are particularly problematic as not having migrant workers in leadership positions makes it less likely that the unions will prioritise issues that are important to migrant workers and can make it difficult to recruit migrant workers to be trade union members (UNHCR 2020).

One right which is often limited for migrant workers is the right to form trade unions. This right is particularly important as there may not be trade unions in migrant dominated sectors or companies (ILO 2023a). In some cases, migrant workers are completely restricted from forming trade unions. Such restrictions are found in Jordan and Malaysia (ILO 2023a; Interview Data). Even in cases where migrant workers do not face direct restrictions, state regulations can create challenges such as the need for official approval, which can leave migrant workers' organisations vulnerable to being rejected. These processes can involve requirements for documentation (e.g., travel or birth documents from country of origin), which may be difficult for migrant workers to obtain, especially if they are undocumented, or high fees that may be onerous for migrant workers (ILO 2023a). For example, as described above, in Ghana unions are expected to pay high annual fees. Furthermore, some systems involve monopoly rights for individual unions (e.g., Brazil) and others have a range of limitations that can differ by union. For instance, in Ghana multiple unions can be formed but only the most representative union covering each category of workers is awarded a Collective Bargaining Certificate

⁸ Some exceptions are found. For example, in the garment and textiles sector, migrant workers can elect representatives to factory-level union committees (Better Work 2021).

⁹ However, migrant workers can hold posts in enterprise-level committees (Better Work 2021).

which confers the right to negotiate on behalf of all workers in the specified category (TUC-Ghana and Rosa Luxemburg Foundation 2012).

Another concern, in addition to being able to register formal trade unions, is whether migrant workers are able to form other types of mutual support groups. In cases where unionization and union actions are restricted, membership in other types of groups can provide support to migrant workers. However, this is not always possible, at least in terms of creating formal organisations. For example, Jordan has restrictions that can prevent Egyptians from forming any type of organisation with regulation in place covering the formation and operation of non-governmental organisations (NGOs) and pre-approval restrictions on NGO's receipt of foreign funding (Interview Data; Human Rights Watch 2024).

In some countries, migrant workers' legal status shapes their access to human rights, including FACB rights. Legal rights can vary for migrant workers classified in different categories. For example, migrants' work visas can be tied to particular employers, as is the case in Jordan and Malaysia. In such cases, workers are particularly vulnerable. Notably, employers connected to work permits can have authority over potential job changes. In other countries, residency is not tied to a particular employer, such as in Côte d'Ivoire. Countries can also have systems in place to help protect migrant workers. In South Africa, the Commission for Conciliation, Mediation and Arbitration, a national tripartite dispute resolution mechanism, handles complaints from all workers, regardless of their migration status (OECD 2018a).

In some cases, migrant workers are refugees and have an official refugee status in their host country. Such migrant workers can have various other routes to regularizing their status, such as Haitians having access to 'humanitarian visas' in Brazil (Gaardner and Rodrigues 2019). These visas grant equivalent rights as those held by Brazilian nationals, including the right to work. In some cases, refugees and those applying for refugee status are restricted from working. These categories are also subject to change. For example, recent legislative amendments in South Africa have limited the right to work for certain categories of asylum seekers (Integral Human Development 2021).

Also, in some cases, migrant workers are undocumented. Irregular migration status can create barriers to joining unions or forming unions. Furthermore, migrant workers who are undocumented or have irregular statuses can face further threats, restrictions and limitations, such as fear of deportation, earning lower salaries, being looked at negatively by colleagues who may blame them for lowering salaries, and being prevented from working in jobs that match their qualifications (Kaushal 2006 as cited in OECD, 2018b; Pousadela et al. 2019). Regularisation and amnesty programs can improve these outcomes.

Another factor that can impact migrant workers' legal status and access to FACB is the country from which they originate. Destination countries can have various agreements with other countries. For example, Jordan has a bilateral labour agreement with Egypt, which creates vulnerability to trafficking as Egyptians cannot leave Jordan without permission of their employer (Integral Human Development 2020). Furthermore, in Jordan, migrant workers' ability to join professional associations is shaped by agreements with home countries. Migrant workers need to show that their home country accepts Jordanian qualifications (Interview Data).

In addition to the importance of the destination country's legal systems, origin countries' governments can also shape migrant workers' experiences. In 2018, the government of Nepal temporarily banned migration to Malaysia following an investigation which uncovered high levels of illegal fees being charged to Nepali migrant workers (Yeoh and Ghimire 2023). Home country governments can also provide support to migrant workers through embassies and consulates located in destination countries.

While many variations in migrant workers' experiences of legal frameworks can be identified, in some countries, migrant workers have equal access under the law. For example, in Ghana, international migrant workers benefit from all the obligations and rights set out in labour legislation, including those related to trade unions (Devillard et al., 2015). In addition, in South Africa, migrant workers also have equal rights under the law in terms of labour legislation and collective bargaining conditions (OECD 2018b).

Beyond the existence of relevant laws, another issue is the implementation of the law (see Box 3). Even in cases where migrant workers have equal protections under the law, migrant workers can face unequal treatment. For example, while migrant workers are afforded equal protections in Côte d'Ivoire, these workers face discrimination in terms of wages and treatment (USDoS 2022e). Whereas, in Brazil, NGO experts found that the government effectively enforced laws related to FACB, including penalizing violators (USDoS 2022d). Nevertheless, migrant workers in Brazil have faced challenges with accessing public services because of lack of information, language barriers and prejudice (Interview Data).

BOX 3. IMPLEMENTATION OF TRADE UNION RELATED LAWS IN GHANA

In Ghana, while the law prohibits anti-union discrimination, it does not provide adequate support for this prohibition. Furthermore, fees for registering or renewing trade union registration and collective bargaining certificates in Ghana have been reported to be exorbitant, which can create a barrier to unions' operations. In addition, unions have reported perceiving unfairness in approved processes for dispute resolution and, thus, did not follow them.

Source: USDoS 2022b

Implementation can also be affected when the actions of one agency violate the rules created by another. Such situations can result in migrant workers' being limited from accessing FACB rights, even in countries that appear to promote equal access. For example, in the past, work permits in Malaysia were issued with conditions that prohibited joining any associations, which is a restriction that violated the Employment Act (Pousadela et al. 2019).

Finally, public sector actors can shape public perception of migrant workers. Public sector actors can highlight benefits that migrant workers bring to countries (OECD 2018b; ILO 2023a). However, a growing trend in recent years is the development of public messaging and political parties that vilify migration (UNHCR 2020, Interview Data).

2.2 ROLES OF TRADE UNIONS

As described above, trade unions have different levels of freedom across countries. Within their national contexts, unions can provide wide-ranging support to migrant workers. This can involve supporting migrant workers who are union members as well as migrant workers who are not. Activities can include advocating for legal reforms, raising migrant workers' awareness of their rights, helping to identify and denounce abuses, and other activities related to contributing to and ensuring that migrant workers' working and living conditions are in compliance with international labour standards.

While not a comprehensive measure of unions' support of migrants, one way to consider the scale of the role that unions play is to look at unionization rates.¹¹ Table 3 below shows unionization rates in the six case study countries.

TABLE 3. TRADE UNION DENSITY RATES AMONG THE GENERAL POPULATION ACROSS DESTINATION COUNTRIES

Country	Density Rate
Brazil	13.03 (2019)
Côte d'Ivoire	10.62 (2017)
Ghana	16.84 (2019)
Jordan	-- ¹⁰
Malaysia	8.7 (2018)
South Africa	29.06 (2019)

Source: ILO, n.d.-c

¹⁰ Nationally representative statistics are not available for Jordan on ILOSTAT Explorer. However, the Danish Trade Union Development Agency (2023) estimates the value to be 5.6%, excluding members of FITU.

¹¹ In countries where CBAs cover migrant workers who are not members of unions, such as South Africa, these rates have less relevance for whether migrant workers receive benefits from unions. Furthermore, it is important to note that in some cases, such as in Jordan and South Africa, unions can take complaints from workers who are not union members.

Union participation can vary by sector. For example, in South Africa, where many Ethiopian migrant workers work in retail trade, a national labour market survey found that 26% of people in wholesale and retail industries¹² reported being members of unions (Statistic South Africa 2021).

Few unions keep disaggregated data on members' migration status (UNHCR 2020). However, available anecdotal and quantitative evidence shows migrant workers often have low levels of connection to unions. For example, in a 2020 survey of Haitians in Cascavel, Paraná, Brazil, none of the 128 respondents indicated that they were members of trade unions (David et al. 2023). Also, construction and trade in South Africa have been found to have lower unionisation rates for foreign-born workers than for native-born workers (OECD 2018b). Interviews conducted for this report described anecdotal observations of low levels of participation for Egyptians in Jordanian unions, Haitians in Brazilian unions, Nepalese in Malaysian unions, and Ethiopians in South African unions.

The nature of migrant workers' connections to trade unions can also be demonstrated through MIDEQ's survey data collected in the migration corridor from China to Ghana in 2021. The migrants included are employed¹³ and aged 16¹⁴ years and above. In this case, Chinese migrant workers in MIDEQ's survey appear to have higher unionisation rates than the general population (ILO, n.d.-c). Twenty-six per cent of the sample have a union or worker/staff association in their workplace (see Figure 1). Among those with a union in their workplace, 87.3% reported being allowed to join the union. Overall, 21.6% of the sample is associated with a union as compared to 16.8% in the general population (ILO, n.d.-c). For Chinese migrant workers in Ghana, union participation of females (25.1% of 339 female respondents) is higher than males (20.2% of 807 male respondents). Across occupation groups (see Figure 2), service and sales workers have the highest union participation rate (26.2%), followed by technicians and associate professionals (25.4%) and craft and related trade workers (23.6%).¹⁵

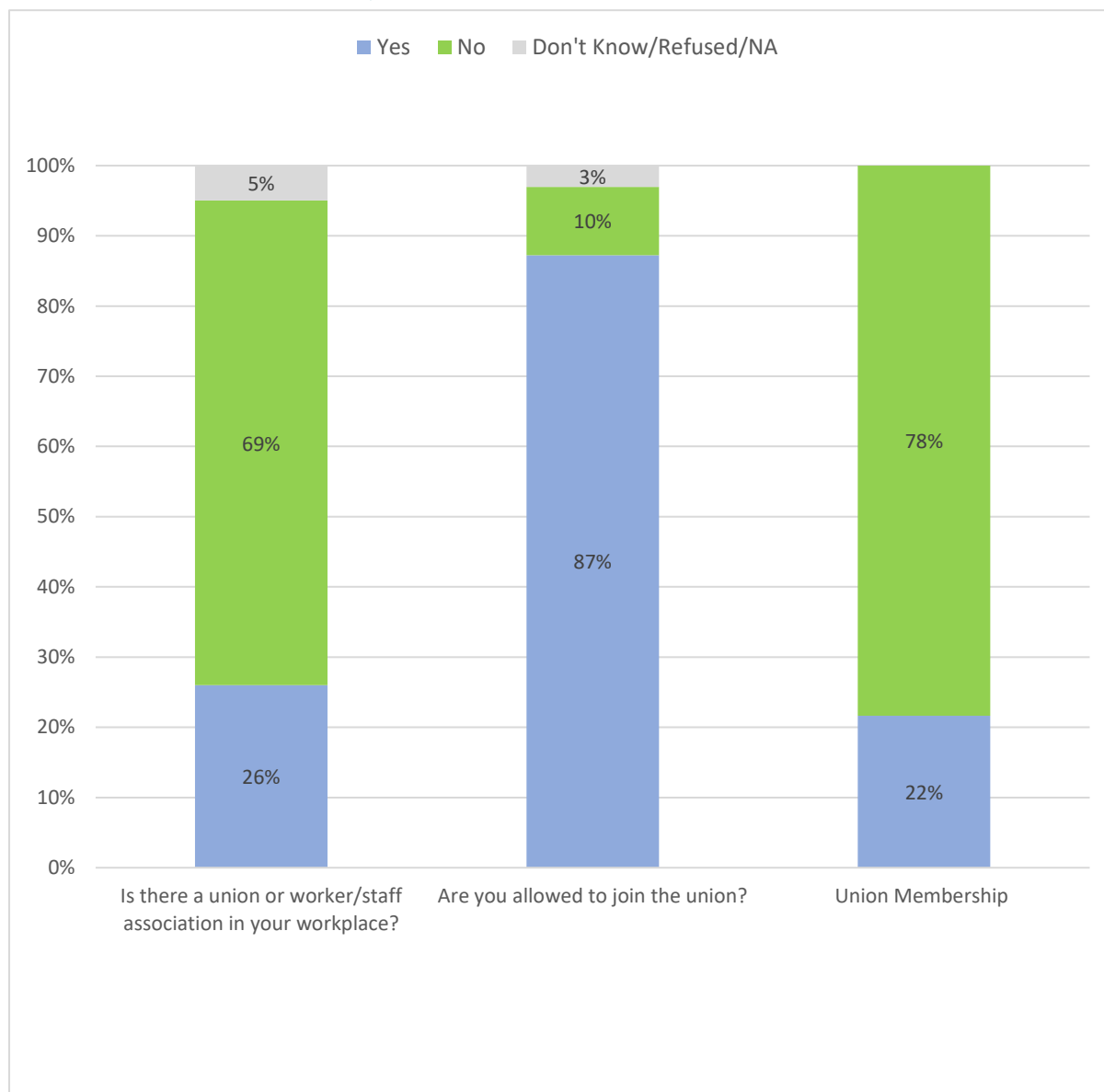
¹² Excluding people who reported being cooks or working in maintenance and repair of motor vehicles.

¹³ See ILO (2023b) for definition of 'employed'.

¹⁴ The minimum working age in Ghana is 16 (ILO, n.d.-d).

¹⁵ Other occupations include clerical support workers.

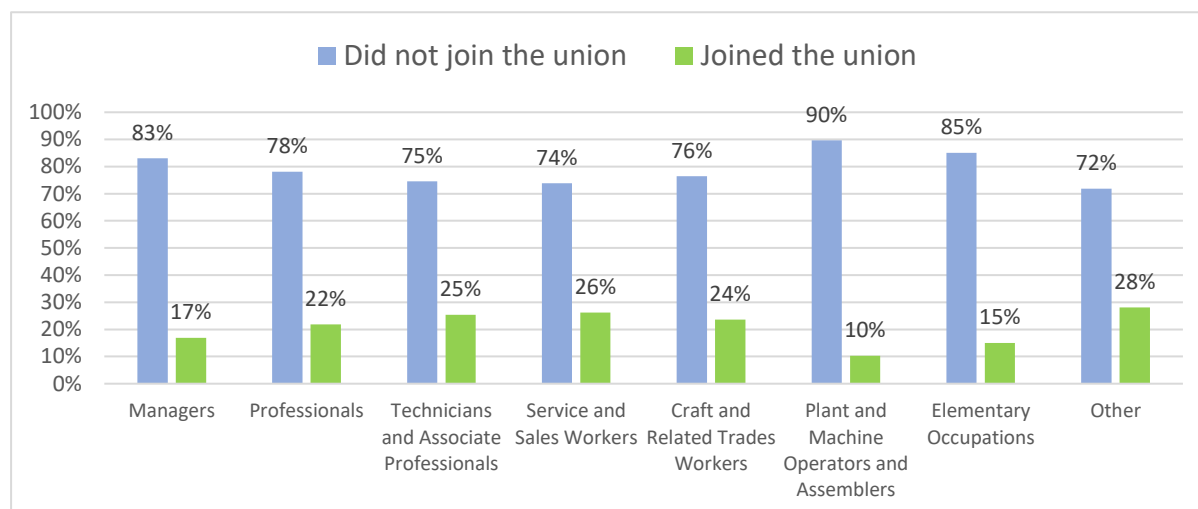
FIG 1. TRADE UNION MEMBERSHIP AMONG CHINESE MIGRANT WORKERS IN GHANA, 2021



1. The figure presents the trade union statistics among Chinese migrant workers in Ghana. These migrants are all 16 years old or above and are employed.

2. Please note that the percentages presented in the figure are based on survey data (the first and third bars represent responses from 1,146 respondents, while the second bar represent responses from 298 respondents, those who answered that they do have a union in the workplace) and should be regarded as informative rather than statistically representative, owing to the specific sampling technique applied. It is important to interpret these findings considering the survey's design and limitations. The results may not be generalizable to the broader population. Source: MIDEQ Survey Data 2021

FIG 2. TRADE UNION MEMBERSHIP AMONG CHINESE MIGRANT WORKERS IN GHANA BY OCCUPATION (ISCO-08), 2021



1. The figure presents the trade union statistics among Chinese migrant workers in Ghana. These migrants are all 16 years old or above and are employed.

2. Occupations are grouped based on ISCO-08, see ILO 2012.

3. Please note that the percentages presented in the figure are based on survey data (covering 1,146 respondents) and should be regarded as informative rather than statistically representative, owing to the specific sampling technique applied. It is important to interpret these findings considering the survey's design and limitations. The results may not be generalizable to the broader population.

Source: MIDEQ Survey Data 2021

Unions can have campaigns that specifically seek to organise migrant workers. This can include outreach in a language that migrant workers can understand. In Malaysia, the Malaysian Trades Union Congress (MTUC) has developed guidance and strategies for organising migrant workers (ILO 2023a). In order to encourage migrant workers to join, some of their affiliates have waived membership dues until a CBA was signed.

Unions can struggle to reach migrant workers. This can be particularly difficult for certain sectors. For example, in Malaysia, unions have struggled to reach domestic workers (Interview Data). Such struggles can be based on workers' isolation and also workers' hesitance to connect with unions. This hesitance can be driven by different motivations, such as wanting to work overtime instead of attending meetings, not feeling welcome at meetings, or a lack of understanding of the benefits of joining a union (Interview Data). Another source of hesitancy, expressed by a union leader in Jordan's construction sector, is that Egyptian workers perceive the union to be a government organisation and do not want to get involved (Razzaz 2017).

In some cases, there have been incidents where unions are unwelcoming to migrant workers. For example, in Malaysia, migrant workers have reported that some unions have declined to register migrant workers (Interview Data). An informant described that some trade union leaders have refused to give migrant workers membership forms. The informant described the barriers as being social, as opposed to legal. In South Africa, labour unions have worried about immigrants competing for jobs, housing, and resources (Kefale and Mohammed 2015). Furthermore, in some instances, unions working with the ILO in the case study countries have expressed hesitance relating to organising migrant workers (Interview Data). While cases such as these do not imply these are widespread phenomenon, anecdotal reports of such behaviour indicate a need for more research.

On the other hand, unions can also support migrant workers who are not members. For example, they can carry out awareness raising campaigns and provide a variety of support services. The MTUC supports migrant resource centers that identify women migrant workers and build networks and peer groups that can act as a preparatory stage for joining unions (ILO 2023a). In Jordan, unions can take complaints from people who are not members. The General Union of Construction Workers has supported some Egyptian workers in cases against employers (Interview Data). Also, in Jordan, the General Trade Union of the Textile Industry has a sector wide CBA and has agreements with NGOs to provide legal consultations for migrant workers.

Within their institutional contexts, trade unions in each destination country play different roles in supporting migrant workers. Table 4 highlights examples of ways that trade unions support migrant workers in each country.

TABLE 4. NATIONAL TRADE UNION SUPPORT AND INITIATIVES

Country	Initiatives
Brazil	The Trade Union of Workers in the Civil Construction of Porto Alegre (STICC POA) organised a public debate under the theme “The new Migration Law and the world of work: Humanitarian perspectives in a context of class struggle”, which brought together diverse speakers, including Haitian migrant workers (Building and Wood Workers’ International (BWI) 2018). STICC POA also launched a program “Construction in Movement” in partnership with Casa Rosa, which aims to provide education for migrant workers.
Côte d’Ivoire	Le Comité Intersyndical pour la Transition vers l’Economie Formelle (CITEF), an inter-union coalition carries out activities targeted to migrants, which have included a campaign to raise awareness about the Covid-19 crisis in Abidjan market, where many migrants work (International Organization for Migration (IOM), 2023a). The Federation of Autonomous Trade Unions (FESACI) has lobbied for improved laws that promote integration of migrants and non-discrimination against migrants, while promoting respect for migrants’ rights (IOM 2021).
Ghana	Trades Union Congress (TUC) Ghana seeks to promote the rights of all workers, regardless of migration status, including regular and irregular migrants (Interview Data). With regards to migrants, TUC Ghana specifically

seeks to address issues of fair recruitment, giving migrants voice and information (NigPilot News Reporter 2023).

Jordan	<p>The Agricultural Workers' Union¹⁶ helped to introduce a new labour code that also covers migrant workers (Interview with Shaddin Almasri as cited in Coleman 2022).</p> <p>The Domestic Workers' Syndicate¹⁷ was formed in 2019 and has migrant workers from Bangladesh, Indonesia, the Philippines, and Sri Lanka (ILO 2021c).</p>
Malaysia	<p>The MTUC has three migrant resource centers where migrant workers, including Nepali workers, can reach out to be given support by Malaysian trade unions (Interview Data).</p>
South Africa	<p>The Congress of South African Trade Unions (COSATU) and members of the South African Municipal Workers Union (SAMWU) provided support to migrants after a xenophobic attack in 2008 (Hlatshwayo 2010).</p> <p>Migrant Workers Union of South Africa (MIWUSA) is a dedicated migrant workers' union.</p>

In addition to nationally based union actions, transnational cooperation can also help create connections between trade unions and migrant workers (see Box 4). Table 5 shows examples of unions in the case study countries engaging in transnational cooperation. These initiatives involve global union federations (GUFs) and regional and bilateral agreements. In some cases, these agreements can involve arrangements where unions in origin countries prepare migrant workers before they go to the destination countries.

BOX 4. TRANSNATIONAL UNION COOPERATION IN MALAYSIA

The MTUC has agreements with the General Federation of Nepalese Trade Unions (GEFONT) and BWI, a GUF with members in building materials, wood, forestry, and allied sectors. Through these agreements, they have supported migrants with legal aid and assistance during the COVID-19 pandemic. Also, in Malaysia, GUFs, such as BWI, have had campaigns to recruit migrant workers. BWI's actions have included supporting an MOU between Timber Employees Union of Peninsular Malaysia (TEUPM) and Central Union of Painters, Plumbers, Electro and Construction Workers (CUPPEC) Nepal to develop an organising campaign for Nepali migrant workers in Malaysia (Global Unions 2008; Ford 2013).

In the ASEAN Trade Union Council (ATUC), there is a trade group with affiliates from different countries. They have MOUs between sending countries and destination countries. They include ASEAN countries and other countries, such as Arab states. The initiative includes ongoing efforts to create portability of union membership for migrant workers.

In South Asia, there is a similar group, South Asian Regional Trade Union Council (SARTUC), which brings together South Asian unions. They have a good relationship with ATUC. Through these organizations, regional collaboration is growing.

Source: Interview Data; ILO 2023

¹⁶ This trade union is not officially recognized in Jordan.

¹⁷ This trade union is not officially recognized in Jordan.

TABLE 5. TRANSNATIONAL INITIATIVES OF TRADE UNIONS

Country	Initiatives
Brazil	<p>Solidarity Center, an American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) affiliate, seeks to connect migrant workers to unions and strengthen collective action, raise awareness on the struggles of migrant workers, share best practices and tools with local union partners to increase migrant affiliation, and promote social dialogue to support the development of public policies on migration through a labour movement perspective. The Solidarity center joined a working group created by the Brazilian Ministry of Justice to discuss and propose a new migration policy. In partnership with the Center for Human Rights and Immigrants Citizenship (CDHIC), through the SindicAndo program, the migration project led to the 2022 creation of the National Network of Unions for the Protection of the Migrant Workers, which has more than 80 members from local unions, national trade union centers, federations, confederations, and GUFs (Solidarity Center 2023).</p> <p>The Solidarity Center is also working with the Brazilian Trade Union Federation, a Unitary Workers' Central (CUT) affiliate, and the National Confederation of Construction and Wood Industry Workers (CONTICOM/CUT) to strengthen union action and confront and combat precarious work through awareness raising campaigns for the construction and wood sectors (Solidarity Center 2023).</p>
Côte d'Ivoire	<p>Resilience Building for Vulnerable Communities in Côte d'Ivoire (VITA), coordinated by trade union NGO Nexus CGIL Emilia Romagna, the CGIL and the Trade Union Platform on Migration — Côte d'Ivoire (PCSM-CI), is centered in Abidjan, a city where many migrants live and work (International Trade Union Confederation (ITUC) 2022). It seeks to develop the capacity of migrant associations and the PCSM-CI to provide support, guidance, and assistance to resident migrants and, more broadly, to contribute to advancing and defending their social and economic rights. VITA has proposed organising trade union caravans to go out and meet migrants where they live and work, to help overcome the mistrust and lack of awareness of the role of trade unions.</p>
Ghana	<p>The Migrant Labour General Workers' Union International (MLGWUI) is based in Ghana and affiliated with the World Federation of Trade Unions (WFTU), the African Coalition on Migration and Development (ACOMAD), the Finish-French Migrant Resource Centre (FFMRC), and the Ghana Philanthropy Forum.</p>
Jordan	<p>The General Federation of Nepalese Trade Unions signed an MOU with the General Trade Union of Workers in Textile, Garment and Clothing Industries in Jordan to ensure protection of Nepalese garment workers and their participation in elections to the Federation board (Pousadela et al. 2019).</p> <p>The ATUC, SARTUC and the Arab Trade Union Confederation (ArabTUC) signed an MOU in 2015 for bilateral cooperation on migration, which was followed by the establishment of a Migrant Worker Resource Centre (MRC) in 2018 (ILO 2021c).</p>
Malaysia	<p>Through an MOU between the MTUC and the Confederation of All Indonesia Trade Unions (KSBSI), cases involving Indonesian migrant workers in Malaysia have been dealt with by the MTUC (ILO 2023a). Responding to KSBSI's social media outreach, Indonesian migrant workers contacted KSBSI directly. KSBSI were then able to assist and facilitate communication between these workers and the MTUC who provided support by contacting law enforcement to resolve cases related to unpaid wages for domestic workers.</p>

South Africa	A declaration and joint action plan to promote decent work for migrant domestic workers were created by trade unions and domestic workers' unions from Lesotho, Zimbabwe and South Africa, which included COSATU, the South African Domestic Services and Allied Workers Union, and the Federation of South Africa Trade Unions (FEDUSA) (ILO 2023a).
Regional and Global	ITUC Africa has a network called ATUMNET which focuses on migrant workers in Africa. In 2023, the ITUC published 'ITUC Policy Brief: A New Social Contract for Migrant Workers'.

2.3 ROLES OF CSOS AND INTERNATIONAL ORGANISATIONS

Finally, in each country, there are other organisations that provide support to migrant workers moving along the selected corridors, such as domestic CSOs and international organisations. Table 6 provides examples of domestic organisations working in each case study country. These organisations create forums for communication and provide support to workers from the selected origin countries.

While domestic CSOs are doing valuable work, they can also face struggles. One challenge can be translating information to reach migrant workers. They can also use creative tactics. The North South Initiative (NSI), a Malaysian CSO, has reached out to companies at the tops of supply chains to help to prevent direct employers from restricting migrant workers' access to unions (Interview Data).

TABLE 6. A SELECTED LIST OF DOMESTIC ORGANISATIONS AND AGENCIES SUPPORTING MIGRANT WORKERS

Country	Organisations
Brazil	<p>Missão Paz encourages employers to hire migrants and seeks to ensure the provision of decent work, free from exploitation.</p> <p>Solidarity Network for Refugees and Migrants (RedeMir) connects organisations operating in Brazil.</p> <p>Migration and Human Rights Institute (IMDH) provides legal assistance, humanitarian reception and social and labor integration to migrants, asylum seekers, refugees, and stateless people.</p> <p>Serviço Pastoral dos Migrantes (SPM) promotes social inclusion and denounces violations of the rights of migrants.</p> <p>União Social dos Imigrantes Haitianos is a social network for Haitian migrants in Brazil.</p> <p>The Brazilian Worker Center educates migrant workers on workplace rights, immigration, and health.</p>
Côte d'Ivoire	Le Collectif des Associations et Mouvements de Jeunesse Burkinabè en Côte d'Ivoire (CAMJBCI) supports migrants to access administrative documents (Interview Data).

Ghana	<p>Human Rights Advocacy Centre (HRAC) works on human rights issues, including providing legal assistance and advocacy for migrants.</p> <p>Migration Advocacy Center has carried out sensitization activities with different CSOs and migrant groups; conducted dialogue sessions with migrants and the Ghana Union of Traders (GUTA), who have been organizing anti migrant initiatives; and created a space where migrant self-organization is strengthened.</p>
Jordan	<p>Tamkeen for Legal Aid and Human Rights (Tamkeen) supports migrants through work on labor rights and combatting human trafficking.</p> <p>Adaleh Center for Human Rights Studies supports and enforces human rights through capacity building for NGOs and practitioners in human rights, democracy, and justice.</p> <p>Phenix Center for Economic and Information Studies conducts research on migrants' experiences.</p>
Malaysia	<p>Migrant Workers' Right to Redress Coalition (MWR2R) advocates for migrant worker labor rights with focus on recruitment methods and policies and advocates towards the government and employers.</p> <p>NSI provides support, conducts research, and engages in advocacy to address the challenges faced by migrant workers.</p> <p>Tenaganita supports migrant workers and refugees. They provide legal aid, support services, and conduct awareness programs to empower and protect the rights of migrants.</p> <p>The Migrants, Refugees, and Immigration Affairs Committee of the Malaysian Bar Council is dedicated to addressing the legal issues faced by migrants, refugees, and asylum seekers. They work on legal advocacy and provide legal assistance to protect the rights of migrants.</p> <p>Workers Hub for Change (WH4C) focuses on labor rights, including those of migrant workers. They engage in advocacy, capacity-building, and research to address issues related to workers' rights.</p>
South Africa	<p>Consortium for Refugees and Migrants in South Africa (CoRMSA) promotes and protects refugee and migrant rights.</p> <p>Scalabrini Institute for Human Mobility advocates for the rights of migrants, including collaborating with trade unions.</p> <p>Lawyers for Human Rights (LHR) established the Refugee and Migrant Rights Programme (RMRP) with walk-in law clinics that provide advice and representation to asylum seekers and refugees. It also builds networks and seeks to combat xenophobia with community engagement and education.</p> <p>Africa Unite is a human rights and youth empowerment organisation working with citizens, refugees and migrants to prevent conflict, enhance social cohesion and promote socioeconomic development.</p>

Globally, the growing hostility towards migrants that has developed in recent years has been felt by organisations that seek to support migrant workers. UNHRC (2020) reports that CSOs' challenges have included:

- toxic narratives (e.g., connecting migrants to smuggling and terrorism);
- criminalization of CSOs that work with migrants (e.g., misusing anti-smuggling and anti-trafficking laws against CSOs that work with migrants);

- campaigns of government intimidation (e.g., surveillance, targeted financial audits, unreasonable searches, discriminatory threats, travel restrictions, and targeting migrant leaders of CSOs for detention and deportation);
- harassment from private individuals (e.g., office invasions and vandalism, hate mail, cyberattacks, street harassment and physical attacks); and
- administrative and financial barriers to CSOs' work (e.g., creating impossibly short timelines for registration processes, increasing taxes, and restricting access to public funding).

In this more difficult climate, CSOs that support migrant workers have adapted in various ways. Adaptations include building alliances, information-sharing and building protective capacities (UNHCR 2020). Actions have included educating staff on how to respond if threatened, creating office security guidelines, setting up hotlines, engaging in strategic litigation, and changing fundraising strategies (UNHCR 2020). These changes have detrimental effects on the ability of CSOs to be effective. The impacts include becoming more reluctant to rely on volunteers whose safety could be put at risk, having to dedicate resources to these modifications instead of other activities, and staff members feeling an increased psychological toll (UNHCR 2020). Another challenge is that governments that are putting pressure on CSOs are also taking hostile stances towards migrants, which means that migrants are simultaneously facing more difficult situations and having less access to CSO support (UNHCR 2020).

In these circumstances, migrants also develop their own groups, which can involve migrant workers. These groups can be explicitly focused on providing mutual support or have other stated purposes. They can be formal organisations or can involve congregating in informal settings such as within religious communities or neighbourhoods. According to the MIDEQ data, 74.56% of the surveyed Chinese migrant workers in Ghana joined formal or informal groups that are mostly made up of people from the Chinese diaspora. An informant in South Africa described that migrants are fighting for themselves (Interview Data).

In addition, various international organisations provide support to migrant workers. These include intergovernmental organisations, such as the ILO and IOM. They also include NGOs such as Migrant Rights International. Examples of such initiatives are provided in Table 7.

When international organisations work with local communities, there can be imbalances of power dynamics. Local organisations can help to address this issue. For instance, NSI makes efforts to allow vulnerable workers to have a voice when projects involve international partners (Interview Data).

TABLE 7. A SELECTED LIST OF INTERNATIONAL ORGANISATIONS' INITIATIVES SUPPORTING MIGRANT WORKERS

Country	Initiatives
Brazil	To contribute to safer, orderly and regular migration, IOM provides administrative support to facilitate visa application procedures upon official request from governments. In Haiti, IOM currently provides visa support for Haitian nationals wishing to migrate to Brazil through two programs: the Family Reunification Visa Program (VITEM XI) for family members of Haitian nationals already living in Brazil and the humanitarian visa program (VITEM III) for Haitians who have found work in Brazil (IOM 2023b). The objective of the two programs is to strengthen regular migration channels, improve information among potential candidates and ensure better protection for migrants.
Côte d'Ivoire	IOM organised an event intended to combine efforts for protecting migrant workers with efforts for protecting the environment. The event involved discussion of sustainable development and concrete solutions to support migrant workers in agriculture (IOM 2023c).
Ghana	IOM Ghana supported the creation of the 'Toolkit for Integrating Migration into District and Sector Medium-Term Development Plans'.
Jordan	The ILO has supported Better Work Jordan, a program which brings diverse groups together — employers, factory owners, trade unions, global brands and governments — to improve working conditions in the garment industry which employs many migrant workers.
Malaysia	In collaboration with the Malaysian NGO Our Journey, UK-based tech non-profit Fifty Eight, and two Malaysian rubber goods companies, the UK-based Ethical Trading Initiative developed the 'Just Good Work' Malaysia app to support migrant workers in Malaysia. Running in seven languages, it provides information on legal rights and what to expect from recruitment to Malaysian workplaces; explains how to raise an issue at work; and provides a confidential, third-party grievance reporting route, if other routes fail.
South Africa	<p>The ILO has helped COSATU to organise an activity to support vulnerable workers, including migrants, which involved bringing in MIWUSA (Interview Data).</p> <p>The Southern Africa Migration Program is an international network of organizations founded to promote awareness of migration-development linkages in SADC.</p> <p>The Southern Africa Migration Network (SAMIN) brings together diverse stakeholders from academia, refugee and migrant rights organisations, as well as human rights defenders and activists.</p>

Regional and
Global

ILO FAIR: Integrated Programme on Fair Recruitment Phase III (2022-2025) is implemented at the global level as well as in migration corridors covering Côte d'Ivoire, Ghana, and South Africa.

The ILO runs a project called Safe and Fair in the ASEAN region with the objectives of: better protecting migrant workers through gender-sensitive labour migration governance frameworks; lessening women migrant workers' vulnerability to violence and trafficking and coordinating responsive quality services; and improving data, knowledge and attitudes on the rights and contributions of women migrant workers.

The African Union (AU) adopted the Migration Policy Framework for Africa (2006), the Joint European Union-AU Declaration on Migration and Development (2006) and the Joint Labour Migration Programme (2015) (OECD 2018b).

3. OVERVIEW OF MIGRANT WORKERS' CONNECTIONS TO TRADE UNIONS

When considering FACB in each country reviewed in this report, the situations differ. Nevertheless, in all of the countries considered, migrant workers from the origin countries of focus have low levels of trade union membership. Overall, a number of key challenges can be identified. In addition, examples of success can be found with existing trade unions connecting to migrant workers and with migrant workers engaging in self-organisation.

3.1 CHALLENGES IN RELATION TO TRADE UNIONS SUPPORTING MIGRANT WORKERS

A wide set of diverse challenges can be identified that are preventing migrant workers from getting access to FACB. These can be grouped into the categories of legal, xenophobia and prejudice, lack of resources (e.g., information or language skills), cultural norms, fear, being members of additional groups that experience discrimination, the nature of migrant workers' jobs, and variations in individual proclivity to join unions. Many of the challenges are intertwined and overlap with each other.

Legal

One key challenge that can occur is that countries may have restrictions to FACB rights that apply to all workers, regardless of migration status. For example, barriers to the right to strike was identified as one of the main obstacles to labour organising by some migrant workers in Jordan (9%) and Malaysia (51%) in surveys of migrant workers (Pousadela et al. 2019). Such legal barriers can be connected to the types of work that migrant workers engage in, as access to trade unions and protection of other labour rights can vary across sectors. It can also be limited for workers in the

informal sector, with particular types of employment contracts, or in particular places, such as export processing zones (UNHCR 2020; ILO 2023a).

While access to FoA is particularly important for migrant workers, these workers often face higher restrictions than local workers. In some cases, countries have laws that explicitly restrict migrant workers' access to FACB. Barriers can involve access to union membership, eligibility for union leadership positions, and the ability to form new organisations. Laws that ease the possibility to arrest or deport migrants can create a culture of fear (see further discussion below). Migrant-specific categories that can lead to restricted FACB access can be related to nationality, residency or work permit types, and/or documentation status (ILO 2023a).

Another concern is the application of the law. Challenges of this type can take multiple forms. One aspect can relate to the lack of enforcement of laws that prohibit discrimination. A specific challenge that migrant workers can face is the ability to form their own organisations. In some countries, groups or associations must be registered. If migrant workers are seen as part of an undesirable segment of society, their applications may not be accepted, which can leave them with the choice of disbanding or operating illegally (UNHCR 2020). Continuing to operate without legal status can create risks, such as fines, criminal penalties, and risk of losing legal status or deportation.

Another factor which can create barriers for migrant workers is a lack of alignment between different relevant laws. Conflicting laws can create restrictions on activities that in and of themselves are not banned. Lack of alignment between government agencies can also lead to limited effectiveness of government programs designed to support migrants.

In many countries legal impediments have been growing in recent years. These changes are impacting migrant workers directly. They are also creating barriers for organisations which seek to support migrants (UNHCR 2020).

Xenophobia and prejudice

Another major concern for migrant workers is xenophobia and prejudice in destination countries. This problem can be widespread and can be expressed at multiple levels, including in the media. For instance, in South Africa, opinion surveys and qualitative research have identified high levels of xenophobic sentiment across different societal groups, which has also been connected to violent incidents (OECD 2018a; Interview Data).

While xenophobia and prejudice are contributing to the increasingly hostile legal environments in many countries, as described above, they also create additional barriers. In some cases, governments are refusing to renew migrant workers' visas in order to decrease the presence of foreign nationals. Some respondents mentioned political parties running campaigns that blamed migrants for national challenges, such as high unemployment (Interview Data). Additionally, government agencies can seek out undocumented migrants in targeted operations intended to implement

sanctions. Migrant workers can also feel that they do not receive equal treatment from public service providers (Interview Data).

In contexts with xenophobia and prejudice, migrant workers can feel the burden of negative stereotypes and misperceptions. In interviews for a study on migrant workers' experiences (Pousadela et al. 2019), migrant workers expressed that they want changes to improve their reputations and to be treated equally with others. In contrast to their perceptions of having negative reputations, the interviewees described feeling that they were contributing to their host countries. Such feelings of stigma can make it hard for migrant workers to congregate or get access to information or services (UNHCR 2020). In addition, sentiments of xenophobia and prejudice are contributing the difficulties faced by organisations seeking to support migrant workers.

Lack of resources

Migrant workers can struggle in cases when they do not have sufficient resources. This can create challenges with connecting to existing unions as well as with creating their own organisations. Needed resources can include information and certain skills, notably language skills. While these challenges can be overcome through the provision of support services, such services are often missing.

A key barrier is the lack of information about existing rights. In surveys of migrant workers (Pousadela et al. 2019), in Jordan 84% of respondents said they were not sure if they could form or join unions, 9% said they could not, and 7% said they could, while in Malaysia, 60% said they were unsure, 10% said they could not, 13% said they could, and 17% said they could only join unions. These results show that there is a low level of awareness of rights. In addition, migrant workers may be unaware of the availability of public services or other services (Interview Data).

Information about specific unions may also be unclear to migrant workers. In Malaysia, GEFONT, a Nepali union, carries out various activities. In some cases, Nepali migrant workers are not aware that being a member of GEFONT is not equivalent to being a member of a trade union in Malaysia (Interview Data). In addition, as mentioned above, some Egyptian workers in Jordan perceive unions as government organisations.

When migrant workers lack access to relevant information, they may not be able to effectively form their own unions. For example, migrant workers may not be aware of the different forms of organising that are available and the pros and cons of different organisational structures. If migrant workers attempt to create independent trade unions, in some cases, these organisations can be replaced with less independent structures, such as employer-employee committees. Such alternative structures may have less power than unions and be comprised of employer selected representatives, without power to negotiate legally binding agreements (UNHCR 2020).

In addition to migrant workers lacking information about their rights and their ability to join unions, in some cases there is a lack of sufficient support and outreach coming from existing unions. The prevalence of such gaps and their motivations need more research within the MIDEQ destination countries. However, multiple potential reasons for lack of action from unions can be identified (UNHCR 2020). Unions can be resistant to working with migrant workers due to narratives that suggest migrant workers are “stealing” jobs or driving down wages or working conditions. In addition, trade unions can face other barriers towards supporting migrant workers, such as a lack of resources. Unions can also fear that reaching out to migrant workers, who may be undocumented, would make them vulnerable to government accusations of promoting illegal employment or human trafficking. Furthermore, in some cases, existing unions can be resistant to the formation of new unions, which can hinder migrant workers’ efforts at self-organising (Interview Data).

Other organisations providing insufficient support can also impact migrant workers. CSOs, that have historically provided information and help for migrant workers to learn about and gain access to their rights, have been having increased difficulties in operating (UNHCR 2020), which can result in migrant workers receiving less support from them. Additionally, in some cases, migrant workers believe that the police do not do enough to protect them when they protest (Pousadela et al. 2019).

On the migrant workers’ side, a lack of local language skills can be a barrier to seeking to access their rights (UNHCR 2020). One issue is that registering an organisation may require fulfilling a bureaucratic application process that uses a language of the destination country. Language barriers can also exacerbate situations where migrant workers lack information about local laws and procedures. Unions’ organisational documents may also need to be translated into multiple languages for members with varying language skills. Language can also be a barrier for self-organising as lack of a shared language can hinder communication among workers.

Migrant workers can also lack other resources that make it more difficult to access FACB rights. For instance, in surveys of migrant workers, lack of resources to organise was listed as a main labour rights challenge by 15% of workers in Jordan and 45% of workers in Malaysia (Pousadela et al. 2019). The needed resources can be diverse. For example, if workers have a complaint, they may be missing paperwork needed to prove their situation (Interview Data). Migrant workers can also find it difficult to produce the documents or fees required for registering a new organisation (UNHCR 2020). Migrant organisations can also struggle to obtain donor funding because of concerns that these groups are not stable or that funding them could lead to political backlash (UNHCR 2020).

Cultural norms and perspectives

In some cases, migrant workers may not be open to the idea of joining unions. This can have multiple drivers. One can be that migrant workers come from countries with very low unionisation rates. Another driver for migrant workers’ reluctance to join

unions can be when they consider themselves as temporary residents with a goal to earn as much as possible and do not want to spend time attending union meetings (Interview Data). They may also feel that they do not fit in with the people who are part of the unions (Interview Data). Such reluctance can create a barrier to migrant workers receiving support from unions, even in situations in which union membership is open to them.

Fear

In contexts where migrant workers with limited resources face increasing legal barriers along with xenophobia and prejudice, another reason migrant workers may not access their FACB rights is fear. This fear can be related to threat of deportation, job loss, detention or harassment (Pousadela et al. 2019; UNHRC 2020). Fear can also be more generalised. One informant described that “Some migrants even vanish. This creates fear so that they don’t complain. In one case, a worker filed a police report, and he was so scared that he cancelled it” (Interview Data). UNHCR (2020) describes that,

“Any legislation or policy that gives law enforcement officers expanded ability to arrest and deport migrants will have a chilling effect on migrants’ ability to challenge authority by exercising their freedom of association rights, especially for migrants who are undocumented or in an irregular situation. Where migrants may be arbitrarily stopped and deported, they will refrain from taking any action that puts them on law enforcement’s radar, which includes organizing. 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.”

Particularly, migrant workers can experience fear that their jobs will be at risk if they participate in union activities. This is a prevalent problem. In surveys of migrant workers, 78% in Jordan and 74% in Malaysia identified harassment or pressure from employers as a major barrier to exercising FoA (Pousadela et al. 2019).

When migrants’ work visas are tied to a particular employer, workers can particularly fear being fired as it could lead to deportation (UNHRC 2020). Additional forms of retaliation workers have experienced have included harassment, wages being withheld, termination, being denied better work assignments or overtime, having contract renewals refused, being the subject of defamation suits, and, for temporary migrant workers, being put on blacklists that prevent future job applications from being accepted or cause work permits to be denied (Pousadela et al. 2019; UNHRC 2020; USDoS 2022a; USDoS 2022c).

Compounded challenges felt through membership of additional groups that experience discrimination

Migrant workers may feel compounded challenges based on their individual characteristics. A major issue is that women migrant workers can face additional difficulties. In survey research on migrant workers in Jordan and Malaysia, men and

women gave very different answers to most questions, which covered topics related to their ability to access labour rights (Pousadela et al. 2019). In some cases, women feel pressured from their own communities to not exercise their FoA rights (UNHCR 2020; Interview Data). In addition, sexual harassment or gender-based violence can limit their involvement (UNHCR 2020). Women migrant workers can be concentrated in textiles, agriculture, domestic and caregiving work, and the informal sector (UNHCR 2020). Some of these jobs, such as domestic work, make them particularly vulnerable through conditions of isolation and/or informality and create difficulties for connecting to unions. Furthermore, in some cases women migrant workers have lower levels of education and language skills than their male compatriots (Interview Data).

However, for some women, migration can create new opportunities. For example, if women migrant workers have moved away from traditional patriarchal spaces, they can enjoy greater economic independence than in their country of origin. In addition, migrant women can benefit from organising together to address shared challenges, such as sexual harassment or gender-based violence (UNHCR 2020).

Migrant workers who are part of minority groups can also face further challenges. They can face discrimination from destination country communities as well as other migrants. In some cases, these challenges can make it difficult to find safe spaces to meet (UNHCR 2020).

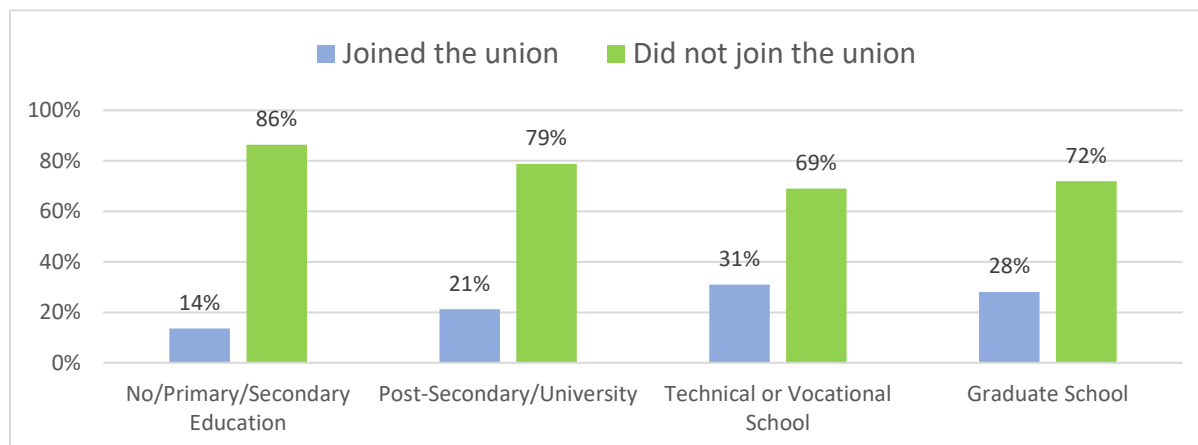
Nature of migrant workers' jobs

Migrant workers can often end up in jobs that make it particularly difficult for them to access FACB rights. Key factors can include long or irregular work hours that make it difficult to find time (UNHCR 2020). They can also be isolated, such as domestic workers or maritime workers (UNHCR 2020). In some cases, short-term contracts also create practical barriers to organising (ILO 2023a).

Variations in individual proclivity to join unions

Another set of barriers can arise from migrant workers' interest and proclivity towards joining unions, which can vary. A key motivating factor noted by Pousadela et al. (2019) is previous union experience. Another factor which can be connected to union membership is education level. The MIDEQ survey data provide in-depth information on the education level of Chinese migrant workers in Ghana. Figure 3 shows the union participation rate is the highest among those who attended technical or vocational school (31%) and graduate school (28.1%).

FIG 3. TRADE UNION MEMBERSHIP AMONG CHINESE MIGRANT WORKERS IN GHANA BY EDUCATION LEVEL, 2021



1. The figure presents the trade union statistics among Chinese migrant workers in Ghana. These migrants are all 16 years old or above and are employed.

2. Please note that the percentages presented in the figure is based on survey data (covering 1,140 respondents who responded whether there is a union or worker/staff association in their workplace and provided information on their education level) and should be regarded as informative rather than statistically representative, owing to the specific sampling technique applied. It is important to interpret these findings considering the survey's design and limitations. The results may not be generalizable to the broader population. Source: MIDEQ Survey Data 2021

3.2 ESTABLISHED TRADE UNIONS' CONNECTIONS TO MIGRANT WORKERS

Making a comprehensive assessment of the impact of trade unions on the experiences of migrant workers requires further research. Nevertheless, many positive examples can be identified among the MIDEQ destination countries. For example, unions have sought to reduce xenophobia, as can be seen in COSATU's South African campaign. In addition, in Malaysia the MTUC has supported MRCs. Several other positive example, are shared in Tables 4 and 5. However, overall, migrant workers were found to have very few connections to existing trade unions in the case study countries.

3.3 SELF-ORGANISING OF MIGRANT WORKERS

In addition to participating in and receiving support from existing trade unions, migrant workers have also engaged in instances of self-organising. The groups they create, which can be formal trade unions or take other forms (that can be informal) with different purposes, can provide migrant workers with forums of support, as well as (in some cases) a collective voice, in their host countries. Facing the diverse barriers to connecting with unions that were described above, in some cases migrant

workers prefer to join other types of support groups. For example, Nepali women migrant workers in Malaysia often prefer to join groups from their home country (Interview Data). For migrant workers who are not union members, they often look for support from CSOs that connect to their communities. In some cases, they approach these organisations when they have a workplace complaint.

CSOs can be organised solely by migrant workers or have connections to destination country organisations. When migrant workers experience xenophobia, they may prefer to speak to people from their home countries. CSOs can give migrant workers information about working conditions and rights. In Brazil, there are about 70 to 80 Haitian organisations, which provide support to the Haitian community, which include churches and political organisations (Interview Data). For example, União social dos Imigrantes Haitianos, as described in Table 6. In Côte d'Ivoire, there are more than 200 associations registered with the Burkinbè consulate, which include informal organisations created for diverse purposes, such as family gatherings (Interview Data). In Ghana, women migrant workers often organise through churches and WhatsApp groups (Interview Data).

The scale of migrant workers' efforts towards setting up new organisations varies across countries. For example, in surveys of migrant workers, 3% of workers in Jordan said they had been involved in setting up an association, union, or other form of CSO (Pousadela et al. 2019). In contrast, 20% of workers in Malaysia said they had engaged in such tasks.

Groups for migrants can incorporate small segments of migrant communities. These can be based on different categories, such as religion, job type or home region. Such groups can be registered or unregistered. As mentioned above, workers in Malaysia can also join GEFONT, a Nepali union. Self-organising can also involve the creation of formal unions and other groups that are based on migrants' identities as workers. For example, MIWUSA is a union that explicitly seeks to support all migrant workers in South Africa. Another example is the Migrant Domestic Workers Network in Jordan (Connell 2015).

4. KEY TAKEAWAYS

Well-governed labour migration can contribute to sustainable development and provide benefits and opportunities for migrant workers, their families, and destination countries (ILO 2017a; OECD 2018b). Labour mobility is an important process to balance skills, gender, age, and the sectoral composition of national labour markets. Migrant workers can bring needed skills that fulfil demands created by the destination countries' changing socio-economic, political and technological environments. However, labour migration also often involves risks for migrant workers in terms of achieving decent working conditions. As such, it is important to understand the experiences of migrant workers in their destination countries with a particular emphasis on how migrant workers experience access to FACB rights.

The ILO has focused on these issues for many years. Notably, in order to promote the outcome of fair and effective international labour migration and mobility along with other relevant outcomes as detailed in the ILO programme and budget, approved by the 329th Session of the Governing Body in March 2017, the ILO proposed a plan of action to cover 2018 to 2022 (ILO 2017b). The objective of the plan was to achieve sound and effective labour migration governance at all levels with a view to enhancing the benefits of labour migration, addressing labour market needs at all skill levels and protecting and promoting the rights of both migrant workers and nationals, in line with the Conference conclusions. One of its ten priorities was FoA. The ILO sought to develop interventions to address barriers to migrant workers' FACB and to promote constituents' capacities in this area. In addition, the ILO described the importance of focusing on supporting tripartite platforms to support social dialogue. These efforts included promoting a stronger role for the social partners in migration-related debates and organizing trainings for ministries of labour and workers' and employers' organisations to enhance their capacities to engage in regional processes, including with ITC–ILO (the Labour Migration Academy).

Moving forward, in 2024, additional actions are needed. Diverse experiences have been found across the MIDEQ destination countries with migrants working in both the formal and informal sectors. Key challenges, which often create major impediments for migrant workers accessing FACB rights, have been identified in this report. Nevertheless, examples of existing trade unions incorporating and supporting migrant workers as well as examples of migrant workers engaging in self-organisation were also found and have been showcased. To better understand existing challenges and successful experiences, more research is necessary, particularly this should also explore the roles played by employers.

Based on the reports' findings and drawing from ILO (2023a) and Pousadela et al. (2019), among other published material, along with feedback from ACTRAV and ACTEMP, a number of potential actions can be identified related to strengthening the collaboration between trade unions, governments, and other stakeholders to advance migrant workers' access to FACB rights. The rest of the conclusion to this report outlines a series of actions that can be taken by different actors to support migrant workers' access to FACB.

4.1 ACTIONS THAT CAN BE TAKEN BY ALL STAKEHOLDERS

First, there are a number of actions that can be taken any concerned stakeholder, which are as listed below.

- i) Seek to remove barriers to FACB rights (Pousadela et al. 2019), including those arising from the challenges identified in this report.

- Look for ways to reduce legal barriers (see options below for relevant actions that can be taken by particular actors).
- Look for ways to reduce xenophobia and prejudice, such as:
 - » running campaigns against xenophobia that highlight the benefits migrant workers can provide to societies (OECD 2018b; ILO 2023a) and
 - » increasing awareness of how unions can benefit from incorporating and supporting migrant workers.
- Provide information and support to migrant workers that can help where migrants lack resources and can also alleviate challenges created through cultural norms, fear, and variations in individual proclivity to join unions.
 - » Run campaigns that show how migrant workers can benefit from joining unions.
 - » Educate migrant workers about their rights (Pousadela et al. 2019).
 - » Provide information in languages that migrants understand. Consider working in partnership with actors from migrants' communities to build trust.
 - » Run campaigns that encourage migrant workers to form new organisations (which may be formal trade unions or take other forms, depending on the migrant workers' contexts and objectives).
 - » Provide support to migrant workers who are trying to form new organisations.
- Find ways to reach migrant workers who may be harder to connect with.
 - » Seek to understand how challenges associated with being members of different groups that experience discrimination (e.g., related to gender or religion) may be preventing migrant workers from joining unions.
 - » Have variations in public awareness campaigns that specifically target different categories of workers, such as women and workers from minority groups.
 - » Identify ways to reach migrant workers who may be in jobs that involve relative isolation (see options listed in under 4.3.1-iv).

ii) Conduct further research.

- Seek to better understand how legislation, policies, and programmes have different impacts on different groups of migrant workers, such as different categories of workers, women and minority groups. Taking guidance from the results, seek to empower people in these groups to access their FACB rights (ILO 2023a).
- Identify the importance of each identified challenge (see Section 3.1) within specific countries and with respect to different groups of migrant workers.

iii) Cooperate with other stakeholders.

- Close coordination between relevant stakeholders (e.g., labour and interior ministries with employer representatives) can improve the impacts of immigration

and reduce unnecessary costs (OECD 2018b). Such a process can help to anticipate skills shortages and immigration needs.

- Develop collaboration between governments with employee and employer organisations to protect migrant workers from discrimination and racism (OECD 2018b). Trilateral cooperation can help to address all barriers outlined in this report (see Section 3.1).

4.2 ACTIONS THAT CAN BE TAKEN BY GOVERNMENTS

Governments are key actors shaping migrant workers' access to FACB.

Governments bear a large responsibility for creating environments conducive to maximising the developmental potential of migration with full protection of human and workers' rights. Labour policies are more likely to be effective when anchored on effective participation and support of the social partners, employers' and workers' organisations, along with other relevant stakeholders. Furthermore, effective labour migration governance requires a "whole-of-government" integrated approach (ILO 2017a). A selection of actions that governments can take to improve migrants' access to FACB is provided below.

4.1.1 LEGAL REFORMS

i) Question and modify legal frameworks to reduce legal barriers to migrant workers' ability to engage in FACB.

- Remove legislation restricting migrant workers access to full participation in trade union activities (ILO 2023a).
- Create legal obligations to provide migrant workers information about their labour rights in a language they understand. Some countries have laws that grant migrant workers the right to be represented by a trade union (ILO 2023a).
- Review laws and regulations related to migrant workers' freedom of expression and make sure they are in line with international standards (Pousadela et al. 2019). Migrant workers should be able to express themselves without fear of reprisals. Actors such as private employers or the police should not be able to restrict migrant workers from exercising their rights to freedom of expression.
- Enable the formation of independent migrant worker trade unions (ILO 2023a).
- Ensure migration laws and policy are coherent with labour laws and that the fundamental rights of migrant workers are not compromised or restricted (Pousadela et al. 2019; ILO 2023a).

ii) Ratify and implement relevant ILO Conventions and Protocols and other relevant global conventions and agreements (ILO 2023a).

- Seek to identify relevant agreements to join based on the national context. Conventions and agreements relevant to migrant workers include: the ILO Freedom of Association and Protection of the Right to Organise Convention,

1948 (No. 87); the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); 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). Additional relevant conventions covering specific categories of migrant workers include the Domestic Workers Convention, 2011 (No. 189); the Plantations Convention, 1958 (No. 110); and the Nursing Personnel Convention, 1977 (No. 149).

- Create and maintain in law and in practice, an enabling environment that facilitates the rights enshrined in the International Bill of Rights, the UN Migration Convention, ILO standards and other relevant international laws and standards (Pousadela et al. 2019).

iii) Follow ILO guidance when developing migration agreements.

- Consult the Guidance on Bilateral Labour Migration Agreements (ILO 2022), which was launched in the context of the UN Migration Network.

4.1.2 PUBLIC SECTOR PROVIDING ADDITIONAL SUPPORT TO MIGRANT WORKERS

i) Monitor the national situation in relation to migrant workers' access to FACB rights and consult with relevant stakeholders when taking actions that may affect migrant workers.

- Conduct better monitoring of the economic impacts of immigration (OECD 2018b). This can improve public policies and actions.
- Consult with social partners to create an enabling environment for migrant workers (ILO 2023a).
- Collect information on FACB rights of migrant workers, including trade union membership (ILO 2023a).
- Consult with relevant trade unions and CSOs when negotiating bilateral and multilateral trade and investment agreements that impact migrant workers (Pousadela et al. 2019).

ii) Create public messaging that supports migrant workers to better access their FACB rights.

- Spread messages that foster goodwill towards migrant workers. For example, publicly disseminate information on the economic, social and cultural contribution of labour migration and migrant workers (ILO 2023a).
- Ensure that migrant workers have access to information about their rights (in domestic and international law and standards) in a language that they understand, while they are still in their country of origin before departure (ILO 2023a). This information should include contact information for trade unions.

- Send a message that hate speech, racism, and xenophobia against migrant workers will not be tolerated (Pousadela et al. 2019; ILO 2023a).
- iii) Provide more effective implementation of existing laws to support migrant workers' access to FACB in cases where enforcement is low and promote norms which benefit migrant workers.
- Ensure comprehensive coverage of labour inspectorates (ILO 2023a).
 - Use labour inspection to monitor workplaces where migrant workers are employed to ensure provision of FACB rights and other labour rights.
 - Train labour inspectors about challenges related to migrant workers accessing FACB rights.
 - Ensure administrative or judicial dispute resolution bodies are effective and accessible to migrant workers with grievances or experiences of violations of FACB rights, regardless of migrant workers' documentation status (ILO 2023a).
 - Ensure that remedial action is taken against actors violating migrant workers' rights. Establish and enforce sanctions against employers and other actors that violate migrant workers' rights (ILO 2023a). An area where this can be important is when law enforcement officials or nonstate actors violate migrant workers' assembly rights (Pousadela et al. 2019). It can also include situations where workers have faced illegal retaliation, such as being dismissed for exercising their FACB rights. Such actions can be facilitated through the creation of easy-to-use reporting mechanisms, which can address migrant workers' fear of retaliation.
- iv) Develop policies and programmes which provide support to migrant workers.
- Modify policies and programmes based on a review of existing initiatives (described in Section 4.1-ii)
 - Provide support services for migrant workers, such as sharing information about accessing public services (Interview Data).
 - Leverage the impact of migration on destination countries' economies (ILO 2017a; OECD 2018b) by:
 - » fostering employability of migrant workers through training and skill upgrading;
 - » recognising migrant workers' existing skills; and
 - » encouraging migrant workers to invest and removing barriers to investing and creating businesses.
 - Develop integration policies (Pousadela et al. 2019; OECD 2018b). Integration policies can:
 - » help integrate migrant workers into the economic, social and political spheres of the countries where they live;
 - » help migrant workers to contribute to the development of their host countries;
 - » involve local authorities;
 - » reduce migrant workers' barriers to accessing public services; and

- » involve providing access to public education and training, recognizing qualifications, providing language instruction, and providing access to citizenship and naturalization.
- Support collective bargaining processes to reach agreements (ILO 2023a).
- Train administrative and law enforcement officials to respect migrant workers' FACB rights regardless of documentation status (ILO 2023a).
- Ensure that police and law enforcement officials facilitate peaceful assemblies of migrant workers, where applicable (Pousadela et al. 2019).
- Ensure that diplomatic missions support their nationals in accessing FACB rights and forming associations that advocate for their rights (Pousadela et al. 2019).
- Create, maintain, and strengthen an open civic space where migrant workers can interact with CSOs (UNHRC 2020).
- Enable the role of CSOs to be strengthened in order to be able to better support migrant workers (UNHRC 2020).
- Promote social dialogue and tripartite mechanisms (ILO 2023a).
- Modify migration policies to adapt to labour market needs (in consultation with the private sector). This could facilitate increased access to legal migration pathways (OECD 2018b).
- Create bilateral and multilateral labour migration agreements based on social dialogue that follow ILO standards (ILO 2023a) and other relevant global standards.
- Promote collective bargaining in sectors that are dominated by migrant workers, which often have low levels of unionization, via legislative and institutional steps (ILO 2023a). Examples of actions can include the creation of sectoral CBAs. This type of action would require cooperation from trade unions and employer organisations.

BOX 5. RECOMMENDATIONS FOR STATES FROM THE SPECIAL RAPPORTEUR

- a) Recognise in domestic laws migrants' right to FoA and encourage them to self-organise, regardless of their migration status;
- (b) Establish laws, policies and practices that are supportive of trade union membership for migrants;
- (c) Extend labour protection in national laws to migrant workers, including domestic workers, to ensure equal protection under the law. Migrant workers should enjoy treatment no less favourable than that applicable to nationals, including with regard to FoA;
- (d) Take positive measures, including affirmative action, to ensure that migrants with specific vulnerabilities are able to effectively exercise their right to FoA;
- (e) Ensure policy coherence by conducting a review of all national policies that are relevant to the right to FoA of migrants and revising those that could adversely affect migrants' exercise of this right;
- (f) Ensure the accessibility of legal protection and effective judicial or other appropriate remedies to address any violation of migrants' right to FoA regardless of their migration status;
- (g) Establish in law the right for migrant workers, including those without documentation, who are victims of retaliation for their collective organising to remain in the country of destination while they settle their dispute, and enforce robust penalties for employers who retaliate against migrant workers who organise;
- (h) Address any threats, intimidation, harassment and use of violence by either public or private actors as reprisals and retaliation against migrants who exercise their right to FoA;
- (i) Provide accessible information for migrants, including in countries of origin prior to their departure, on their right to FoA, and provide assistance services for migrants with vulnerabilities, including migrant women and domestic migrant workers, to ensure that they can better understand their right to FoA and navigate relevant processes and procedures more effectively;
- (j) Strengthen civil space and create an enabling environment for civil society organisations, including those working on migration and migrants' rights issues. While the formation of an association with legal personality may require certain formalities, rules on association should facilitate the registration, work and funding of civil society organizations, the process should be simple, practical and free from undue State restrictions and interference. Registration procedures should also be accessible to migrants, including those in an irregular situation;

BOX 5. RECOMMENDATIONS FOR STATES FROM THE SPECIAL RAPPORTEUR

- (k) Provide accessible information for migrants on existing migrant associations and civil society organisations that can provide them with advice or assistance;
- (l) Ensure that criminal justice laws are not misused to punish migration-related humanitarian acts or to harass civil society organisations that work with migrants;
- (m) Guarantee that administrative and law enforcement officials are adequately trained with regard to the respect of the right of migrants, including those in an irregular situation, to FoA, particularly in relation to their specific protection needs;
- (n) Ensure that migrants' visa 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 his or her employer's good will, as a means to safeguard migrant workers' right to FoA;
- (o) Ensure migrants' work visa or permits are issued with no effective restrictions on the migrant workers' right to FoA, including to form and join trade unions;
- (p) Ensure that all legislation concerning smuggling and trafficking has humanitarian exemptions applicable to persons and organizations that conduct humanitarian assistance or provide aid to migrants without criminal intent;
- (q) Limit immigration detention to the shortest possible period of time when it is resorted to as an exceptional measure, while ensuring that migrants held in detention have open and confidential access to visitors and telephone calls and that sufficient private spaces are available within detention facilities.

Source: UNHRC 2020

4.3 ACTIONS THAT CAN BE TAKEN BY WORKERS' ORGANISATIONS AND INDIVIDUAL MIGRANT WORKERS

Workers' organisations are also key actors in shaping migrants' access to FACB. Notably workers' organisations can inform migrant workers about their rights and help to protect them. Trade unions have advocated for a rights-based approach to labour migration and identified human and workers' rights as being at the centre of well-managed labour migration policies (ILO 2021e). Below are a series of actions that can be taken by workers' organisations and individual workers.

4.1.3 TRADE UNIONS INCREASING ENGAGEMENT WITH MIGRANT WORKERS

i) Strengthen organisational capacities to protect migrant workers' rights;

- Build capacity in relevant areas (ILO 2023a), which include organising and conducting outreach to migrant workers, as well as advocating for their rights;
- Improve integration of migrant workers into trade union ranks to improve migrant workers' protection.

ii) Advocate for legal reforms

- Promote ratification campaign of relevant ILO ILS including all FPRW and those directly linked to migrant workers such as Convention Nos. 97, 143, 181, 189 and 190.
- Advocate for promoting national legislation, policies, strategies and programs for the implementation in law and practice of relevant related ILS for the protection of migrant workers' rights.
- Advocate for review of national legislation and labour codes with the aim of promoting enhanced harmonization with international labour standards and sub-regional protocols.

iii) Cooperate with domestic and international organisations, including international union federations, and engage in social dialogue.

- Submit more observations on the application of Convention Nos. 87 and 98 and other relevant Conventions with respect to migrant workers' FACB rights in law and in practice to the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the ILO Committee on Freedom of Association (CFA) so as to enable review by the ILO supervisory system (ILO 2023a).
- Submit information in collaboration with NGOs to the UN treaty bodies supervising the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW), Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) and International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (ILO 2023a).
- Engage in social dialogue to ensure effective involvement in labour migration governance, which can enhance the protection of migrant workers' rights and working conditions. A functional social dialogue mechanism and effective policy advocacy for comprehensive labour migration policies at both the intra and inter-sub-regional levels based on international labour standards are crucial to enhance the development potential of migration and ensure the protection of migrant workers' rights.

- Increase transnational union cooperation. Such cooperation is essential in order to protect migrant workers and promote sound and gender-sensitive labour migration policies. Activities can involve (ILO 2023a):
 - » signing MOUs or other types of agreements;
 - » seeking to protect migrant workers' rights throughout the migration cycle, from pre-departure to after return to the country of origin;
 - » facilitating joint research and understanding of historical and cultural backgrounds;
 - » sharing good practices;
 - » engaging in capacity development initiatives;
 - » allowing unions to support justice by showing trade unions as credible non-state actors to contribute to improving migration governance;
 - » developing joint education and awareness campaigns that target potential migrant workers, migrant workers' communities, recruitment agencies, governments, and employers;
 - » developing support services such as language and communication training, consular and legal assistance to migrant workers, helping to ensure that employers are responsible for repatriation and re-integration assistance;
 - » undertaking ratification campaigns to improve the body of labour standards necessary for the protection of migrant rights in home and destination countries;
 - » establishing MRCs and using them to support outreach and organising of migrant workers in countries of origin and destination; and
 - » receiving support from international union federations.
- Connect with organisations in countries, which are connected through high migration flows.
 - » Participate in recruitment processes, pre-departure briefings, and arrival briefings for regulated recruitment processes and encourage migrant workers to join future trainings (ILO 2023a).
 - » Network with other trade unions from labour migration corridors through inter-trade union MOUs to provide visibility and protection of migrant workers before departure and post arrival.

iv) Make concerted efforts to connect with more migrant workers and provide services targeted at migrant workers.

- Explore and adopt innovative strategies to reach migrant workers (ILO 2023a). Examples can include: distributing leaflets where migrant workers congregate and using digital tools. As migrant workers with previous union experience may be more likely to join a union, it might be beneficial to specifically reach out to such individuals.
- Seek to cover non-unionised and unrepresented sectors (see ILO 2023a).

- Carry out awareness raising, followed by organizing, that is targeted towards women migrant workers and other minority groups, which focuses on issues important to these groups (ILO 2023a).
- Translate all documents into languages understood by migrant workers (ILO 2023a).
- Network and cooperate with CSOs, including migrant workers' rights organisation, especially where migrant workers are restricted from joining trade unions (ILO 2023a).
- Demonstrate an understanding of migrant workers' concerns and be able to engage in collective bargaining that covers those concerns (ILO 2023a).
- Help migrant workers make demands to the state and employers (Pousadela et al. 2019).
- Take advantage of skills and experiences of migrant workers, which may have been developed in their home country (UNHCR 2020).
- Create migrant committees (ILO 2023a) and consider creating sub-groups that address the need of migrants facing additional forms of discrimination within ethnic, cultural, or other relevant communities.

4.1.4 MIGRANT WORKERS CONTINUING TO SUPPORT EACH OTHER

i) Work together to access FACB rights and to fulfil other types of support needs, especially in cases where migrant workers are not part of unions.

- Provide support to each other, particularly as migrant workers may be familiar with other migrant workers' languages and cultures. Additionally, some migrant workers may feel more comfortable seeking assistance from people from their home countries than people from their destination countries;
- Seek to register migrant groups and associations as formal trade unions, where possible;
- Seek external support, such as from international union federations and CSOs.

4.4 ACTIONS THAT CAN BE TAKEN BY CSOS AND OTHER INTERNATIONAL ORGANISATIONS

Finally, other organisations can also play roles in supporting migrant workers' access to FACB. These organisations are diverse and can include domestic or global CSOs as well as international organisations. Actions that such organisations can take are listed below.

- i) Provide assistance to migrant workers, such as legal services and up-to-date information, in order to help them access FACB rights, particularly in situations where they cannot or do not receive support from trade unions.
- ii) Cooperate with and support trade unions in their actions to support migrant workers, in situations where trade unions are engaging in these activities.

- iii) Advocate for improvements to the laws that are stifling organisations from supporting migrant workers and preventing migrant workers from accessing their FACB rights.

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ANNEX A: SELECTED FACTORS RELATED TO MIGRANT WORKERS' ACCESS TO FACB IN MIDEQ DESTINATION COUNTRIES

Access to FACB and the challenges faced by migrant workers differ in each MIDEQ destination country. Below some of the key features of each country are listed.

A.1 BRAZIL

- Ratified eight of the ten ILO Conventions that are part of the FPRW (ILO, n.d.-b)
- Migrants can join trade unions
- Union formation is restricted through a rule that stipulates the existence of one union per occupational category at each level (e.g., municipal, inter-municipal, state or federal) (USDoS 2022d; ITUC 2023)
- Unions negotiate on behalf of all workers in an occupational category, not just their members (USDoS 2022d)
- Autonomous workers who are engaged exclusively and permanently for an enterprise do not enjoy the right to organise and bargain collectively (ITUC 2023)

A.2 CÔTE D'IVOIRE

- Ratified all ten ILO Conventions that are part of the FPRW (ILO, n.d.-b)
- Migrants can join trade unions
- Members responsible for the administration or management of an occupational trade union must be Ivorian nationals or nationals of states with reciprocity agreements (ITUC 2023)

A.3 GHANA

- Ratified eight of the ten ILO Conventions that are part of the FPRW (ILO, n.d.-b)
- Migrants can join trade unions
- Chinese migrant workers in Ghana often (75% of those surveyed) join groups in Ghana that are mostly made up of people from the Chinese diaspora (MIDEQ Survey 2021)
- Workers are covered by collective bargaining agreements if they are members of the category of worker described in the agreement, regardless of whether they are members of the trade union who negotiated the agreement

A.4 JORDAN

- Ratified seven of the ten ILO Conventions that are part of the FPRW (ILO, n.d.-b)

- The Labor Law limits the ability to freely form trade unions with only 17 unions in prescribed sectors authorised (ITUC 2023)
- Migrants can join trade unions
- Migrant workers cannot establish trade unions (ITUC 2023)
- Migrant workers are disproportionately represented in sectors with limitations on collective representation (ITUC 2023)

A.5 MALAYSIA

- Ratified seven of the ten ILO Conventions that are part of the FPRW (ILO, n.d.-b)
- Migrants can join trade unions
- Legal barriers to migrants holding trade union posts (ILO 2023a)
- Trade union registration is at the discretion of the Director General of Trade Unions and unions that do not register, or whose registration has been denied or withdrawn, are considered illegal organisations (ITUC 2023)
- Trade unions must seek prior permission before affiliating with any "consultative body...established outside of Malaysia" (ITUC 2023)

A.6 SOUTH AFRICA

- Ratified nine of the ten ILO Conventions that are part of the FPRW (ILO, n.d.-b)
- Migrants can join trade unions
- A dedicated migrant workers' union (MIWUSA) has been established
- Sectoral collective bargaining agreements can cover all workers, including those who are not members of unions

ANNEX B: METHODOLOGY

Material in this report draws from a series of key informant interviews. The discussions were carried out through phone calls and emails. An overview of the experts who were consulted is provided in Table B1.

TAB B1. KEY INFORMANTS

No.	Name	Organisation	Destination Countries
1	Edward Asiedu	University of Ghana Business School / MIDEQ	Ghana
2	Faisal Garba	University of Cape Town / MIDEQ	Ghana & South Africa
3	Mariama Awumbila	University of Ghana / MIDEQ	Ghana
4	David Dorkenoo	ILO Bureau for Workers' Activities (ACTRAV)	South Africa
5	Nezam Qahoush	ILO ACTRAV	Jordan
6	Inviolata Chinyangarara	ILO ACTRAV	Ghana
7	Felipe Moulin	Instituto Maria e João Aleixo / MIDEQ	Brazil
8	Ayman Halasa	The Information and Research Center – King Hussein Foundation / MIDEQ	Jordan
9	Kando Amédée Soumahoro	University Felix Houphouët-Boigny / MIDEQ	Côte d'Ivoire
10	Yuki Otsuji	ILO ACTRAV	Malaysia
11	Adrian Pereira	North South Initiative / MIDEQ	Malaysia
12	Anita Ghimire	Nepal Institute for Social and Environmental Research / MIDEQ	Malaysia
13	Gaëla Roudy Fraser	ILO	NA

This report also draws from MIDEQ's 2021 survey data, which covers both the destination and origin countries. The survey includes information on the existence of unions or worker/employee associations at the workplace, whether one is allowed to join a union, as well as participation in unions and other formal or informal workers' networks. With the exception of Ghana, other countries (namely, Brazil, Burkina Faso, Côte d'Ivoire, and Haiti) have fewer than 4% of the sample that responded to questions related to trade unions.¹⁹ Considering the low survey observations, only survey figures from Ghana (which had 1,146 responses) related to trade unions are presented.

¹⁹ The raw observations range from 3 to 35 respondents, as compared to the total sample sizes which range from 868 to 1,268 respondents.

Finally, this report has been revised based on feedback and suggestions received from the ILO's Bureau for Workers' Activities (ACTRAV), the ILO's Bureau for Employers' Activities (ACTEMP), and colleagues from the ILO's Fundamental Principles and Rights at Work branch. However, the content remains the perspectives of the author and does not represent official opinions of the ILO or MIDEQ.

ANNEX C: PUBLIC POLICY FRAMEWORKS IN MIDEQ DESTINATION COUNTRIES

C.1 BRAZIL

Brazil has ratified the ILO's Right to Organise and Collective Bargaining Convention, 1949 (No. 98). Key characteristics of collective bargaining systems in Brazil include the following elements (OECD and AIAS 2021).

- Wage bargaining takes place with both sector and company bargaining.
- Company agreements can specify or deviate from sectoral agreements, guidelines or targets. However, enterprise bargaining on wages is rare. Lower-level agreements can only offer more favourable terms.
- Extension of collective agreements to non-organised employers is used in some industries only because of absence of sector agreements, or very high thresholds (supermajorities, public policy criteria, etc.), and/or veto powers of employers.
- Some coordination of wage setting, based on pattern setting by major companies, sectors, government wage policies in the public sector, judicial awards, or minimum wage policies.
- Pattern bargaining, where the target for wage negotiation is set by one
- leading exposed sector, and followed by others, is used.

The tables below provide an overview of workers' rights as described by ITUC (2023) and a selection of laws related to migrant workers' access to FACB in Brazil.

TAB C1A. WORKERS RIGHTS IN LAW IN BRAZIL

- The right to FOA is enshrined in the constitution and regulated by law
- The law does not specifically protect workers from anti-union discrimination
- Barriers to the establishment of trade unions
 - » One third of all workers of a specific category required in order to establish a union in a particular territory
 - » Unions can only appeal to the Ministry of Labour against refusal of registration (Article 575 Labour Law)
- Only one union is permitted at each level, e.g., municipal, inter-municipal, state or federal (Art. 516 Labour Law)
- Fire fighters and various other state employees do not have the right to organise
- The right to collective bargaining is not protected in law
- Exclusion of certain matters from the scope of bargaining:
 - » An agreement can be declared null and void if it is deemed to conflict with the government's economic and financial policy, or the wage policy in force (Section 623 of the Consolidated Labour Laws (CLT)).
 - » Restrictions on collective wage bargaining in public and mixed enterprises, making real wage increases contingent upon certain criteria such as increased productivity, the distribution of dividends or the alignment of the overall remuneration of employees with current levels in the labour market.
 - » Restrictions on the inclusion of automatic price index-related wage increases or the introduction of amendments to agreements, which restricts the ability of the parties to freely determine the subject and content of collective negotiations.
- Authorities' or employers' power to unilaterally annul, modify or extend content and scope of collective agreements
 - » An agreement can be declared null and void if it is deemed to conflict with the government's economic and financial policy, or the wage policy in force.
 - » Restrictions on collective wage bargaining in public and mixed enterprises, making real wage increases contingent upon certain criteria such as increased productivity, the distribution of dividends or the alignment of the overall remuneration of employees with current levels in the labour market.
 - » Restrictions on the inclusion of automatic price index-related wage increases or the introduction of amendments to agreements, which restricts the ability of the parties to freely determine the subject and content of collective negotiations (Article 623 Labour Law).

- Collective agreements may only have a maximum duration of two years, although they can be renewed with the approval of the union's general assembly (Articles 614 and 615 Labour Law)
- Promotion of individual bargaining as opposed to collective bargaining: Workers who have a higher education diploma and receive a wage that is at least two times higher than the ceiling for benefits from the general social security scheme may agree to derogate from the provisions of the legislation and collective agreements in their individual contracts of employment (Section 444 of the CLT)
- Absence of appropriate mechanisms to encourage and promote machinery for collective bargaining: By application of Act No.13.467 of 2017, article 611A of the CLT abolishes the principle of favourability, which is the cornerstone of collective bargaining; key elements of the employment relationship regulated by law can be derogated from through collective bargaining; the sole limit to these deviations is a closed list of rights referred to in Section 611B, which contains 30 rights, enshrined in articles 7, 8 and 9 of the Federal Constitution of Brazil
- Civil servants, including those not employed in the administration of the state, have no collective bargaining rights
- Autonomous workers who are engaged exclusively and permanently for an enterprise do not enjoy the right to organise and bargain collectively (Section 442B of the CLT)
- Act No. 13.467 disrupts the relationship between the various levels of collective bargaining; under the terms of Section 620 of the CLT, the conditions established in collective labour accords (which are concluded at the level of one or more enterprises) always prevail over those contained in collective labour agreements (which are concluded at a broader level, such as a sector of activity or an occupation)
- The right to strike is enshrined in the constitution and recognised in the labour law; however:
 - » An employer may replace workers during a lawful strike action in the event that the strike may cause irreparable damage to the machinery or goods of the company.
 - » The legal instrument known as an “interdito proibitório” (prohibitory ban), provided for in Article 1210 and subsequent articles of the Civil Code has been used to ban or restrict strike pickets on the grounds of "safeguarding property against interference or despoilment".

Source: ITUC 2023

TAB C1B. ELEMENTS OF THE NATIONAL PUBLIC POLICY FRAMEWORK IN RELATION TO MIGRANTS AND FACB: BRAZIL

Key Legal Provisions	Key Government Agencies	Public Sector Initiatives/Actions
<p>Constitution of Brazil (1988) provides FACB rights (ILO, n.d.-e)</p> <p>CLT (1943)/ Decree Law No. 5,452 governs labour relations in Brazil</p> <p>Law no. 9,474 (1997) establishes the process for implementing the 1951 UN Refugee Statute</p> <p>Migration Law No. 13,445 (2017) and Decree 9,199 (2017) regulate the rights and duties of migrants, along with entry and stay in the country</p> <ul style="list-style-type: none"> • The Migration Law does not differentiate immigrants based on migratory situation (e.g., regular or irregular) or between temporary and permanent residents (IOM 2022) • The Migration Law also established the National 	<p>Ministry of Foreign Affairs (Ministério das Relações Exteriores - MRE)</p> <p>Ministry of Justice and Public Security (Ministério da Justiça e Segurança Pública - MJ)</p> <ul style="list-style-type: none"> • houses the National Committee for Refugees (Comitê Nacional para os Refugiados – CONARE) which assesses asylum claims • houses Department of Immigration (Departamento de Migrações – DEMIG) <p>Ministry of Women, Family, and Human Rights (Ministério da Mulher, da Família e dos Direitos Humanos)</p> <p>Ministry of Labor and Employment (Ministério do Trabalho e Emprego - MTE)</p> <ul style="list-style-type: none"> • Houses the National Immigration Council (Conselho Nacional de Imigração – CNIg) comprised of: <ul style="list-style-type: none"> ○ 9 ministries: Ministry of Labour and Social Security (MTPS); MJ; MRE; Ministry of Agriculture, Livestock and Food Supply (MAPA); Ministry of Health (MS); Ministry of Development, Industry and Foreign Trade (MDIC); Ministry of Science, Technology and Innovation (MCTI); Ministry of Education (MEC); and Ministry of Tourism (Mtur) ○ Workers' representations: (Workers' Union of Brazil (CTB); CUT; Union Force (FS); General Workers' Union (UGT); New Workers' Union (NCST) ○ Employers' representations: (National Confederation of Industry (CNI); National Confederation of Trade in Goods, Services and Tourism (CNC); Confederation of Agriculture and Livestock of Brazil (CAN); National Confederation of Transport (CNT); National Confederation of Financial Institutions (CNF) ○ Civil Society: Brazilian Society for the Progress of Science (SBPC) ○ Observers: National Commission for Population and Development (CNPd); 	<p>Disque Direitos Humanos (Disque 100): A free service that disseminates information on human rights and receives human rights violation claims, which focuses on people in vulnerable situations</p> <p>Ligue 180: A women's assistance center that receives claims from women victims of violence</p> <p>Direitos e Serviços no Brasil: A mobile phone application that gathers information on public policies developed in the country on the rights and duties of migrants, refugees and asylum seekers, launched in partnership between IOM and the Ministry of Women, Family and Human rights.</p> <p>Observatory of Violence Against Migrants and Refugees: Monitors complaints and procedures related to violence against migrants and refugees and supports the development of public policies to address them, launched by CONARE</p>

Policy on Migration, Refuge and Statelessness	Special Secretariat for Women's Policies (SPM/PR); Special Secretariat For Human Rights (SDH/PR); Secretariat for the Promotion of Racial Equality (SEPP/IR/PR); IMDH; ILO; IOM; Secretariat for Social Security Policies (SPPS/MPS); Federal Public Defender's Office (DPU); Federal Attorney's Office (AGU); Federal Police Department (DPF); Brazilian Intelligence Agency (ABIN); Public Labour Prosecution Office (MPT); and Public Prosecution Office (MPF)
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C.2 CÔTE D'IVOIRE

Côte d'Ivoire has ratified 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). The tables below provide an overview of workers' rights as described by ITUC (2023) and a selection of laws related to migrant workers' access to FACB in Côte d'Ivoire.

TAB C2A. WORKERS RIGHTS IN LAW IN CÔTE D'IVOIRE

- FoA is regulated by a Labour Code
- The law prohibits anti-union discrimination but does not provide adequate means of protection against it
- The law does not specifically protect workers from anti-union discrimination
- Members responsible for the administration or management of an occupational trade union must be Ivorian nationals or nationals of any other State with which reciprocity agreements have been concluded (Section 51(6) of the Labour Code)
- Minors above the age of 16 years may join trade unions, unless their parents or guardians object (Section 51(7) of the Labour Code)
- The right to collective bargaining is not specifically protected in law, but neither is it explicitly prohibited
- High representativeness thresholds (Section 54.2(1) and (2) of Act No. 2015-532 of 20 July 2015 on the Labour Code)
 - » At enterprise or establishment level, unions must reach at least 30 per cent of valid ballots cast representing at least 15 per cent of registered electors.
 - » In a broader occupational and geographical context, in order to be representative, the organization must be representative in one or more enterprises together employing at least 15 per cent of the employees working in the occupational and geographical sector concerned.

- Absence of appropriate mechanisms to encourage and promote machinery for collective bargaining
- The possibility of concluding collective agreements in the public service applies only to the staff of public services, enterprises and establishments not governed by specific conditions of service set out in law or regulation (Section 73.7 of the Labour Code)
- The right to strike is enshrined in the Constitution and regulated by Labour Code
 - » Strikes are prohibited until a notice period of six working days has elapsed. In the public sector, the right to strike is also recognised, once again with the obligation to respect the six-day notice period.
 - » The President may submit a dispute to arbitration committee, if he or she believes it is necessary in order to safeguard public order or interest. The arbitration committee shall consist of one judge and two arbitrators.
 - » Staggered work stoppages or rolling strikes are prohibited.
 - » The President may submit a dispute to arbitration committee, if he or she believes it is necessary in order to safeguard public order or interest. The arbitration committee shall consist of one judge and two arbitrators. This is the case if the strike affects an essential service or in case of an acute national crisis (Art. 82.11, Labour Code).
 - » The President of the Republic may, if s/he thinks the strike could threaten public order or the general interest, submit the dispute to arbitration.
 - » Participation in illegal strikes can lead to the loss of indemnity claims (Art. 82.16 Labour Code; Arts. 11 and 12 Decree on the Procedures of Collective Dispute Settlement).
 - » The President of the Republic may, if s/he considers that the strike could threaten public order or the general interest, submit the dispute to arbitration. This may be the case when "the strike affects an essential service whose interruption could endanger the lives, health or security of all or a part of the population ", and in an "acute national crisis". The Labour Code does not list the services considered to be essential.

Source: ITUC 2023

TAB C2. ELEMENTS OF THE NATIONAL PUBLIC POLICY FRAMEWORK IN RELATION TO MIGRANTS AND FACB: CÔTE D'IVOIRE

Key Legal Provisions	Key Government Agencies	Public Sector Initiatives/Actions
Law No. 2002-03 (2002) regarding identification of	Ministry of Interior Security (Ministère de l'Intérieur et de la Sécurité) <ul style="list-style-type: none"> • Manages immigration through the National Office of Civil Status and 	National Population Policy (Politique Nationale de Population - PNP)

<p>persons and stay of foreigners</p> <ul style="list-style-type: none"> • Art. 11 sets the principle that a stay permit (titre de séjour) is required for engaging in salaried activity, as well as a work visa granted by the Ministry of Interior <p>Ordinance No. 2007-604 (2007) with regards to the Suppression of the Stay Permit</p> <ul style="list-style-type: none"> • Art. 2: ECOWAS Member State nationals no longer require residence permits and only need to hold national identification <p>Law no. 2015-532 (2015) provides the Labour Code.</p> <ul style="list-style-type: none"> • Art. 2: Provides for equal treatment of foreigners and nationals, regardless of their legal status, foreigners benefit from all obligations and rights from • Art. 51.6: Only Ivorian nationals or those nationals from states with which Côte d'Ivoire has concluded reciprocal agreements can fulfil administration and direction functions in trade unions 	<p>Identification (Office National de l'État Civil et de l'Identification - ONECI) and the Territorial Surveillance Directorate (Direction de la Surveillance du Territoire - DST)</p> <p>Ministry of Planning and Development (Ministère du Plan et du Développement)</p> <ul style="list-style-type: none"> • Houses the National Population Office (Office National de la Population - ONP) <p>Ministry of Employment and Social Protection (Ministère de l'Emploi et de la Protection Sociale - MEPS)</p> <p>National Commission for Human Rights (La Commission Nationale des Droits de l'Homme de Côte d'Ivoire)</p> <p>Ministry of Territorial Administration and Decentralization (Ministère de l'Administration du Territoire et de la Décentralisation - MATD)</p> <p>Ministry of Security and Social Protection (Ministère de la Sécurité et de la Protection Civile - MSPC)</p> <p>The Ministry of Solidarity, Family, Women and Children (Ministère de la Femme, de la Famille et de l'Enfant – MFFE)</p> <ul style="list-style-type: none"> • Responsible for the fight against human trafficking <p>Observatoire National de l'Emploi et de la Formation (ONEF)</p> <p>Directorate for Support and Assistance to Refugees and Stateless Persons (Direction d'Aide et d'Assistance aux Réfugiés et Apatrides - DAARA/MAE)</p> <p>Inter-Ministerial Committee against Trafficking, Exploitation, and Child Labour (Comité interministériel de lutte contre la traite, l'exploitation et le travail des enfants)</p> <p>National Committee for the Fight against Trafficking in Persons (Comité national de lutte contre la traite des personnes - CNTLP)</p> <p>Le Ministère de la Promotion de la Jeunesse et de l'Emploi des Jeunes</p> <p>Agency of Employment (Agence Emploi Jeune – AEJ)</p> <ul style="list-style-type: none"> • Manages work permits 	<p>2015-2025, run by ONP, encompasses the migration policy</p>
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C.3 GHANA

Ghana has ratified 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). Ghana's legal framework for collective bargaining is based on the Labour Act of 2003 (Act 651) (TUC-Ghana and Rosa Luxemburg Foundation 2012). Unions are required to have a Collective Bargaining Certificate, which entitles them to the right to bargain on behalf of each category of workers they represent. Only one union covering a category of workers is issued the certificate. Other unions are encouraged to cooperate with the union that holds the certificate. Agreements cover the category of workers named in the certificate, whether or not they are members of the union that negotiated the conditions. The tables below provide an overview of workers' rights as described by ITUC (2023) and a selection of laws related to migrant workers' access to FACB in Ghana.

TAB C3A. WORKERS RIGHTS IN LAW IN GHANA

- The right to FoA is enshrined in the Constitution and regulated by law
- The law prohibits anti-union discrimination, but does not provide adequate means of protection against it
- Barriers to the establishing trade unions are created through requirement that where two or more persons desire to form a trade union, they shall register with the Chief Labour Officer and pay registration fee of 3 million cedis for Registration Certificate (Regulation 10(2) of the Labour Regulations 2007)
- While provision is made for trade unions to join or form federations, and to affiliate with international workers' organisations, no legal provision is made for trade unions to form or join a confederation among the organisational rights of trade unions (Section 81, Labour Act 2003)
- A trade union may not be financially or materially be aided by a political party (Section 82, Labour Act 2003)
- Categories of workers with limitations with respect from forming or joining a union, or from holding a union office
 - » The Prison Service and the Security and Intelligence Agencies, as specified under the Security and Intelligence Agencies Act 1996, are excluded from the scope of application of the Labour Act 2003 (Section 1).
 - » While the Labour Act 2003 does not exclude export processing zone (EPZ) workers from its coverage, Section 34(i) of the Free Zone Act provides that free zone developers and enterprises shall be free to negotiate and establish contracts of employment that include wage scales, minimum working hours, employee suspension and dismissal, settlement of disputes arising between employers and employees and other such terms of employment as shall be consistent with ILO Conventions on workers' rights and conditions of service.

- » A worker whose function is normally considered as policy making, decision making, managerial, holding a position of trust, performing duties that are of highly confidential nature or those of an agent of a shareholder of an undertaking may not form or join trade unions. The categories of workers to be considered as falling into such categories shall be determined by agreement between the employer and the workers or trade unions, with consideration to the organisational structure and job descriptions or functions of the worker concerned (Section 79(2)-(4), Labour Act 2003). The law prohibits anti-union discrimination, but does not provide adequate means of protection against it.
- The right to collective bargaining is recognised by law; however:
 - » Where there is more than one trade union in an undertaking representing the same category of employees, the Chief Labour Officer shall invite the unions to a meeting to undertake verification to determine which union represents the majority of the workers to be issued with a bargaining certificate (Section 99 Labour Act 2003; regulation 10(1) Labour Regulations 2007). The union issued the bargaining certificate shall consult or, where appropriate, invite the other unions to participate in the negotiation process (regulation 10(1), Labour Regulations 2007). The ILO Committee of Experts has repeatedly requested the Government to take the necessary measures to ensure that the legislation clearly provides for an election with a view to determining the most representative union for the purposes of collective bargaining in the event of plurality of trade unions in workplaces.
- Limitations or ban on collective bargaining in certain sectors
 - » The Prison Service and the Security and Intelligence Agencies, as specified under the Security and Intelligence Agencies Act 1996, are excluded from the scope of application of the Labour Act 2003 (Section 1).
 - » While the Labour Act 2003 does not exclude EPZ workers from its coverage, Section 34(i) of the Free Zone Act provides that free zone developers and enterprises shall be free to negotiate and establish contracts of employment that include wage scales, minimum working hours, employee suspension and dismissal, settlement of disputes arising between employers and employees and other such terms of employment as shall be consistent with ILO Conventions on workers' rights and conditions of service. Also, a worker whose function is normally considered as policy making, decision making, managerial, holding a position of trust, performing duties that are of highly confidential nature or those of an agent of a shareholder of an undertaking may not form or join trade unions and are thereby prevented from being represented in collective bargaining (Section 79(2)-(4), Labour Act 2003).

- The right to strike is recognised in the Labour Law and regulated by a Labour Code; however:
 - » There is an excessively long prior notice / cooling off period.
 - » Compulsory arbitration in collective disputes are not resolved within seven days (Section 160(2)).
 - » Sections 154 to 160 of the 2003 Labour Act and its 2007 Regulations contain no specific time limit within which mediation should be concluded. This could serve as an impediment to the staging of lawful strikes given that the exhaustion of mediation proceedings is a prerequisite in this respect (Section 159).
 - » If a dispute remains unresolved within seven days from the commencement of strike action, the dispute shall be settled by compulsory arbitration (Section 160(2), Labour Act 2003).
 - » There are no provisions in the Labour Act 2003 prohibiting discrimination in favour of non-strikers.
 - » Discretionary determination and excessively long list of “essential services” in which the right to strike is prohibited or severely restricted. Essential services (defined as including areas in an establishment where an action could result in a particular or total loss of life or pose a danger to public health and safety and such other services as the Minister may by legislative instrument determine) may be identified in a collective agreement (Sections 98 and 175, Labour Act 2003) and a number are identified in regulation 20 in the Labour Regulations 2007 (e.g., meteorological services; fire services; air transport services; supply and distribution of fuel, petrol, power and light; telecommunications services; public transport services; ports and harbour services; and the Bank of Ghana).
 - » Minimum maintenance services may be imposed in any workplace and shall be any service in an undertaking the interruption of which would result in material damage to equipment and machinery and which by agreement between the workers and the employer under a collective agreement should be maintained during strike or lockout. Any dispute as to whether a work is necessary to secure minimum maintenance services shall be referred to the Commission for determination and the decision of the Commission shall be final (Section 170(2)-(4), Labour Act 2003).

- » While the Labour Act 2003 does not exclude EPZ workers from its coverage, Section 34(i) of the Free Zone Act provides that free zone developers and enterprises shall be free to negotiate and establish contracts of employment that include wage scales, minimum working hours, employee suspension and dismissal, settlement of disputes arising between employers and employees and other such terms of employment as shall be consistent with ILO Conventions on workers' rights and conditions of service. Also, a worker whose function is normally considered as policy making, decision making, managerial, holding a position of trust, performing duties that are of highly confidential nature or an agent of a shareholder of an undertaking may not form or join trade unions and is thereby prevented from being represented in collective bargaining (Section 79(2)-(4), Labour Act 2003).

Source: ITUC 2023

TAB C3B. ELEMENTS OF THE NATIONAL PUBLIC POLICY FRAMEWORK IN RELATION TO MIGRANTS AND FACB: GHANA

Key Legal Provisions	Key Government Agencies	Public Sector Initiatives/Actions
<p>Constitution of Ghana (1992, rev. 1996) (Hodges and Baah 2006)</p> <ul style="list-style-type: none"> • Ch 5, S.12(2) states that people in Ghana, regardless of race, place of origin, political opinion, colour, religion, creed or gender are entitled to the fundamental human rights and freedoms of the individual contained in this Chapter subject to respect for the rights and freedoms of others and the public interest • S.17(2) ensures equality and freedom from discrimination on grounds of gender, race, colour, ethnic, origin, religion, creed or social or economic status; 17(3) expands this to cover place of origin and occupation 	<p>Ministry of Interior</p> <ul style="list-style-type: none"> • Includes the Migration Unit, Ghana Immigration Service and Ghana Police Service, which regulate entry, stay and removal of foreigners <p>Ministry of Employment and Labor Relations (MELR)</p> <ul style="list-style-type: none"> • Includes the Labour Department, which acts as an intermediary between employers and job seekers and licenses and monitors private employment agencies • houses the National Labour Commission, <ul style="list-style-type: none"> ○ supports industrial relations by facilitating dispute resolution practices and by promoting cooperation among social partners and mutual respect ○ requires employers and unions to comply with labour laws and provides a forum for arbitration of labour disputes (USDoS 2022b) • houses the Factories Inspectorate and the Fair Wages and Salaries Commission (FWSC) 	<p>National Migration Data Management Strategy (2017)</p> <p>Migration governance assessment (2019)</p> <p>National Migration Policy (2016) promotes benefits and minimises costs of internal and international migration to ensure socioeconomic development in Ghana</p> <p>National Labour Migration Policy (2019)</p>

- S.21(1)(e) guarantees the right to form or join a trade union with some exceptions noted (e.g., in interest of defence, public safety or public order)
 - S.24(3) outlines a right for workers to form or join trade unions
- Labor Act 651 (2003):
- recognizes the rights of Ghanaian and migrant workers to join trade unions and engage in collective bargaining
 - prohibits discrimination in the constitutions or rules of trade unions and employer organisations towards any person on grounds of race, place of origin, political opinion, colour, religion, creed, gender or disability
- Immigration Act 573 (2000), Immigration (Amendment) Act 848 (2012) and Immigration Regulations L.I 1691 (2001)
- Refugee Law (1992)
- Asylum seekers cannot work in Ghana (Kandilige et al. 2022)
- Ministry of Foreign Affairs and Regional Integration (MoFARI)
 Ministry of Gender, Children and Social Protection (MGCSPP)
 Immigrant Quota Committee
- chaired by the Deputy Minister of Interior, considers work permits applications
- Inter-Ministerial Steering Committee on Migration
- responsible for the formulation of the National Migration Policy
- The Ghana National Migration Commission (GNMC)
- newly established agency resulting from recommendations in the National Migration Policy (Kandilige et al. 2022)
- The Commission on Human Rights and Administrative Justice
 National Population Council (NPC)
 Migration Desks in Metropolitan, Municipal and District Assemblies and in Ministries, Department and Agencies
 Ghana Refugee Board (GRB)

C.4 JORDAN

Jordan has ratified the ILO's Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The tables below provide an overview of workers' rights and a selection of laws related to migrant workers' access to FACB in Jordan.

TAB C4A. WORKERS RIGHTS IN LAW IN JORDAN

- The right to FoA is enshrined in the Constitution and is recognised by law but strictly regulated
- The law does not specifically protect workers from anti-union discrimination
- Trade unions must obtain Ministry of Labour approval to become officially registered

- Trade unions can be established by a minimum of fifty founding members working in the same trade or engaged in similar or interdependent occupations within one field of production
- An imprisonment penalty of three months and/or a fine of not less than 500 dinars and not more than 1,000 dinars is prescribed for any person who pursues trade union activities in the name of a dissolved union or its administrative board (Article 119 of the Labour Code)
- Unions must belong to the General Federation of Jordanian Trade Unions (GFJTU), the only trade union federation; the government subsidises the GFJTU staff's wages and some of its activities; at its 2008 Congress, the GFJTU agreed to change its structure and that of its unions by replacing elected union branches with union committees; new trade unions must be directly linked to 17 professions and sectors in which unions already exist, effectively making trade union pluralism impossible
- The Regulation of Organising the Affairs of the General Federation of Trade Unions and the Vocational Associations (1998) lays out detailed rules for the operation of the General Federation of Trade Unions; Section 98(e) of the Labour Code provides that the first condition for founding a workers' organization is to be Jordanian
- Foreign workers cannot become founding members and leaders of trade unions and employers' organizations (article 98(e) of the Labour Code)
- The Labour Code imposes strict rules on the use of union funds, specifying that union assets cannot be "disbursed except for justified purposes related to the interest of the association" (which includes salaries; costs for management; fees of the judicial lawsuits; costs of any labour dispute; monetary aids paid to the association members or their family members because of death, old age, sickness, unemployment, or accidents that occur to them; costs of the educational and social services provided by the association to the members (article 109))
- In addition, article 6 of the Regulation of Organising the Affairs of the General Federation of Trade Unions and the Vocational Associations gives an exhaustive list of the financial resources of General Federation: A- The union affiliation fee for the Federation membership for the first time and the annual subscription fees from the member unions according to what the General Federation specifies; B- The revenue of investing the movable and immovable properties of the Federation, as well as the yields of the practiced activities; C- The unconditioned donations, contributions and gifts, provided that the Council of Ministries approves them if they were from a non-Jordanian source

- Categories of workers with prohibitions related to trade unions
 - » Categories of workers who are not covered by the Labour Code and prohibited or limited from forming or joining a union, or from holding a union office include gardeners, cooks, and civil servants.
 - » Although the law was amended in 2010 to allow foreign workers to join unions, it does not permit them to form unions or to hold union office; thus, in sectors where migrants form the majority of the workforce, the establishment of trade unions and the exercise of the right to collective bargaining is very unlikely.
 - » The exclusion of agricultural and domestic workers from the right to form and join unions has been a longstanding issue. An agricultural union exists but is not officially recognised. Based on this union's efforts, new regulations were implemented in 2021 which provide protections at workplaces that employ more than three agricultural workers. The 2008 amendment of section 3 of the Labour Code removed the express exclusion of domestic workers from the scope of application of the Code. In 2011, a code for domestic workers was issued. The list of the industries and economic activities included under each of the 17 sectors of activity assigned to the recognized sectoral trade unions was revised in 2022. In this update, for the first time agricultural and domestic workers became eligible for trade union membership within the General Union of Water, Agriculture and Food Industries Workers and the General Trade Union of Workers in Public Services and Liberal Professions, respectively.
- The right to collective bargaining is not specifically protected in law, but neither is it explicitly prohibited; however:
 - » Public and municipality employees cannot bargain collectively.
 - » Sectors outside official unions do not have collective bargaining rights.
- The right to strike is recognised by law but strictly regulated
 - » Government permission must be obtained beforehand.
 - » Workers cannot strike without giving notice to the employer at least fourteen days prior to the date specified for strike. This period is doubled if the action relates to any of the public interest services.
 - » The Ministry of Labour can impose cumbersome mediation or, if that fails, refer the case to a labour court consisting of a panel of Ministry-appointed judges. Disputes can also be transferred to the Council of Ministers and then to Parliament. Strikes are prohibited during mediation and arbitration.

Sources: Connell 2021; Interview with Shaddin Almasri as cited in Coleman 2022; ITUC 2023; ILO 2023c

TAB C4B. ELEMENTS OF THE NATIONAL PUBLIC POLICY FRAMEWORK IN RELATION TO MIGRANTS AND FACB: JORDAN

Key Legal Provisions	Key Government Agencies	Public Sector Initiatives/Actions
<p>Constitution:</p> <ul style="list-style-type: none"> • Article 16: recognises freedom of association within the limits of the law • Article 23(2)f: recognises freedom to form trade unions within the limits of the law <p>Residence and Foreigners' Affairs Law No. 24 (1973)</p> <p>Jordanian Labor Law (1996) and amendments</p> <ul style="list-style-type: none"> • covers inter-relation between employers' and workers' organizations (Bitar, n.d.) • mandates that the Minister of Labour should classify occupations and industries in which trade unions may be established • states that trade unions must establish the General Federation of Jordanian Trade Unions • regulates collective bargaining • 2010 legal amendment allows foreign workers to join unions but does not permit them to form unions or to hold union office (ILO, n.d.-a) <p>The National Law on the Prevention of Trafficking in Human Beings (2009)</p>	<p>Ministry of Labor</p> <ul style="list-style-type: none"> • oversees the regulation of employment, working conditions, labor rights (including labor unions), and overseeing the supply of migrant labour • houses Directorate of Migrant Labor <p>Economic and Social Council</p> <ul style="list-style-type: none"> • promotes and facilitating tripartite dialogue • makes policy recommendations <p>Ministry of Interior</p> <ul style="list-style-type: none"> • houses Public Security Directorate, which manages residency status of migrants <ul style="list-style-type: none"> ◦ houses the Anti-Human Trafficking Unit <p>Ministry of Justice</p> <ul style="list-style-type: none"> • chairs National Committee for Countering Human Trafficking 	<p>Requested the establishment of the Better Work Jordan programme, established in 2008, strives for an export-oriented Jordanian garment that proves decent work (ILO, n.d.-f)</p> <p>The Government of Jordan collaborated with the ILO, workers, and employers to draft the Decent Work Country Programme for Jordan (2024-2027) (United Nations Global Marketplace 2023)</p> <p>National Strategy for Anti-Human Trafficking (2023-2026)</p> <p>The Ministry of Labour created an agreement with the MRC (supported by TUC-AP/Arab TUC/SARTUC/ATU) and the General Federation of Jordan Trade Union to enable the MRC to file complaints with government agencies (ILO 2021c)</p> <p>Reducing number of work permits for migrants (Interview Data)</p>

C.5 MALAYSIA

Malaysia has ratified the ILO's Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The tables below provide an overview of workers' rights as described by ITUC (2023) and a selection of laws related to migrant workers' access to FACB in Malaysia.

TAB C5A. WORKERS RIGHTS IN LAW IN MALAYSIA

- The right to FoA is enshrined in the Constitution and is recognised by law but strictly regulated
- The law prohibits anti-union discrimination, but does not provide adequate means of protection against it
- The Director General of Trade Unions (Ministry of Human Resources) can refuse to register a trade union without giving any reason for the refusal and can withdraw registration, and is thus given very broad discretion in deciding these matters; Unions that do not register, or whose registration has been denied or withdrawn, are considered illegal organisations
- The decisions by the Director General of Trade Unions (Ministry of Human Resources) and the Minister of Human Resources cannot be appealed to any Court
- The TUA requires that trade unions seek prior permission from the Director General of Trade Unions (Ministry of Human Resources) before affiliating with any "consultative body...established outside of Malaysia"
- The Director General of Trade Unions (Ministry of Human Resources) can specify the sector and category in which a union is permitted to organise; the TUA limits trade union membership to workers in similar trades; general unions are prohibited
- Excessively detailed list of the provisions that must appear in the rules of every trade union (First Schedule of article 38(1) of the TUA); in addition, pursuant to article 26 of the same Act, members under eighteen years of age cannot participate in a number of decision-making processes, including strike ballots
- Any member of a trade union of workmen who participates in an illegal strike ceases to be a member of the trade union, and thereafter shall not be eligible to become a member of any trade union except with the prior approval of the Director General in writing
- The Malaysian Penal Code requires police permission for public gatherings of more than five people; furthermore, any violation of the rules applying to the management of union funds and properties is punishable by a prison sentence not exceeding two years, or to a fine not exceeding two thousand ringgit or to both (article 49 of the TUA); failure to keep account books in the prescribed manner is punishable by a fine not exceeding one thousand ringgit, or to imprisonment for a term not exceeding six months, or to both (article 57 of the same Act)

- The Director General of Trade Unions (Ministry of Human Resources) may deregister a union if s/he finds that two or more registered trade unions exist in a "particular establishment, trade, occupation or industry"; the Director General has the authority to suspend a branch of a trade union if s/he "is satisfied" that the branch has contravened any part of the Act or the rules of the union; the Minister of Human Resources may also suspend a trade union for up to six months in the interests of national security or the public; pursuant to article 18 of the TUA, the Minister may suspend in his absolute discretion, but with the concurrence of the Minister responsible for internal security and public order, by order published in the Gazette for a period not exceeding six months any trade union, or any class or description of trade unions, which in his opinion is, or is being, used for purposes prejudicial to or incompatible with, the interests of the security of, or public order in, Malaysia or any part thereof
- Any person who is disqualified to be employed by a trade union under the law and has himself so employed without first obtaining the exemption of the Minister, shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding one year, or to a fine not exceeding two thousand ringgits, or to both (Article 29 (3) of the TUA)
- Categories of workers prohibited or limited from forming or joining a union, or from holding a union office:
 - » Employees working in the defence industry or in prisons do not have the right to form or join trade unions.
 - » A migrant worker can join an existing labour union and participate in its activities (TUA and the Industrial Relations Act). However, Article 28(a) of the TUA requires that any union officer must be a citizen of Malaysia. The Ministry of Home Affairs also sets out a series of conditions connected to the issuance of work permits to migrant workers.
 - » Industrial unions are prohibited from organising employees in managerial and executive positions. A 2007 Industrial Relations Act amendment adds "executive" and "security" employees to the classifications of "managerial" and "confidential" staff who are not protected against anti-union discrimination, but then fails to define the parameters of "executive" and "security" services. The amended law also provides that the Director General of Trade Unions (Ministry of Human Resources) and the Minister of Human Resources have absolute authority to determine designations of workers' status as "executive", "security", "managerial" and "confidential" staff.

- The right to collective bargaining is recognised by law but strictly regulated
 - » The Industrial Relations Act provides that a trade union must apply for recognition from the employer, who can recognise the union, deny recognition or appeal to the Director General of Trade Unions (Ministry of Human Resources) for a ruling on the representativity of the union. If a union fails to report to the Minister of Human Resources within 14 days about the employer's refusal to recognise it, the union's application for recognition is considered withdrawn. Workers in a union that has its recognition withdrawn have no protection against dismissal. The Act requires that a union's representativity be determined by a secret ballot of the workers. However, the law fails to provide any safeguards against employer manipulation of the size of the bargaining unit (e.g. by adding temporary workers) for the purpose of the election.
 - » The Industrial Relations Act narrowly restricts collective bargaining to activities that include making provisions for training to enhance skills, for an annual review of the wage system and for a performance-related remuneration system. Hiring and firing, transfer and promotion, dismissal and reinstatement fall outside the scope of collective bargain.
 - » Collective bargaining is restricted in companies in "pioneer" industries, such as the electronics industry.
 - » The Industrial Relations Act allows the Minister of Labour to initiate compulsory arbitration at his/her own volition.
 - » In the public sector, the joint council system limits public sector unions to a consultative role, which means they are only entitled to "express their point of view" on principles regarding wages and working conditions.
- The right to strike is recognised by law but strictly regulated
 - » Two thirds of the members of a trade union must vote in favour of a strike in a secret ballot, and the ballot must include a resolution that stipulates "the nature of the acts to be carried out or to be avoided during the strike". The results of the ballot are passed to the Director General of Trade Unions (Ministry of Human Resources) for verification.
 - » Trade unions are not allowed to go on strike for disputes relating to trade union registration or illegal dismissals. Sympathy strikes are not permitted.
 - » General strikes are not permitted
 - » Penalties for executive committee members of a union who engage in an illegal strike include fines and imprisonment for up to one year. Rank and file workers who engage in an illegal strike are considered by the government to be automatically stripped of union membership and cannot join another trade union in the future without written approval of the Director General of Trade Unions.
 - » Essential services are very broadly defined, and include health care, education and transportation.

Source: ITUC 2023

TAB C5B. ELEMENTS OF THE NATIONAL PUBLIC POLICY FRAMEWORK IN RELATION TO MIGRANTS AND FACB: MALAYSIA

Key Legal Provisions	Key Government Agencies	Public Sector Initiatives/Actions
<p>Industrial Relations Act (1967) and amendments:</p> <ul style="list-style-type: none"> • Covers trade unions, collective bargaining, and labour disputes. <ul style="list-style-type: none"> ○ provides for the freedom of association and prohibits discrimination based on trade union membership ○ provides for recognition of trade unions, collective bargaining procedures, representation in case of dismissals, and conciliation procedures. ○ establishes an Industrial Court ○ covers industrial actions <p>TUA (1959) and amendments</p> <p>Employment Act 1955:</p> <ul style="list-style-type: none"> • describes that employment contracts should not restrict employees from joining trade unions, participating in trade union activities, or associating with others with the purpose of organising a trade union <p>Employers are prohibited from interfering with trade union activities or retaliating against workers for legal union activities (USDoS 2022a)</p> <p>Some legal rights to strike and to bargain collectively but with severe restrictions. (USDoS 2022a)</p> <p>Unions need ministerial approval to affiliate with organizations outside of Malaysia (USDoS 2022a)</p> <p>Subcontracted workers may not form a union nor may they negotiate or benefit from CBAs (USDoS 2022a)</p> <p>Foreign workers can join trade unions but cannot hold officer positions unless they obtain permission from the Ministry of Human Resources (USDoS, 2022a; ILO, n.d.-a)</p> <p>The Director General of Trade Unions and the Minister of Human Resources can refuse or withdraw registration from unions without judicial oversight (USDoS 2022a)</p> <p>National level unions are prohibited; three territorial union federations are allowed (with many of the responsibilities of national-level unions but they cannot bargain on behalf of local unions); furthermore, unions cannot affiliate with other unions in similar trades, occupations, or industries (USDoS 2022a)</p>	<p>Ministry of Human Resources (Kementerian Sumber Manusia):</p> <ul style="list-style-type: none"> • formulates and implements policies related to labor and employment, including those concerning migrant workers; responsible for conducting labour inspections • houses the Department of Labour (Jabatan Tenaga Kerja), which oversees regulation of employment practices and the protection of workers' rights • Houses the Department of Trade Union Affairs (Jabatan Hal Ehwal Kesatuan Sekerja) <p>Ministry of Home Affairs (Kementerian Dalam Negeri)</p> <ul style="list-style-type: none"> • houses Immigration Department of Malaysia (Jabatan Imigresen Malaysia), which manages the entry, stay, and repatriation of foreign workers 	<ul style="list-style-type: none"> • Inadequate enforcement of laws prohibiting employers from seeking retribution for legal union activities and requiring reinstatement of workers fired for trade union activity, with penalties included (USDoS 2022a) • Unions officials reported (USDoS 2022a) <ul style="list-style-type: none"> ○ experiencing long and unpredictable waits for recognition with employers challenging requests causing multi-year delays ○ incidents of detention and restriction of movement of union members under laws allowing temporary detention without criminal charges

Strikes must be authorised by the Director General of Trade Unions; general strikes are prohibited; strikes over disputes related to trade union registration, illegal dismissal, or disputes that are under consideration by the Industrial Court are prohibited; strikes in a broad range of “essential” industries are prohibited (USDoS 2022a)

- chairs the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants (MAPO)

- Labour inspections are conducted in collaboration with MRCs (ILO 2021c)

C.6 SOUTH AFRICA

South Africa has ratified 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). Four bargaining levels are found in South Africa (Labour Research Service 2022):

- Plant or company level bargaining: Collective bargaining can involve one or more workplaces that are part of a larger enterprise.
- Centralised sector-level bargaining (bargaining councils): Section 27 of the Labour Relations Act No 66 of 1995 states that one or more trade union and one or more registered employers’ organisation may form a bargaining council in a sector. These can be national or regional. Bargaining councils regulate wages and conditions of employment. The settlements reached can be extended by the Minister of Labour to non-parties (workers and employers not registered with the council).
- Sectoral determinations: Regulation of wages and conditions of employment for vulnerable workers in sectors likely to have exploitation or absence of workers’ organisations. Sectors include farm workers, domestic workers, the wholesale and retail trade, the hospitality sector, and the taxi industry. A commission established in law conducts research and convenes public hearings to collect proposals from workers and employers. This commission makes recommendations to the Minister of Labour, which lead to sectoral determinations that apply to all employers and all workers in the sector. This is part of the National Minimum Wage Act.
- Informal economy forums: For sectors that are informal (e.g. street traders and waste reclaimers) or where the employment relationship is informal (e.g. community health workers). Bargaining levels range from local to national. Many of the agreements are with government and public authorities. These agreements can be unstable as they can change when new parties or people come into the government.

The tables below provide an overview of workers’ rights as described by ITUC (2023) and a selection of laws related to migrant workers’ access to FACB in South Africa.

TAB C6A. WORKERS RIGHTS IN LAW IN SOUTH AFRICA

- The right to FoA is enshrined in the Constitution and regulated by law
- The law prohibits anti-union discrimination, but does not provide adequate means of protection against it
- Members of the National Intelligence Agency and the South African Secret Service are excluded from the FoA protections established by the Labour Relations Act
- The right to collective bargaining is enshrined in the Constitution and is recognised by law
- The law prohibits anti-union discrimination, but does not provide adequate means of protection against it
- The members of a bargaining council must be sufficiently representative of the sector and area (sections 27(1) and 29(11)(b)(iv), Labour Relations Act); however, the term 'sufficiently representative' is not defined
- Members of the National Intelligence Agency and the South African Secret Service are excluded from the right to collective bargaining under the Labour Relations Act
- The right to strike is enshrined in the Constitution and recognised by law but strictly regulated
 - » 30 days must have elapsed since the dispute was referred to a bargaining council or the Commission for Conciliation, Mediation and Arbitration (CCMA) and a certificate stating that the dispute remains unresolved must have been issued. Also, 48 hours' notice of the strike action must have been given to the employer, council or employers' organisation, unless the State is the employer, in which case at least seven days' notice of the strike action must be given (section 64(1), Labour Relations Act).
 - » An employer may engage replacement labour, provided that the employer's business has not been designated as a maintenance service and the employees replaced have been locked out by the employer in response to a strike (section 76, Labour Relations Act).
 - » No person may take part in a strike or a lock-out or in any conduct in contemplation or furtherance of a strike or a lock-out if that person is engaged in an essential service or a maintenance service (section 65(1), Labour Relations Act). A service is an essential service if so designated by an essential services committee. A service is a maintenance service if the interruption of that service has the effect of material physical destruction to any working area, plant or machinery (sections 70, 71 and 75, Labour Relations Act).

Source: ITUC 2023

TAB C6B. ELEMENTS OF THE NATIONAL PUBLIC POLICY FRAMEWORK IN RELATION TO MIGRANTS AND FACB: SOUTH AFRICA

Key Legal Provisions	Key Government Agencies	Public Sector Initiatives/Actions
<p>Constitution (1996)</p> <ul style="list-style-type: none"> • Section 18. Freedom of Association <ul style="list-style-type: none"> ○ guarantees the right to freedom of association for all workers, including migrants • Section 23. Labour Relations <ul style="list-style-type: none"> ○ sets out that everyone has right to fair labour practices; every worker has the right to: (a) form and join a trade union, (b) to participate in the activities and programmes of a trade union, and (c) to strike; every trade union and every employers' organisation has the right to: (a) determine its own administration, programmes and activities, (b) organise, and (c) form and join a federation; every trade union, employers' organisation and employer has the right to engage in collective bargaining. ○ notes that national legislation may be enacted to regulate collective bargaining, which may limit rights in the constitution but must comply with Section 36(1); and that national legislation may recognise union security arrangements contained in collective agreements, which may limit rights in the constitution but must comply with Section 36(1) • establishes the South African Human Rights Commission (SAHRC) as the national human rights institution <p>South Africa has signed and ratified the SADC Protocol on Facilitation of Movement of Persons, which is not yet in force (South African Minister of International Relations and Cooperation 2023)</p> <p>Prevention and Combating of Trafficking in Persons Act No. 7 (2013)</p> <p>Labor Relations Act (1995) and amendments (Bhoola 2002)</p>	<p>Department of Home Affairs (DHA)</p> <ul style="list-style-type: none"> • responsible for migration matters; oversees the identification and documentation of migrants, and grants refugee status <p>Commission for Conciliation, Mediation, and Arbitration (CCMA):</p> <ul style="list-style-type: none"> • established under the Labor Relations Act, the CCMA draws its legislative mandate from Section 23 of the Constitution • promotes labour market stability, social justice and job security by facilitating industrial relations and providing a tripartite dispute resolution mechanism • accredits bargaining councils formed, at industry or sectoral levels, by trade unions and employer organisations <p>Department of Employment and Labour (DEL)</p> <ul style="list-style-type: none"> • houses the National Economic Development and Labour Council (NEDLAC), which involves representatives from government, organised labour, organised business and community organisations cooperating through problem-solving and negotiation, on economic, labour and development issues, and related challenges facing the country; they consider all proposed labour legislation before its introduction to 	<p>Reducing number of work permits for migrants (Interview Data)</p> <p>Prevention and combating of trafficking in Persons National Policy Framework</p> <p>National Labour Migration Policy</p> <ul style="list-style-type: none"> • draft was released for public comment in February 2022 (South African Government 2023)

- sets out procedure for the registration of trade unions and employer organisations. Registration is not required, but is a precondition for participation in the industrial relation system developed by the Act
- sets out basic labour rights, including freedom of association – the right of employees and employers to join and participate in the lawful activities of unions and employer organisations

Employment Equity Act No. 55 (1998) and amendments

Immigration Act No. 13 (2002) and amendments

- implements different categories of work permits

Refugees Act No. 130 (1998) and amendments

Border Management Authority Act No. 2 (2020)

Parliament as well as all significant changes to social and economic policy before they are implemented or, in the case of legislation, before it is introduced into Parliament (OECD 2016)

SAHRC

Department of Home Affairs

- oversees the identification and documentation of migrants, and with the granting of refugee status
- directorates include the Immigration Inspectorate,
- works with the South African Police Service and the Asylum Seeker Management and the Standing Committee for Refugee Affairs
- deals with border control

Ministry of International Relations and Cooperation

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Cover image

Political demonstration of a group of women from the Salima region (Malawi), members of the United Democratic Front (UDF). Photo by Marcel Crozet (ILO). [CC BY-NC 4.0](#).

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