



# Migration and trade unions

An outline of international standards, regional trends and good practices

One of the most effective ways of preventing the exploitation of migrant workers is by guaranteeing the right to join trade unions in destination countries. However, in the South-East Asia region, this right is often denied to migrant workers, either by the law of the destination country or by their employment contract or immigration status. The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the Committee on Freedom of Association (CFA) have repeatedly reaffirmed the fundamental rights of workers, including migrants and those with irregular status, to form and join trade unions and to be protected against any act of discrimination including on the grounds of trade union activities. Overly restrictive nationality provisions related to trade union rights risk depriving migrant workers of the right to elect their representatives in full freedom, especially in sectors where they account for a significant proportion of the workforce.

The ILO Bureau for Workers' Activities (ACTRAV) developed the *In Search of Decent Work: Migrant Workers' Rights* manual that outlines four key areas of action in which trade unions can have an impact on protecting and promoting migrant workers' rights. These four areas are: promoting a rights-based migration policy; creating alliances with trade unions and others; educating and informing union members; and reaching out to migrant workers. In the South-East Asia region, trade unions' role in the protection of migrant workers' rights is being promoted through the GMS TRIANGLE project, with Trade Union Action Plans to promote the role of trade unions in the protection of migrant workers developed and supported in Thailand, Malaysia, Viet Nam, Myanmar, Cambodia, and Lao People's Democratic Republic.



## International Labour Organization instruments

The **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)** sets forth the right for workers and employers, without distinction, to establish and join organizations of their own choosing without previous authorization. Workers' and employers' organizations also have the right to elect representatives in full freedom. The Convention states that workers' and employers' organizations shall not be liable to be dissolved or suspended by administrative



## Trade union activities to protect migrant workers' rights in Malaysia

The Malaysian Trades Union Congress (MTUC) has been active in protecting the rights of migrant workers in Malaysia. MTUC runs Migrant Worker Resource Centres (MRCs), or drop-in centres, in Penang and Kuala Lumpur/Selangor. Through the MRCs, migrant workers and members of their families can receive counselling, legal assistance and dispute resolution, and information, education and training. MRCs also engage in organizing migrant workers through the formation and strengthening of networks and migrant associations. In 2014 24-hour information hotline numbers were established.

MTUC is also active in pursuing complaints against companies for labour rights abuses such as unpaid wages, no rest day, inadequate accommodation, unfair dismissal, medical insurance issues, compensation for injury, and the withholding of identity documents. In 2012-2013, MTUC provided legal assistance to migrant workers and handled 22 complaint cases involving 122 claimants (118 male, 4 female) which resulted in over US\$56,000 in compensation. This was achieved through action in labour courts, the industrial relations courts, and through direct negotiations.

authority; and that workers' and employers' organizations shall have the right to establish and join federations and confederations, which may in turn affiliate with international organizations of workers and employers. Despite recognition as one of the fundamental workers' rights Conventions, Convention No. 87 is not widely ratified in the ASEAN region, especially in major migrant labour receiving countries.

The **Right to Organise and Collective Bargaining Convention, 1949 (No. 98)** provides that workers shall enjoy adequate protection against acts of anti-union discrimination, including requirements that a worker not join a union or relinquish trade union membership for employment, or dismissal of a worker because of union membership or participation in union activities. These fundamental principles and rights are universal and apply to all human beings in all countries, regardless of nationality or residence or migrant status.

The **Migration for Employment Convention (Revised), 1949 (No. 97)** calls upon each member to apply, without



discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favourable than that it applies to its own nationals in respect of membership of trade unions and enjoyment of the benefits of collective bargaining (Article 6).

Article 10 of the **Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)** calls for each member to pursue a national policy designed to promote and guarantee equality of trade union rights.



### United Nations Conventions

Article 26 of the **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990** calls for States Parties to recognize the right of migrant workers and members of their family to:

- Take part in meetings and activities of trade unions and of any other associations established in accordance with law, with a view to protecting their economic, social, cultural and other interests, subject only to the rules of the organization concerned;
- Join freely any trade union and any such association, subject only to the rules of the organization concerned; and
- Seek the aid and assistance of any trade union and of any such association.

The **International Covenant on Economic, Social and Cultural Rights (1966)** provides for the right of everyone to form trade unions and join the trade union of his or her choice, subject only to the rules of the organization concerned.



### Regional instruments

The **ASEAN Human Rights Declaration (2012)** states that every person has the right to form trade unions and join the trade union of his or her choice for the protection of his or her interests, in accordance with national laws and regulations (General principle 27 (2)).



### Good practices

**Bilateral cooperation:** Given the large numbers of Vietnamese workers in Malaysia, the Malaysian Trades Union Congress (MTUC) hosted a mission for a delegation from the VGCL (Viet Nam General Confederation of Labour) and VAMAS (Vietnamese Association of Manpower Supply) to visit migrant workers, meet several government departments and NGOs, and to meet with the Labour Management Section of the Vietnamese Embassy in Malaysia. The mission also identified areas where cooperation among MTUC, VGCL, VAMAS and the Embassy can be further strengthened including through the development of an MOU to provide better protection for Vietnamese migrant workers.

**A bilateral Memorandum of Understanding (MOU) between Cambodian and Thai trade unions** was signed in November 2013. The MOU promotes a rights-based approach to policy on labour migration and the education and organizing of migrant workers. The MOU is guided by the ACTRAV model bilateral agreement, as well as key ILO Conventions concerning migrant workers' rights. The MOU ensures the parties' commitment to initiate pre-departure and orientation training; to set up a helpdesk in their respective unions; to address occupational safety and health in key sectors dominated by migrant workers, including domestic work, fishing, construction, and agriculture; to develop a model employment contract in collaboration with recruitment agencies; and to lobby the Thai government to provide Khmer translation services and visual advocacy materials.

The **ASEAN Trade Union Council (ATUC)** and the ILO ASEAN TRIANGLE project's Work Plan for 2013–2016 includes the following activities:

- Research papers on inter-regional trade union cooperation; the impact of ASEAN Economic Community Integration upon trade unions; and challenges to the ratification of core ILO conventions in ASEAN.
- Advocacy campaigns for the ratification and application of core ILO conventions including the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); the Domestic Workers Convention, 2011 (No. 189); Convention No. 87; and Convention No. 98.
- Strengthening trade union services for migrant workers through training; establishment of complaint mechanisms; inter-union agreements; and strengthening and/or establishing Migrant Resource Centres.

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