

Organising Migrant Workers: Proposed Toolkit for Unions in South Africa

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Overview

This toolkit is derived from a **consultative process throughout 2017 facilitated by the African Centre for Migration & Society with support from the Friedrich Ebert Stiftung (FES) amongst trade unions, migrant rights organisations, social movements, non-governmental organisations and worker advice offices.** This consisted of an involved series of workshops, dissemination of research and an ad hoc committee formed during the final workshop. The **overall objective of this process** was to better understand labour migration in South Africa and to develop, document and share a resource that can be used for unions and civil society to build a broad-based consultative process that includes and is responsive to the issues facing migrant workers in South Africa. In doing so it will promote decent work and social protection for migrant workers. Although it is primarily targeted to the hospitality sector, which was a selected case study for this process, it can be widely adapted to other sectors and countries.

The **purpose** of this toolkit is to equip union organisers in South Africa with legislative and policy knowledge, and practical skills for organising migrant workers in the hospitality sector. Furthermore, the toolkit is a guide for trade union organisers, social movements, migrant rights organisations, NGOs and worker advice offices to include migrant workers to access fair labour practices. In addition, it outlines the rights of migrant workers in South Africa including legal remedies which are guided by international, regional and national labour laws.

This toolkit is aimed at civil society including trade union organisers, migrant rights organisations and worker advice offices, in their recruitment strategies of migrant workers.

It should be read alongside an issue brief on the hospitality sector, which is published as a supplement and is available at

<https://drive.google.com/open?id=15gtpthxXYGd3daXMUOTnbunoGhknj2DK>.

Definitions:

This toolkit uses the following definitions throughout unless otherwise stated:

Who is an employee?

Section 213 of the Labour Relations Act (LRA) 66 of 1995 defines an **employee** as anyone, other than an independent contractor, who works for another person or who assists in conducting the business of an employer.

Foreign workers, even those employed without a relevant work permit, are considered ‘employees’ under the LRA and are afforded all of the same legal protections.

Today, workers fall into various categories outside of standard employment relations as a result of the effects of workplace restructuring and labour segmentation. It is important to take note of such employment

relations in our efforts to service and represent workers. These forms of atypical work contracts are presented below:

Permanent Worker: Is employed full time on an open contract. Very often entitled to several benefits in line with the LRA such as gazetted wages, social security benefits; paid annual leave; skills development

Temporary: Employed on occasional basis and paid according to hours worked at a particular time. Workers are hired to fill in positions for employees who will be on occasional leave, sick, maternity or family responsibility leave.

Part-time: Is a permanent worker employed for lesser hours and paid based on hours worked.

Fixed-term contract worker: Is employed on a fixed-term (time and contract) and paid according to work done (deliverables). If a contract worker is employed for 3 consecutive months offering services to same employer, they are eligible for a permanent position. Note that according to Section 198 of the LRA, a worker should be permanent after serving a company for three consecutive months.

What is a migrant?

A migrant is defined as someone who has left their place of birth to live in another place. This can be within the same country (domestic migrant) or in another country (international migrant). In this document we refer to international migrants as migrants, unless otherwise stated.

A migrant can hold different types of documentation including a work permit, a permanent residency permit, or can have no documentation or lapsed documentation. This is called 'being undocumented'.

Migrants who are forced to leave their country of origin, or home country due to the fear of persecution are called asylum seekers. If their application for asylum in their country of destination, or host country is granted they are known as refugees.

Introduction

Labour migration is the most common form of international mobility, with an estimated 150 million people working outside their country of origin (ILO 2015). In Southern Africa, the separation of production and reproduction costs of labour through the employment and exploitation of migrant worker is well documented (see for instance Burawoy 1976).

International migrant workers enjoy some of the most progressive and

broad labour protection in Africa. Yet many labour migrants, especially those coming from the continent find themselves in deeply exploitative and precarious conditions of work. Available data shows that only 12% of migrant workers belong to a trade union (Budlender 2014).

There is therefore a strong need for better mobilisation, organisation and protection of vulnerable workers, especially migrants.

In South Africa there are 1, 2 million international migrant workers in the country accounting for 4% of the labour force (Statistics South Africa 2012), with many in informal jobs, self-employed or working under precarious conditions.

Workers in South Africa, especially those in low-skilled, low paid positions face multiple vulnerabilities. Evidence from the Quarterly Labour Force Survey (2012) shows that only 29% or less than 1 in 3 workers in South Africa belong to a union and that many have little or no access to social security.

Why organise migrant workers?

Globalisation, the global recession in 2008, and neoliberal market oriented policies across much of the world has resulted in the erosion of many labour rights and practices. In order to maintain minimum standards of decent work, it is important to ensure that all workers, especially those who are most vulnerable, those at the so-called ‘bottom rung of the ladder’, such as migrants, are protected. Failing to do so can result in a race to the bottom of labour standards and a high wave of competition and conflict among workers.

Protecting migrant workers requires a careful understanding of the challenges they face, strong political will, and capacity to organise.

What are the benefits of organising migrant workers?

Unions in South Africa are facing severe challenges due to the increasing casualisation and informalisation of employment, increasing rates of poverty, urbanisation and migration

and the reduction of permanent jobs. Organising migrant, casual and informal workers is fundamental to revitalising the role of unions as a strong sector of society. Conversely, if unions side-line migrant workers (intentionally or not), it creates a greater likelihood of worker exploitation and therefore erosion of labour standards across the labour market.

- To respond to the changing needs of the labour market and its workforce, three critical roles for unions are envisaged:
- Eliminating discrimination, conflict and competition between local and migrant workers as a means of fostering worker unity and solidarity, which is essential to the global union struggle against capitalism.
- Strongly advocating for informed, and fair policies and practices for migrant workers.
- Developing coalitions beyond the traditional organised labour sector in promoting decent work

What do unions do?

The Labour Relations Act of South Africa recognises trade unions as a key collective bargaining partner in the tripartite negotiation council – National Economic Development and Labour Council (NEDLAC), which includes government, business and labour. The collective bargaining process enables union to respond to ‘bread and butter’ issues, which affect workers in the workplace. Over the

years, unions in South Africa have negotiated for work-related benefits on behalf of workers, which include but are not limited to the following:

- Remuneration and allowances
- Social security benefits e.g. pension, maternity protection, medical
- Skills development
- Safe working environment e.g. protective clothing in mining, hospitality and agriculture sectors

Migration in South Africa: Knowing the law

Migrants require work permits to be able to work in South Africa. There are **four categories of work permits** provided for in the Immigration Act of

2002. These are general, critical, corporate and intra-company transfers.

Type of permit	Main Features
General Work Permit	This applies to general workers across all sectors and skills levels. To obtain a work permit a provisional employment offer of employment needs to be in place from the employer. In addition, the employer needs to demonstrate that efforts have been made, and failed to recruit a local worker for the same position.
Critical Work Permit	The government is obliged to publish an annual list of critical skills needed in the labour market and economy that cannot be filled with local supply. Migrants who possess such skills and qualifications may apply for this permit. It allows family members to enter and live in the country but they are not eligible to work unless they obtain separate work permits of their own.
Corporate Work Permit	This kind of permit is distinct from the first two as an employer can apply for it on behalf of potential workers. It is typically used for seasonal work such as in the commercial agricultural sector, and is granted under relaxed conditions, which allows the employer

	to recruit a number of migrant workers en masse for specific, and fixed-term labour needs. Families of the workers are not permitted to enter or stay in the country under this scheme.
An Intra company transfer	Intra-company transfer permit is granted to workers transferred to work for a sister company of a company or branch outside of South Africa and is limited to one particular employer under which the permit is awarded.

It is important to note that the above framework does not apply to refugees and asylum seekers who are granted automatic right to trade, and employment under the Refugees Act of 1998.

Also note that immigration laws, including those affecting refugees and asylum seekers are constantly under review and that these provisions may change.

Do migrant workers have rights?

All workers have basic labour and human rights as stipulated in the Constitution. This includes migrants, refugees, asylum seekers and undocumented migrants. These rights apply in all employment relationships, regardless of the type of employment

contract signed, or even if no employment contract is signed.

Various legal frameworks provide guidelines on the issue of migrant workers at international, and national level. The section below presents some of the key instruments

The ILO has developed a series of fundamental conventions to guide governments to better protect the right of workers. This includes:

The eight fundamental rights conventions:

Abolition of Forced Labour

- Protocol of 2014 to the Forced Labour Convention, 1930
- Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203)
- Forced Labour Convention, 1930 (No. 29)
- Abolition of Forced Labour Convention, 1957 (No. 105)

Elimination of Child Labour

- Minimum Age Convention, 1973 (No. 138)
- Worst Forms of Child Labour Convention, 1999 (No. 182)

Trade Union Rights

- Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)
- Right to Organize and Collective Bargaining Convention, 1949 (No. 98)

Equality and Non-discrimination in Employment and Occupation

- Equal Remuneration Convention, 1951 (No. 100)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Selected Conventions and Recommendations of General Application (including Governance Conventions)

Labour Inspection Convention, 1947 (No. 81)
Labour Clauses (Public Contracts), 1949 (No. 94)
Protection of Wages Convention, 1949 (No. 95)
Employment Injuries Benefit Convention, 1969 (No. 121)
Employment Policy Convention, 1964 (No. 122)
Labour Inspection (Agriculture) Convention, 1969 (No. 129)
Minimum Wage Fixing Convention, 1979 (No. 131)
Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)
Nursing Personnel Convention, 1977 (No. 149)
Occupational Safety and Health Convention, 1991 (No. 155)
Safety and Health in Construction Convention, 1988 (No. 167)
Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172)
Safety and Health in Mines Convention, 1995 (No. 176)
Maternity Protection Convention, 2000 (No. 183)
Safety and Health in Agriculture Convention, 2001 (No. 184)

And selected Conventions and Recommendations containing Specific Provisions on Migrant Workers

Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)
Employment Service Convention, 1948 (No. 88)
Social Security (Minimum Standards) Convention, 1952 (No. 102)
Protection of Migrant Workers (Underdeveloped Countries) Recommendation,
1955 (No. 100)
Plantations Conventions, 1958 (No. 110)
Equality of Treatment (Social Security) Convention, 1962 (No. 118)
Maintenance of Social Security Rights Convention, 1982 (No. 157)
Private Employment Agencies Convention, 1997 (No. 181)
HIV and AIDS Recommendation, 2010 (No. 200)
Domestic Workers Convention, 2011 (No. 189)
Domestic Workers Recommendation, 2011 (No. 201)

In addition to these, the **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families** helps in the organising of migrants.

At a **national** level, the Constitution, the Basic Conditions of Employment Act of South Africa, The Labour Relations Act and various sectoral determinations outline the regulation of employment for all workers, including migrants. In summary these provisions include the:

- Right to ethical international recruitment practices that provide workers with the opportunity to assess the benefits and risks associated with employment positions and to make timely and informed decisions.

- Right to fair and just recruitment and contractual practices in the employment of migrant workers.

- Right to employment, promotion and remuneration that is based on objective criteria, such as levels of qualification, years of experience and degrees of professional responsibility on the basis of equality of treatment local workforce.

- Right to equal employment and conditions of work.

- Right to career and skills development- the Sectoral Determination 14 of the hospitality sector highlights that there should be equal training opportunities for all and especially groups that may face particular disadvantages in terms of acquisition of professional skills (for example, youth, persons with disabilities, migrant workers, older persons, indigenous peoples or ethnic minorities).

The Bargaining Council for the Restaurant, Catering and Allied Trades.

The Labour Relations Act, no 66 of 1995, Section 31 allows for the establishment of a bargaining council for workers in the Food Retail, Restaurant, Catering and Allied Trades. At the time of publication, both parties and non-parties were bound by the existing collective bargaining agreement as gazetted by the Minister of Labour. The scope of the bargaining council agreement covers various magisterial districts.¹

¹ For more information kindly refer to: <http://www.labour.gov.za/DOL/legislation/sectoral-determinations/sectoral-determination-14-hospitality>.

Help! How do I assist a migrant worker on my shop floor

To help support, recruit and organise migrant workers it is important to have a clear understanding of the needs and challenges facing this group. Although individual cases will differ, available evidence suggest that the most common problems facing migrant workers in South Africa are:

- Documentation, including obtaining, renewing or changing the type of permit held
- Little interface with unions
- Workplace exploitation and low wages

- Xenophobia in the workplace
- Human trafficking in selected instances
- Poor access to social services by migrants and their families
- Physical threats to lives and livelihoods in local communities

It is also important to dispel myths surrounding migrants so that trust and cooperation can be built in the workplace. The following table tests some of the more frequent stereotypes associated with migrants:

Myths vs. facts – debunking common misconceptions

Myth	Fact
Migrants are stealing jobs	Available evidence suggests that migrants constitute only 4,5% of the labour market, while unemployment hovers at 36%. Moreover migrants are filling important positions in the economy, are creating jobs themselves and are self-employed.
Migrants don't want to be documented	Existing evidence suggests that migrants understand the importance of documentation and actively spend

	time and money trying to obtain the relevant permits even while the state makes it difficult to do so.
Migrants are responsible for crime	There is no evidence to suggest that migrants are disproportionately responsible for crime. Migrants who commit a crime should be dealt with within the criminal justice system.
Migrant workers are not covered by labour law	The constitution, LRA and BCEA etc. apply to all workers including migrants.
Migrant workers undermine collective bargaining agreements	Migrants are workers who benefit from collective bargaining but at times, due to their vulnerability (especially undocumented) are forced to accept low wages because they are under-represented.
Migrants accept any wages offered to them and undercut wages	Employers should be encouraged to hire and pay according to gazetted laws, the sectoral determination Act Section 3.2.2.36 highlights that; Migrant workers, women and youth are particularly vulnerable to informal or casual employment services in a less safe and less favourable working environment than other workers.
Unions are only there to represent local workers	Unions have an inclusive mandate to all workers irrespective of their nationality.
Migrant workers are reluctant to join unions	More needs to be done to unionise migrant workers and dispel fears of unions being spaces for locals only.

Moving Forward together

What can unions do to support migrant workers?

Although various processes have been in place to organise vulnerable workers more can be done to strengthen efforts and results in this regard. This is structured around 3 themes:

Informing and changing

- Lobby government to ratify and implement relevant Conventions and national laws to protect migrants
- Establish the feasibility and need for migrant help desks and link to international desks
- Lobbying for better migration policies that do not criminalise African job seekers
- Publish regular commentary on issues facing migrant workers in labour journals, and the popular press
- Build capacity within unions to understand the law, the evidence and the issues facing migrants

- Actively participate in campaigns against xenophobia in the workplace and broader society through mass education and awareness raising
- Capacity-building and sensitisation trainings of migrant desk officers, worker leaders and union staff

Building Coalitions

- Continue to establish bi-lateral agreements between unions in labour sending countries and labour-receiving-countries to ensure members continue to enjoy protection through sister unions in host countries
- Develop relationships with migrant and community organisations and associations on common goals

Organising

- Develop a targeted migrant organising strategy
- Strengthen inclusive worker-driven solidarity in all campaigns

- across gender, nationality and sexual orientation
- Develop support systems that allow unions to help migrants obtain and maintain documentation
- To educate workers on their socio-economic and labour rights
- To advance workers interests and socio-economic justice
- To ensure equal pay for work of equal value for all employees regardless of their origin and nationality
- To protect, defend, and uphold all workers' rights regardless of nationality, race and sexual orientation
- To promote worker to worker solidarity
- To fight all forms of discrimination in the workplace for example gender wage disparities, racism, xenophobia, gender-based violence, sexual harassment and any other forms of injustice
- To promote equality, social justice and inclusion
- Gain expertise in immigration policy and legislative frameworks
- Improve publicity of unions within migrant communities
- Ensuring union benefits are inclusive of migrant worker needs
- Clearly spell out the advantages of joining organised labour such as representation at the national tripartite negotiation council, NEDLAC
- Including migrant rights on the collective bargaining agenda
- Educate migrants on their rights especially freedom of association and collective bargaining
- Reviewing anti-discrimination policies to ensure they explicitly cover xenophobia
- Organising union education strategies aimed at combating xenophobia
- Report employers who undermine labour laws by exploiting migrant workers
- Implementation and evaluation

Practical advice for on-the-ground organisers

Below are some of the practical tips which could be useful:

- Mapping: Identifying ‘hotspots’ e.g. hotels, restaurants which recruit large numbers of migrants
- Identify forms of organisation at those workplaces e.g. workers committees/ forums
- Establish a stakeholders working committee, with migrant organisations outside of the workplace e.g. migrant rights organisations, worker advice offices, public interest litigation organisations (e.g. Lawyers for Human Rights; Probono, Wits Law Clinic, Centre for Applied Legal Studies)
- Establish partnerships with relevant organisations such as International Organisation for Migration (IOM), International Labour Organisation (ILO), United Nations High Commissioner for Refugees (UNHCR) and national government departments
- Compile a referral list e.g. where to send migrant members to seek advice related to documentation, social services, etc.
- Other sectors: domestic work, sex work, security, and construction.

What can migrant workers do to protect their rights?

- Ensure that they acquire relevant work permits in order to seek employment in South Africa
- Seek advice related to their rights through various worker organisations which provide socio-economic and legal advice
- Join or form trade unions
- Attend workshops offered by labour related institutions such as the Commission for Conciliation, Mediation and Arbitration (CCMA) aimed at worker rights education.

Building solidarity – why should unions work in solidarity with migrant organisations and other support services?

Given the myths related to organising of migrants such as those mentioned before, it is important for unions and migrant-rights organisations to work collectively to ensure complementary efforts. In this case, migrant rights organisations could play a referral role while unions take up the responsibility of servicing and representing all workers in collective bargaining and labour disputes in their capacity as recognised NEDLAC tripartite partners' institutions to represent

workers. At the same time, there is a great need to collectively mobilise resources to advance and support service delivery by all partners. Local unions need to establish strong partnerships with their sister unions from labour sending countries and foster union-to-union solidarity. Accordingly, this toolkit could be shared with sister unions and could lay the foundation for educating potential immigrants among union members from labour sending countries. Such education programmes need to take into account education and awareness raising on critical issues; such as the importance of documentation and safe migration

Referral List: Where to seek help and information

Government:

The Commission for Conciliation, Mediation and Arbitration (CCMA)

CCMA National Office,
28 Harrison St, Johannesburg 2001
Phone: 011 377-6650 / 011 377-6600

Department of Labour

77 De Korte St, Johannesburg, 2001

South African Human Rights Commission

Braampark Forum 3, 33 Hoofd St,
Braampark, Johannesburg, 2017
Phone: 011 877 3600

Department of Home Affairs

3rd Fl., Mineralia Building,
Cnr De Korte St, Johannesburg, 2000
Phone: 084 797 956

Civil society:

Lawyers for Human Rights

Heerengracht Building,
87 De Korte St & Melle St,
Braamfontein, Johannesburg, 2001
Phone: 011 339 1960

Socio-Economic Rights Institute of South Africa (SERI)

Aspern House, Johannesburg, 2001
Phone: 011 356 5860

Section 27

Unt6, 6th Fl., Braamfontein Centre,
23 Jorrisen St, Braamfontein,
Johannesburg, 2001
Phone: 011 356 4100

Advocacy and technical support:

Foundation for Human Rights

36 Boundary Rd, Houghton Estate,
Johannesburg, 2193
Phone: 011 484 0390

Friedrich Ebert Stiftung (FES)

34 Bompas Rd, Dunkeld West,
Johannesburg, 2196
Phone: 011 341 0270

International Labour Organization (ILO) Pretoria

Block C, Crestway Office Park,
20 Hotel St, Persequor, Pretoria, 0020
Phone: 012 818 8000

Research:

Global Labour University

1 Jan Smuts Avenue,
Braamfontein, Johannesburg, 2000
Phone: 011 717 100

African Centre for Migration & Society (ACMS)

1 Jan Smuts Avenue,
Braamfontein, Johannesburg, 2000

Centre for Researching Education and Labour (REAL)

is a research centre in the School of Education at the University of the Witwatersrand.

1 Jan Smuts Avenue,
Braamfontein, Johannesburg, 2000

Migrant organisation

African Diaspora Forum (ADF)

Migrant organisation that coordinates migrant organisations and lobbies on migration policy and improving migrants' conditions in South Africa.

ADWN

Migrant workers organisation that deals with all workers' challenges across South Africa

Global Zimbabwe Forum

Migrant organisation that takes care of Zimbabwean migrants.

Migrant Workers' Association - South Africa (MWASA)

Migrant organisation that takes care of Zimbabwean migrants.

Migrant Workers Union of South Africa (MIWUSA)

Migrant organisation that takes care of Zimbabwean migrants.

Zimbabwe Workers Union SA (ZIWUSA)

Migrant Workers Organisation that organises women in various precarious and highly exploitative sectors e.g. begging and sex work.

Organisations:

Commission for Gender Equality (CGE)

Institution that supports democracy and established in terms of Chapter 9 of the South African Constitution. Its mandate is to promote and protect and attain gender equality in South Africa

GOLEKANE

NPO established to advance the issues of former Owner-Drivers of ABI.

#OUTSOURCINGMUSTFALL #OMF

Built on top of the #FeesMustFall

Unions:

Congress of South African Trade Union (COSATU)

The biggest federation in South Africa with almost 1,8 million members. Its significant achievements include the overthrow of apartheid and the

introduction of NEDLAC, Introduction of DITSELA (Workers Training) the current Labour Relations Legal Framework and many benefits for workers

Federation of Unions of South Africa (FEDUSA)

It is the second biggest federation in the country. It participates in DITSELA, NEDLAC, relevant state institutions and policy formulation

South African Commercial, Catering and Allied Workers Union (SACCAWU)

This is a trade union that organises workers in the commercial, catering and allied space. Its major victories include the attainment of 12 months' maternity leave at Pick n' Pay

South African Federation of Trade Unions (SAFTU)

This is a new federation which was launched in 2016.

For further reading and references:

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ILO & International Institute for Labour Studies (2015) Repairing the economic and social fabric. Geneva.

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Statistics South Africa (2012a). Gross domestic product. Pretoria.

Retrieved from

<http://www.statssa.gov.za/publications/P0441/P04413rdQuarter2012.pdf>

Case study: MWA recruiting with SACCAWU

<https://docs.google.com/document/d/1vIP5k10k25wfk3ybcgvG280UhOOKIQ050kv-1LVqW8/edit?usp=sharing>

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