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## Organising migrant workers: Proposes toolkit for unions in South Africa.

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### Introduction

Migration has been in existence for as long as mankind has existed. People move for various reasons which include political, economic (in search of greener pastures), education, social, religious, natural wars and persecution because of one's sexual orientation. In recent times, the desire for democratic space and respect for human rights and dignity have been the main contributing forces towards migration. At the same time, labour migration has increased, adding on to unions' responsibility of ensuring that all workers are protected within the ambit of the law.

Data from the Quarterly Labour Force Survey in 2012 shows that only 29% or 1 in 3 workers in South Africa belong to a union. Amongst migrants this figure drops to 12%. In addition, unions seem to lack strategies to respond to this growing labour force in the workplace. With support from the FES, the ACMS in consultation with trade unions, migrant rights organisations, social movements, non-governmental organisations and worker advice offices has developed a series of workshops to improve capacity in organising workers in hospitality sector in South Africa. This toolkit is part of that process.

### Purpose of the toolkit

A three year study on labour migration in South Africa conducted between 2012 and 2015 by the African Centre for Migration and Society (ACMS), University of the Witwatersrand through a project dubbed Migrating for Work Research Consortium (MiWORC) found out unionisation rate amongst migrants in South Africa is low. Further, the study revealed that unions have not yet devised organising strategies to specifically respond to the needs of the current workforce which is very often found outside of standard employment relations which include casual, out-sourced and migrant labour. The purpose of this toolkit is to equip union organisers in South Africa with theoretical and practical skills for organising migrant workers in the hospitality sector guided by scientific research. 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.

### Target

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

## Structure of the toolkit

**Understanding the context – the hospitality sector in South Africa** see attached issue brief

### Who is a worker?

Foreign workers, even those employed without a relevant work permit, are considered ‘employees’ under the *Labour Rights Act* and are afforded all of the same legal protections. This has been confirmed through the Labour Court (such as in *Discovery Health Limited v CCMA & others*

### What does the law say on workers’ rights?

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

#### Rights of migrant workers

There are specific fundamental conventions and universal rights stipulated by the International Labour Organisation (ILO) which are binding to all member states including those outside of the United Nations or who have not ratified. These are as follows:

1. Freedom of association (Convention No. 87) and the right to organize and bargain collectively (Convention No. 98)
2. The elimination of all forms of forced or compulsory labour (Convention No. 29 and 105);
3. The abolition of child labour (Convention No. 138), and
4. Equal remuneration (Convention No. 100) and non-discrimination in employment (Convention No. 111).

In addition to these, the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* is very critical as far as organising migrants is concerned.

#### Other rights include:

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

## **Why organise migrant workers?**

In order to maintain minimum standards of decent work, it is important to ensure that workers at the 'bottom of the rung', those who are mostly likely to be vulnerable or exploited, such as migrants, are protected. Failing to do so can result in a 'race to the bottom' of labour standards amongst employers. Protecting migrant workers requires a careful understanding of the challenges they face. This includes:

- Documentation regardless of migration status
- Employment contracts are very often attached to work permit regime; that is the length of one's permit superimposes their work contracts as the immigration law requires employers to act as "an eye" (monitors) on behalf of the Department of Home Affairs
- As a result, many have lost their jobs after failing to renew their work permits
- Little interface with unions
- Workplace exploitation and low wages
- Xenophobia in the workplace
- Human trafficking
- Poor access to social services by migrants and their families

## **Myths vs. facts – debunking common misconceptions**

Migrants are stealing jobs,

- Migrants bring crime,
- Migrant workers are not covered by labour law,
- Migrant workers undercut labour bargaining,
- Migrants accept any wages offered to them and undercut wages
- Unions are only there to represent local workers
- Migrant workers shun unions
- Migrant workers fear joining unions because they are undocumented
- Unions are a prototype of "Home Affairs"

## **What can unions do to support migrant workers?**

- Gather relevant information and data on migration and exchange information between sending and receiving countries
- Lobby their respective governments to ratify relevant Conventions to protect migrants.
- 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.
- Organise migrant and cross-border workers regardless of origin, sexual orientation, ethnicity and nationality

### **Why do Unions exist?**

Migrant workers face numerous challenges which include difficulties with documentation; for example, sometimes employers confiscate their passports; general poverty, xenophobia, racism, enslavement; erratic payment of wages; absence of social security; sexual harassment, gender-based violence, and human trafficking. Thus, it is important to understand the role of unions in addressing some of the problems faced by workers in general. While not exhaustive, the subsequent section outlines the importance of unions in the workplace.

- To fight for the rights of the working class in a collective way guided by the principle of *“An injury to one is an injury to all”*
- 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 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

### **What Unions do?**

The Labour Relations Act of South Africa recognises trade unions as a key collective bargaining partner in the tripartite negotiation 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 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

## Way forward:

### What can unions do to protect migrant workers?

- Lobbying for favourable policies which will make it possible for undocumented migrants to secure work permits
- Expertise in immigration policy and legislative frameworks
- Introduce migrant help desks
- 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.
- Actively participate in campaigns against xenophobia in the workplace and broader society through mass education and raising awareness
- 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
- Sending desk officers and officials to sensitisation trainings.

### Tips for good practice – practical advice for on-the-ground organisers

The current workforce has become more diversified as migration increases as a result of globalisation, and political and socio-economic instability across the globe. Thus, migrant workers are a feature of labour markets across the world and need to be included in the mandate of trade unions. There is a need to devise new strategies which respond to the specific needs of precarious workers; including migrants. Below are some of the practical tips which could be useful.

- Lobbying government to ensure minimum requirements for documentation
- 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, CALZ)

- Establish Partnerships with relevant organisations such as IOM, ILO, 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

### **What can migrant hospitality 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 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 in order to complement 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.