

FREEDOMS ON THE MOVE

THE CIVIC SPACE OF MIGRANT WORKERS AND REFUGEES



OCTOBER 2019

ABOUT US

CIVICUS: WORLD ALLIANCE FOR Citizen Participation is an international alliance of civil society organisations and activists dedicated to strengthening citizen action and civil society around the world. Founded in 1993, CIVICUS has a vision of a global community of active, engaged citizens committed to equity and justice. Our work focuses on monitoring civic space conditions, connecting civil society groups and amplifying marginalised voices, particularly in the global south. Spanning the whole spectrum of civil society, our alliance includes members and partners in more than 170 countries on all continents. For further information, see www.civicus.org.

The Solidarity Center is the largest US-based international worker rights organisation, helping workers attain safe and healthy workplaces, family-supporting wages, dignity on the job and greater equity at work and in their community. Allied with the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), the Solidarity Center assists workers across the globe as, together, they fight discrimination, exploitation and the systems that entrench poverty – to achieve shared prosperity in the global economy.

The Solidarity Center acts on the fundamental principle that working people can, by exercising their right to the freedom of association and forming trade unions and democratic worker rights organisations, collectively improve their jobs and workplaces, call on their governments to uphold laws and protect human rights, and be a force for democracy, social justice and inclusive economic development. For further information, see www.solidaritycenter.org.

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Informatics Studies, **Kituo Cha Sheria**, the **Geutanyoe Foundation**, the **North South Initiative** and **Sin Fronteras**, who conducted fieldwork in Germany, Jordan, Kenya, Malaysia and Mexico, and to every one of the 959 migrant workers and refugees in those countries who responded to our questions and provided their unique perspectives.

This report was made possible by the generous support received by the Solidarity Center from the Open Society Foundations, the Solidarity Center Education Fund and the US Agency for International Development (USAID). CIVICUS also acknowledges the support of its core donors, the CS Mott Foundation, the Danish International Development Agency, the Ford Foundation, the Ministry of Foreign Affairs of the Netherlands, the Open Society Foundations and the Swedish International Development Cooperation Agency. The opinions expressed herein are those of the authors and do not necessarily reflect the views of our donors.



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Cover photo: Central American migrants riding northbound on a freight train known as the beast, which crosses Mexico from south to north. Photo: Iván Castaneira/Sin Fronteras IAP



Activists protest against deportations of refugees and migrants at Schoenefeld airport near Berlin.. Photo: Sean Gallup/Getty Images

FOREWORD: A CALL TO ACTION IN SOLIDARITY WITH MIGRANTS AND REFUGEES

WE LIVE IN A world of migration. In numbers unprecedented, people are on the move. Many uproot themselves unwillingly – forced from their homes by conflict, climate change, repression, economic coercion or poverty – to find refuge in a new land. Or they embark hopefully, spurred by job opportunities and promises of brighter horizons for themselves and their families.

Whatever sparks their decision, the price they pay should not include the loss of their fundamental freedoms. Yet while the freedoms of association, peaceful assembly and expression are fundamental rights, enshrined in international law, migrant workers and refugees are often denied the ability to participate in democratic processes and exercise the rights many people take for granted. Many migrant workers and refugees are doubly disenfranchised, barred from voting in both destination and origin countries. They are often prevented from organising in the workplace, denied the right to join or form unions. These essential civic rights of all people are crucial safeguards, as they enable those otherwise denied a voice to organise, protest and speak out. Our report, however, shows that these rights for migrant workers and refugees are systematically being abused.

Why? In many parts of the world, deepening authoritarianism and economic nationalism are undermining the rule of law and democratic institutions. Populists and governments are demonising migrants and refugees for political gain, making their already precarious situation as society's newcomers extremely dangerous. The result has been the widespread violation of migrant and refugee civic rights and increasing restrictions on those who defend basic rights. The very core principles of equality and inherent human dignity enshrined in the over-70-years-old Universal Declaration of Human Rights are being eroded.

Despite daunting odds, migrant workers and refugees want to participate in and contribute to their new communities and workplaces. According to our research, migrants and refugees not only yearn to have a say in policies that affect them, but they also bring to their destination countries the skills and experience of having pushed for their fundamental civic freedoms at home.

Our report, the culmination of a two-year, multi-country process of listening to migrant workers and refugees, presents one very clear conclusion: migrant workers and refugees must be included in efforts to reclaim democracy and fundamental rights, not just for themselves but also for society writ large. Indeed, **we see this as a call to action.**

Our movements – as defenders of workers' rights and fundamental freedoms – exist to protect human dignity in the face of marginalisation and inequality. Today more than ever, as civil society, we are called upon to challenge repression, advocate for fundamental freedoms and strengthen democratic movements. We can do so by helping to organise migrants and refugees, learning from their experiences and working together to reclaim the space for civil society in destination countries. In doing so, we can protect democracy and build more just societies for us all.

Shawna Bader-Blau, Executive Director, Solidarity Center

Lysa John, Secretary General, CIVICUS

EXECUTIVE SUMMARY

ABOUT THIS REPORT

THIS REPORT IS THE result of a two-year project undertaken jointly by CIVICUS – the global civil society alliance – and the Solidarity Center, which promotes worker rights worldwide. The research included fieldwork in five countries, in partnership with **Wadi** in Germany, **Phenix Center for Economic and Informatics Studies** in Jordan, **Kituo Cha Sheria** in Kenya, the **Geutanyoe Foundation** (focused on refugees) and the **North South Initiative** (focused on migrant workers) in Malaysia and **Sin Fronteras** in Mexico.

Through two in-depth surveys, one of migrant workers and another of refugees, this study sought to understand more about the main challenges faced by migrant workers and refugees in exercising their rights to the fundamental freedoms of association, peaceful assembly and expression; the factors that make them more likely to try to assert their rights and the factors that make them more vulnerable to violations and abuses; and the perpetrators and enablers of denials of their rights.

KEY FINDINGS

Our world is currently witnessing one of the largest movements of people across borders in history (UNHCR 2018). Globalisation and the search for decent work push workers to migrate far from their homes. Conflict, discrimination, repression, environmental degradation and poverty uproot people who become refugees in other countries. While there is ample research on other aspects of migration, there is still very limited data on whether and how migrant workers and refugees are able to exercise their fundamental civic freedoms. This report seeks to fill that gap and provide a better understanding of the conditions faced by migrant workers and refugees when attempting to exercise those freedoms.

International human rights law does not limit civil and political rights to citizens. Like everyone else, migrant workers and refugees should be able to enjoy the key civic freedoms of association, peaceful assembly and expression. These are important freedoms in



An Aztec dancer participates in a march on International Workers Day, calling for support of labour and immigrant concerns.
Photo: David McNew/Getty Images

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Flashmob at Piazza Montecitorio in Rome, Italy in commemoration of the 70th anniversary of the Universal Declaration of Human Rights in 2018. Photo: Franco Origlia/Getty Images

themselves, because they enable people to be full members of their societies, allowing them to have a say in the decisions that affect their lives. They also safeguard access to other rights. For migrant workers and refugees, these freedoms offer protection against discrimination, marginalisation and scapegoating, which commonly affect them in their host or destination countries. When the rights to association, peaceful assembly and expression are open to migrant workers and refugees, they can organise and act to uphold their interests in their workplaces and communities, influence public opinion and hold public officials accountable. Access to civic rights is particularly crucial given that most migrant workers and refugees are usually denied the right to vote in the countries in which they live, as well as in the countries they have left behind, and are therefore excluded from a crucial opportunity to influence decision-makers on issues that directly affect their lives.

The denial of rights to migrant workers and refugees is a contravention of international human rights instruments, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR), which set out the rights to which every person is entitled regardless of their nationality or migratory status, including the freedoms of association, peaceful assembly and expression and the right to non-discrimination. It also goes against the specific protections of specialised conventions such as the Refugee Convention and the Migrant Worker Convention.

According to our research, a majority of migrant workers and refugees are not actively exercising their rights of association, peaceful assembly and expression in the countries in which they live. In interviews conducted as part of the research, only in Germany had more than half of those interviewed participated in a protest. One likely reason for this participation deficit is that many migrant workers and refugees lack sufficient knowledge of host country and international laws related to civic freedoms: they are not fully aware of their civic rights. Some migrant workers and refugees explained that when they had protested in their host countries, they had done so out of need, but had also thought it was not appropriate for them to 'create trouble' in a country that was not theirs. The inference is that they saw the exercise of these freedoms as a privilege available to some categories of people rather than as a universal human right.

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What is clear from the research is that many migrant workers and refugees want to access their civic freedoms. They want to participate in the societies they call home and do not want to remain on the margins. They want to have a say in their communities and their workplaces, and on the decisions that affect their lives.

Where participation is strongest, it mirrors past practices of activism. Migrant workers and refugees carry not only knowledge, skills and life experiences, but also histories of activism and civic engagement that often come into play in the countries in which they live. Across all countries, this study identified previous activity in a civil society organisation (CSO), including labour unions, in home countries as a predictor of engagement in unions and other CSOs in host countries. It was observed that even in countries where civic freedoms are restricted, migrant workers and refugees with experience of protest participation in home countries were more likely to protest.

However, the research also identified that migrant workers and refugees face numerous and severe challenges in exercising their civic freedoms.

Perceived barriers to the exercise of the freedom of association vary across countries, but overall, in the case of migrant workers, harassment or pressure from employers emerges as the main obstacle, followed by concerns over governments or employers not listening to their needs. For refugees, the lack of resources is highlighted as a major limitation that prevents people from associating and organising.

As for the factors that influence the freedom of peaceful assembly – which includes the right to protest – overall, survey participants believe that the police do not do enough to protect them when they protest. Restrictions on the freedom of peaceful assembly are reported even in countries generally perceived as being most open. Perceptions of public support for those protesting are mixed, but generally, few people are confident that the public support their protests. Among migrant workers, the biggest deterrents against protesting are direct or perceived threats of deportation or detention. Perceptions of safety are also important: people are more likely to protest in countries where they believe their assembly rights are better protected. But perceptions of the lack of safety or support do not necessarily act as a deterrent; certain groups continue to mobilise regardless.

The main barriers identified to the exercise of the freedom of expression are language difficulties, lack of access to information, police activity, threat of deportation or detention, harassment, threat of expulsion from work and media censorship. The confidence of migrant workers and refugees that they can safely criticise authorities varies from country to country. Where restrictions on the freedom of expression are seen as deriving from someone's actions rather than from a contextual situation (such as a language barrier), the police and non-state actors are identified by refugees as the main violators; migrant workers consistently point first at private-sector employers and secondly at the police.

Our research findings also suggest that gender is a key variable that affects access to rights. A number of instances were observed of rights being perceived and practised differently by various categories of migrant workers and refugees depending on their gender.

RECOMMENDATIONS

Across countries, the migrant workers and refugees who were interviewed repeatedly pointed out that they are being held back by stereotypes and negative misperceptions and would like the opportunity to prove that they are normal human beings and dreamers, not criminals or misfits. They insist they are law-abiding residents, productive members of society and caring neighbours. To find their place in their new homes, they should be allowed to get their paperwork in order as soon as possible and lead a normal life like everybody else. They implore their hosts to learn about the terrible experiences they have gone through and understand that nobody undergoes them except out of sheer necessity. They ask that policy be made on the basis of the understanding that – in the words of a refugee interviewed in Kenya – migrants and refugees “are human beings, have a lot of skill and potential, and are capable of bringing a lot of change in the community.” In the absence of the ability to exercise civic rights, these voices often do not find their way into public discourse.

To make these aspirations a reality, CIVICUS and the Solidarity Center call on all states to create and maintain, in law and in practice, an enabling environment for the rights of migrant workers and refugees, in accordance with the provisions enshrined in the

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ICCPR, the UN Migration Convention, International Labour Organization (ILO) standards and other international laws and standards.

The ability of migrant workers and refugees to exercise their civic freedoms requires a comprehensive and holistic approach to civil rights policies and the labour market. It requires policy coherence that recognises that migrant workers and refugees must be integrated not only in the economic and social arena but also in the political sphere of the countries in which they live.

All states must guarantee the fundamental civic freedoms of all people on the move, regardless of their legal status, as provided for in the New York Declaration for Refugees and Migrants, and ratify and uphold the 1951 UN Convention on Refugees and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. They must ratify and respect ILO conventions No. 87 and 98 on freedom of association, right to organise and collective bargaining, and No. 189 on domestic workers.

Additionally, states must ensure that all bilateral and multilateral agreements related to migrant workers and refugees guarantee their civic freedoms and do not include provisions that allow for these freedoms to be restricted in law and practice. From the perspective of host or destination countries, it is key to acknowledge that vibrant democracies cannot thrive in the presence of a mass of disenfranchised residents.

States must recognise in law and practice that all workers, regardless of status, have a right to associate, organise unions and associations, and bargain collectively, and therefore they should remove any legal or policy measures that unwarrantedly limit their right to association. They should address barriers such as harassment or pressure from employers and the lack of resources to organise.

Migrant workers and refugees also need to be informed about their rights to the freedom of association and the importance of collective action, and encouraged by the diplomatic missions of their countries of origin to join or form unions or associations and advocate for themselves. Trade unions must support the participation and engagement of migrant workers and refugees who work and help them make demands to the state



Women demonstrate at a refugee camp in Dadaab, Kenya.
Photo: UNHCR

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Migrant workers protest working conditions in Athens.
Photo: Ayhan Mehmet/Anadolu Agency/Getty Images

and employers. Employers have a duty to ensure that migrant workers and refugees are provided with adequate time off to exercise their right to the freedom of association and are not retaliated against in the workplace for doing so.

To ensure that migrant workers and refugees are able to exercise their right to the freedom of peaceful assembly, states are urged to take positive measures to ensure that all migrant workers and refugees have the knowledge and ability to exercise this right, as provided for in domestic and international law and standards. In order to do so, they must instruct all police and law enforcement officials that it is their duty to facilitate peaceful assemblies involving migrant workers and refugees, and ensure steps are taken to ensure their safety; ensure that law enforcement authorities and non-state actors who violate the assembly rights of migrant workers and refugees are held accountable for their violations; and send a strong message that hate speech, racism and xenophobia against migrant workers and refugees will not be tolerated.

To enforce the right to the freedom of expression of migrant workers and refugees, states are urged to review all laws and regulations that prevent migrant workers and refugees from expressing their opinions or criticising the authorities, in line with international standards and best practices; to inform them about their rights under domestic and international laws; to ensure they are able to exercise the freedom of expression without fear of reprisals, intimidation, harassment, expulsion from their workplace, or threats of deportation or detention; to take action against state or non-state actors – notably the police and private employers – who impede or restrict migrant workers and refugees from speaking out; and to address any other restrictions on their ability to exercise the freedom of expression, including language barriers and lack of access to information.

CIVICUS and the Solidarity Center see the results of this research as an urgent call to action for unions and other members of civil society advocating for civic freedoms in their countries. Migrant workers and refugees want to participate in society. They want to have a say in the policies that impact on their communities and workplaces. They come to their destination or host countries with skills and experience in pushing for their fundamental civic freedoms. Unions and other CSOs should take advantage of this opportunity to help organise migrant workers and refugees, learn from their experiences and work together to push for enhanced space for civil society in destination countries.

INTRODUCTION

WE ARE WITNESSING ONE of the largest movements of people in human history. As documented by the International Labour Organization (ILO), the number of international migrants reached 258 million people in 2017. The vast majority, an estimated 164 million, are migrant workers (ILO 2018), that is, international migrants who are currently employed or seeking employment in their present country of residence. Additionally, for the first time in history, the number of refugees,¹ internally displaced persons and asylum seekers has surpassed 70.8 million people (UNHCR 2018). How these people on the move are treated as they migrate, and whether they can exercise their fundamental civic freedoms – their rights of association, peaceful assembly and expression – in their destination or host country are increasingly critical questions.

As an acknowledgment that the sheer scale of the international movement of people demands an urgent international response, in September 2016 the United Nations (UN) General Assembly adopted the New York Declaration for Refugees and Migrants. In this document, states committed to “protect the human rights and fundamental freedoms of all persons, in transit and after arrival” (UN 2016c). The New York Declaration led to the development of two non-binding global compacts: the Global Compact on Refugees² and the Global Compact for Safe, Orderly and Regular Migration,³ both of which were concluded in 2018. Migration issues are also prominently featured within the Paris Agreement on Climate Change and the Sustainable Development Goals, which recognise the pressing vulnerabilities of people on the move and the “positive contribution of migrants for inclusive growth.”

However, the promises contained in the New York Declaration failed to materialise

fully. While both recently adopted global compacts reference the concept of decent work,⁴ the Global Compact on Refugees fails to address the key civic freedoms of association, peaceful assembly and expression, and the Global Compact on Migration limits the freedom of association to only certain categories of workers, in violation of ILO standards. In practice, millions of migrant workers and refugees continue to be denied basic rights. As the scale of the migratory phenomenon continues to grow, more people are being driven to the margins of society and subjected to abuse, in contexts increasingly fraught with xenophobia and restrictions in the space for civil society.

DENIALS OF CIVIC FREEDOMS FOR MIGRANT WORKERS AND REFUGEES

The fundamental rights to the freedoms of association, peaceful assembly and expression are important not just in and by themselves, but also as means to ensure the full enjoyment of other rights, including for protection against discrimination, marginalisation and scapegoating.

THE RIGHTS TO FREEDOM OF PEACEFUL ASSEMBLY AND OF ASSOCIATION ARE ... KEY TO THE REALIZATION OF BOTH DEMOCRACY AND DIGNITY, SINCE THEY ENABLE PEOPLE TO VOICE AND REPRESENT THEIR INTERESTS, TO HOLD GOVERNMENTS ACCOUNTABLE AND TO EMPOWER HUMAN AGENCY.

UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, 2016 report to the UN General Assembly

- ¹ As defined by the 1951 Refugee Convention, a refugee is “a person who is outside his or her country of nationality or habitual residence; has a well-founded fear of being persecuted because of his or her race, religion, nationality, membership of a particular social group or political opinion; and is unable or unwilling to avail him or herself of the protection of that country, or to return there, for fear of persecution.”
- ² The UN General Assembly adopted the Global Compact on Refugees in December 2018, with 181 member-states voting in favour and two states, Hungary and the USA, voting against. While not legally binding, the Global Compact on Refugees seeks “to strengthen the international response to large movements of refugees and protracted refugee situations, and to better define cooperation to share responsibilities.”
- ³ Negotiations leading to the Global Compact for Migration began in 2016, following the arrival of over a million migrants and refugees in Europe. While supporters of the Compact believe it will foster cooperation and improve states’ treatment of migrants and refugees, those opposed claim it impinges on national sovereignty and will encourage more irregular migration. While 192 UN member states - all bar the USA - agreed to the final text in July 2018, only 164 states went on to sign it at the adoption ceremony in December 2018. Following the adoption event, a UN General Assembly vote to endorse the Compact saw only 152 states vote in favour, with five voting against. For more information, see CIVICUS (2019), pp. 238–240.
- ⁴ As defined by the ILO, decent work “involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.” For more information see the ILO’s website, <https://www.ilo.org/global/topics/decent-work>.

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These fundamental rights determine the extent to which there is space for civil society to organise and act, and for people to participate as members of civil society. When these rights are fully respected, it can be said that the space for civil society – civic space – is open. When they are subjected to restrictions, civic space is narrowed, obstructed, repressed or closed, depending on the prevalence and severity of violations. Around the world, fundamental civic freedoms are currently under attack, as analysed in the most recent edition of CIVICUS' State of Civil Society Report (CIVICUS 2019). According to the CIVICUS Monitor, an online tool that tracks civic space, severe restrictions are observed in 111 of the world's countries – well over half. This means that only four per cent of the world's population live in countries with open civic space (CIVICUS 2018). Severe restrictions can be found in every continent.

As our research finds, the fundamental civic rights of migrant workers and refugees are subjected to specific forms of restriction. This denial of rights conflicts with international human rights norms and stands at odds with our expectations as civil society that all members of society, including migrant workers and refugees, should be able to participate in decision-making and make their voices heard. To enable participation, there needs to be a wide and diverse civil society, comprising a variety of independent organisations representing diverse interests and promoting the rights of various groups.

As countries expand opportunities for refugees to work, their rights at work must be guaranteed. However, often initiatives undertaken to defend rights have a narrow focus and do not seek to integrate refugees and migrant workers into labour markets in a way that allows for their full exercise of civic freedoms, or to re-enfranchise them as full civic actors in their communities and workplaces.⁵

Most destination countries continue to deny migrant workers and refugees the right to the freedom of association and the right to organise, alongside other fundamental labour rights. In many countries, migrant workers and refugees are explicitly excluded

⁵ For example, both Global Compacts recommend foreign direct investment and preferential trade agreements aimed at limiting migration out of less developed countries or keeping refugees wherever they first seek shelter, making it likelier that people will remain employed in low-wage sectors. The 'compacts' promoted and funded by the World Bank, European Union and other institutions to keep refugees in third countries also point in the same direction. See Gordon (2019).



Rohingya refugees demonstrate against Myanmar's oppression of Rohingya Muslims in front of the Myanmar Embassy in Kuala Lumpur. Photo: Alexandra Radu/Anadolu Agency/Getty Images

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from labour laws and other legal protections or relegated to exclusion areas such as export processing zones, where legal protections are weakened. Migrant workers and refugees are often forced to work in the informal economy, characterised by little to no government regulation, few legal protections, no benefits and no labour standards.⁶

For refugees, access to civic rights is even more precarious. Despite often being long-term residents in host countries, many refugees spend a significant portion of their lives in refugee camps or without achieving any legal status. Many refugees are often silenced for seeking the right to work or access to basic services.

THE MAJORITY OF THE WORLD'S WORKERS, PARTICULARLY THOSE IN VULNERABLE SITUATIONS, SUCH AS MIGRANT, WOMEN AND DOMESTIC WORKERS, ARE DISENFRANCHISED OF THEIR RIGHTS TO FREEDOM OF PEACEFUL ASSEMBLY AND OF ASSOCIATION IN THE WORKPLACE. THAT DISENFRANCHISEMENT IS THE RESULT OF MANY FACTORS, INCLUDING THE FAILURE OF MUCH TOUTED ECONOMIC POLICIES IN REDUCING POVERTY AND ECONOMIC INEQUALITY; THE INCREASING POWER OF MULTINATIONAL CORPORATIONS AND CORRESPONDING FAILURE BY STATES TO EFFECTIVELY REGULATE AND ENFORCE NORMS AND STANDARDS AGAINST THOSE ACTORS; THE FRAGMENTATION OF THE WORKPLACE AND DIFFUSION OF EMPLOYER RESPONSIBILITIES ACROSS A RANGE OF ACTORS; AND THE GLOBAL CRACKDOWN ON CIVIL SOCIETY THAT TARGETS ORGANIZATIONS AND INDIVIDUALS WORKING ON LABOUR ISSUES.

UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, 2016 report to the UN General Assembly

Migrant workers and refugees are often twice excluded from participation, as they face marginalisation from the civic and political communities of both their home and

destination countries.⁷ Being away from home often for years at a time, they are not able to contribute to decision-making processes in their origin countries. They are also denied full civic and political rights in their host or destination countries. This challenge is particularly severe in countries that have received massive contingents of migrant workers or refugees and are the home of large numbers of people who are classed as non-citizens and so denied the right to vote. This means that people are being subject to laws and paying taxes without having a say in the decision-making processes that determine those laws and taxes.

The extent to which the rights of migrant workers and refugees are respected is an indicator of the broader status of human rights. In countries where violations of the rights of migrant workers and refugees are endemic, the rights of other groups also tend to be constrained. Where human rights and labour norms and standards are not implemented for migrant workers or refugees who work, the standards and rights of all workers are eroded. Conflicts between local and foreign workers can also increase the potential for human rights and labour abuses by governments and employers.

Conversely, when the civic freedoms of migrant workers and refugees are respected, the space is broadened for civil society as a whole. Participation of migrant workers and refugees in trade unions, an important part of civil society, helps strengthen the power of unions by increasing their membership and leverage at the bargaining table and within civil society. It is critical that migrant workers and refugees be fully enabled to participate in civil society.

ABOUT THIS REPORT

Despite the growing numbers of migrant workers and refugees and the urgency of the problem of the denial of their rights, there is very little data available on whether and how migrant workers and refugees can exercise civic freedoms. This report seeks to fill that gap and provide a better understanding of the conditions faced by migrant workers

⁶ For more information see The ILO's website, <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/migrant-workers/lang--en/index.htm>.

⁷ The term 'host country' is often used in the context of refugee resettlement, but for migrant workers we prefer to use the term 'destination country' given that 'host' holds political implications. For simplicity, however, we use the terms interchangeably in this report.

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and refugees when attempting to exercise civic freedoms, building upon the limited but valuable knowledge on these issues that has begun to accumulate over the past two decades, as set out in the literature review (see Annex).

This report is the result of a two-year project that began with theoretical reflection and desk research, followed by fieldwork in five locations around the world – Germany, Jordan, Kenya, Malaysia and Mexico – aimed at gathering empirical data on the challenges, opportunities and barriers faced by migrant workers and refugees when attempting to exercise fundamental civic freedoms. Through the administration of two in-depth surveys, one targeted at migrant workers and one at refugees, this project sought to learn more about the main challenges faced by migrant workers and refugees in the exercise of their rights to the freedoms of association, peaceful assembly and expression; the factors that may compel them to attempt to exercise their rights; the factors that may make them more vulnerable to violations and abuses; and the perpetrators and enablers of the denial of their rights.

The report is structured around three main sections. The first section provides a review of the existing international legal norms and standards related to the rights and freedoms of migrant workers and refugees, including of association, peaceful assembly and expression, along with an analysis of the limitations of norms and standards in protecting rights and freedoms. The second section presents key findings from our data analysis. Our main empirical research tools were interview questionnaires designed to collect primary data, which were administered by civil society research partners in our five selected locations. This section begins by spelling out the rationale for case selection and the methodology, and acknowledging the limitations of the sample. It then goes on to present key findings and their implications. The third and final section provides a series of policy recommendations on the basis of the research findings.

It is our hope that this report will improve understanding among policy-makers and civil society of the extent to which migrant workers and refugees can access civic freedoms, and that this better understanding will help inform work to improve the conditions for the exercise of these freedoms.



Migrant workers crowd into bunk beds in a labour camp in Old Dubai, United Arab Emirates.
Photo: Ghaith Abdul Ahad/Getty Images

INTERNATIONAL NORMS AND STANDARDS

WHILE PROTECTED BY SPECIALISED conventions such as the Refugee Convention and the Migrant Worker Convention, which contain some civic rights, migrant workers and refugees are also protected by international human rights instruments that set out the full panoply of rights, including the right to non-discrimination and the freedoms of association, peaceful assembly and expression, which apply universally to all people, regardless of nationality or migratory status. International human rights treaty monitoring bodies have increasingly developed their own jurisprudence on non-nationals, which has led some to argue that the normative framework has shifted from refugee law to human rights law (Chetail 2014, Gil-Bazo 2015).

The International Bill of Rights, which comprises the key instruments of the Universal Declaration of Human Rights (UDHR, 1948), the International Covenant on Civil and Political Rights (ICCPR, 1966) and the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966), is underpinned by an understanding that civil and political rights are essential to everyone because these rights enable people to represent their interests, influence public opinion and hold governments accountable. However, migrant workers and refugees are largely excluded from one of the most crucial of civil and political rights, that of participating in elections, in either their home or host countries (Ziegler 2017). This makes the rights to associate, assemble peacefully and express their opinions even more critical, as they are often the only means they have to influence policies that impact on their lives and well-being (Daly 2017).

CIVIC RIGHTS AND THE REFUGEE CONVENTION

The 1951 Convention relating to the Status of Refugees was drafted following the Second World War and, together with its 1967 Protocol, still forms the basis for international standards on the treatment of refugees. While the Refugee Convention did not guarantee the full range of civil and political rights, it set out a more expansive range of civil and socio-economic rights than existed in previous agreements on refugees, particularly in its definition of a “sphere of personal freedom for refugees” (Hathaway 2005). Basic liberties for refugees are guaranteed by the inability of states to make “any reservations with respect to obligations to protect against discrimination, religious freedom and access to the courts” (Ibid.).

The Refugee Convention defines refugees in very specific terms: they are persons who are outside their country of nationality or habitual residence and are unable or unwilling to return due to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a social group, or political opinion. The primary obligations that the Convention and its protocol impose on states that are party to them is to not forcibly return refugees to a territory where they face danger (the principle of non-refoulement), and to not discriminate between groups of refugees.

The Refugee Convention recognises that refugees have the core civic freedom to associate. This affords refugees a wide range of associational rights, including to join trade unions and other cultural, recreational, social and philanthropic associations. This right, however, does not extend to all civil society groups. It does not extend to political and non-profit associations, and does not apply universally or uniformly, as it grants refugees who reside lawfully in a country the most favourable treatment accorded to nationals of a foreign country, in the same circumstances. In other words, under the Convention refugees are entitled only to non-citizen rights. Despite these limitations, article 5 provides that “nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention,” a statement that could be interpreted as envisaging the complementarity of international human rights instruments.

MIGRANT WORKERS

While it was considered groundbreaking when it was agreed in 1990, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Worker Convention) has more recently been criticised for its provision of fewer human rights for undocumented workers and for entrenching rights below the international human rights baseline. This is particularly true of the limited right to the freedom of association recognised for undocumented migrant workers, and the absence of any recognition of the right to the freedom of peaceful assembly.

Part III of the Convention, which applies to both documented and undocumented migrant workers, includes fundamental rights contained in the International Bill of Rights, such as the rights to freedom of thought, conscience and religion, and to express

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opinions without interference. However, it is more focused on work-related migrants' rights, including treatment equal to that of nationals with respect to remuneration and work conditions. Significantly, article 26 recognises the right of both documented and undocumented migrant workers and their families to take part in meetings and activities of trade unions and any other associations established in accordance with the law, with a view to protecting their economic, social, cultural and other interests; to join such organisations freely; and to seek aid and assistance from them.

While these rights to take part and join and seek aid or assistance are clearly important civic rights, the Convention's understanding of the freedom of association is more restrictive than that of general human rights instruments, as set out in the International Bill of Rights, which broadly protects the right to form and join trade unions. The distinction between participating or joining an existing association or trade union and creating one's own is material because undocumented migrants deal with unique threats, such as deportation, and other workers often view them negatively, for example

by blaming them for lowering wages. This omission by the Convention denies migrant workers both agency and the ability to focus on their specific concerns (Noll 2010).

In contrast to part III, part IV of the Migrant Worker Convention sets out those rights that apply only to documented workers and goes further to protect civic rights in the employment context and with regard to governance and national elections in countries of origin. It also envisages the establishment of an institution or procedure to consider the special situation of migrant workers, with the participation of migrant workers or their representatives.

Article 40 of part IV sets out that documented migrant workers and their families have the right to form associations and trade unions in the context of employment in order to promote and protect their "economic, social, cultural and other interests." It also determines that they "shall" have the right to participate in the public affairs of their state of origin and to vote and be elected in that state. Article 42 instructs state parties



Central American men wait at a migrants' shelter in southern Mexico, a stop in their northbound journey. Photo: Iván Castaneira/Sin Fronteras IAP

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to consider the establishment of “procedures or institutions” to take account of the special needs, aspirations and obligations of migrant workers in their state of origin and of employment. Such institutions shall “envisage as appropriate” the “possibility for migrant workers and members of their families to have their freely chosen representatives in those institutions.” Further states of employment should facilitate the consultation or participation of migrant workers and members of their families in decisions concerning the “life and administration of local communities.”

These rights are clearly important to civic and political participation and go further than analogous rights guaranteed to undocumented migrants in this Convention. However, they are still restrictive in that the right to form an association or trade union appears to be limited to the work context, whereas the right to associate as enshrined in article 22 of the ICCPR contains no analogous caveat within the limitations it establishes on the freedoms of association. Article 42 of the Convention permits, but does not require, the creation of an institution or procedure through which states of origin and destination can take into account the specific needs of migrant workers, and also permits, but does not require, the participation of migrant workers in decisions concerning the limited subject matter of the “life and administration of local communities.”

As pointed out by critics such as Noll (2010), the Convention entrenches a “fundamental inequality” between documented and undocumented migrants, which is then followed through in regional human rights courts and UN treaty bodies. The title of the Convention, which claims to protect the human rights of “all migrant workers and their families,” is misleading at best, given that the limited rights of undocumented workers it recognises are confined to the private economic sphere, and it has the aim of deterring the hiring of undocumented workers. The denial of the active right to associate precludes the exercise of civic rights and participation in the political community.

As discussed below, however, the ILO – the only tripartite UN agency, bringing together states, employers and workers from its 180-plus member states to set labour standards and develop policies to promote decent work for all workers – has recognised in its conventions the right of all workers regardless of status – including undocumented migrant workers – to the freedom of association and the right to organise unions and collectively bargain in their workplaces.

INTERNATIONAL HUMAN RIGHTS AND CIVIC FREEDOMS

While refugees and migrant workers are protected by specific conventions, they are more broadly protected by international human rights instruments that apply universally to all people. The rights to non-discrimination and equality in the enjoyment of rights and the freedoms of association, peaceful assembly and expression are entrenched in international human rights law and are connected to the fact of being under a state’s jurisdiction, rather than to citizenship status. While these rights can be limited, treaty bodies have interpreted limitation provisions in a restrictive manner.

NON-DISCRIMINATION

According to article 2(1) of the ICCPR, state parties must “respect” and “ensure” the rights recognised in the Covenant, without distinction of any kind, including those of national or social origin. Paragraph 1 of ICCPR’s General Comment 15 on the Position of Aliens (1986) sets out that while it is the state that decides whom it will admit into its territory, once non-citizens are allowed to enter a territory, they become entitled to Covenant rights. Consequently, each of these rights – including the rights to liberty and security, the freedom of movement, the freedoms of thought, conscience and religion, and the freedoms of association, peaceful assembly and expression – must be guaranteed without discriminating between nationals and non-nationals.

The text of the ICCPR, however, allows limitations of these rights through specific provisions that apply only to citizens, such as the right to vote in elections (article 25), or to people lawfully present in a state, such as the freedom of movement and freedom to choose one’s residence (article 12(1)). It also contains a generalised derogation clause that can be invoked in a public emergency but must be limited to the extent strictly required and be consistent with international law (CCPR General Comment No. 29, article 4: Derogations during a State of Emergency, 31 August 2001). In sum, under the ICCPR, not all differentiation amounts to discrimination: if the criteria for differentiation are reasonable and objective and their purpose is legitimate under the Covenant, then it is not considered to amount to discrimination.

The International Covenant on the Elimination of All Forms of Racial Discrimination (ICERD, 1965) qualifies the prohibition on discrimination, which does not apply to

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People take part in a Muslim Lives Matter demonstration in response to the barbaric murder of a Muslim worker in Rajasthan, India. Photo: Javed Sultan/Anadolu Agency/Getty Images

“distinctions, exclusions, restrictions or preferences” made by a state party between “citizens and non-citizens” (article 1(2)). However, legal provisions that deal with nationality, citizenship, or naturalisation may not discriminate against any particular nationality (article 1(3)). Despite the restrictive text, the ICERD has gone to great lengths to interpret the scope of qualifications with respect to non-citizens narrowly.

In General Recommendation XI, the Committee on the Elimination of All Forms of Discrimination (CERD) found that the exemption of distinctions between citizens and non-citizens from the ambit of discrimination must not be interpreted to diminish the rights and freedoms recognised in other human rights instruments, particularly the International Bill of Rights. In 2005, CERD adopted General Recommendation XXX on Discrimination against Non-Citizens, which provides that although certain rights, including the right to vote and stand for election, may be confined to citizens, human rights are in principle to be enjoyed by all people. These rights include protection and recognition before the law and equal access to remedies. It also means that deportation laws may not discriminate in purpose or effect among non-citizens on the basis of race, colour, or ethnic or national origin. While the General Recommendation permits states to refuse to offer jobs to non-citizens without a work permit, within the context of an employment relationship, all people are entitled to worker rights, including the freedoms of association and peaceful assembly.

Significantly, the General Recommendation sets out that differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for differentiation do not further a legitimate aim and are not proportional to the achievement of this aim. Accordingly, the Committee recommends that states ensure that measures taken to combat terrorism do not discriminate in either purpose or effect and that non-citizens are not subjected to racial or ethnic profiling or stereotyping.

The ICESCR states that member states should respect Covenant rights “without discrimination of any kind” (article 2(2)). However, it also states that “developing countries” may determine the extent to which they will guarantee the economic rights in the Covenant to non-nationals (article 2(3)). Yet in 2009, the ICESCR Committee issued a General Comment in which it confirmed that the term “other status” in the non-discrimination provisions included prohibition of discrimination on the basis of

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nationality (UN 2009a). The General Comment finds that Covenant rights “apply to everyone including non-nationals, such as refugees, asylum seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation” (paragraph 30). Consequently, ICESCR rights, including rights “to form and join trade unions... for the promotion and protection of his economic and social interests” apply to all non-nationals, including both documented and undocumented migrant workers.

FREEDOM OF ASSOCIATION

The right to the freedom of association is set out in the UDHR, ICCPR and other instruments, including the ICESCR, ICERD, the Convention on the Rights of the Child (CRC, 1989) and the UN Declaration on Human Rights Defenders (1998). As set out in the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (1998), it literally applies to “everyone.”

The former UN Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, has argued that the freedom of association is both a civil right that grants protection from arbitrary interference by the state or private agents, and a political right essential to democracy, since political interests can only be championed effectively in concert with other people (UN 2009b). She argues that this right applies across the board to everyone, including non-nationals, and that there is a direct relationship between pluralism, democracy and the freedom of association.

According to the former UN Special Rapporteur on the rights to freedom of peaceful assembly and of association (SR FOAA), Maina Kiai, negative obligations require that states do not unduly obstruct the exercise of the freedom of association and that associations are free to determine their statutes, structures and activities without undue interference (UN 2012). The positive obligation requires states to establish and maintain enabling environments, allowing individuals to operate freely without the fear of threats of reprisal.

The 2012 SR FOAA report also sets out that the right to the freedom of association is not absolute, but restrictions must (a) be introduced by legislation or common-law decisions

of the judiciary, and not through government decrees or administrative orders; and (b) be necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others. In addition to (a) and (b), the SR FOAA emphasises that any restrictions on the exercise of the freedom of association must be proportionate to the aim pursued and must be necessary to prevent a real threat to national security or the democratic order, and it must be ensured that no less invasive measures are adequate to achieve this purpose. Accordingly, vague, ill-defined provisions that lend themselves to misinterpretation, including on security and anti-terrorism, may not be used to repress this right. Criminal sanctions for unregistered activities, burdensome and lengthy registration procedures, denial of registration and deregistration, and administrative and judicial harassment also violate this right.

The freedom of association also underpins international labour law and is linked to the right to organise and bargain collectively, entrenched in ILO Convention 87 (1948). The pivotal place of this right is also found in the ILO Declaration on Fundamental Principles and Rights at Work (1998), which is binding on all member states, regardless of whether they have ratified the Conventions in question. The eight fundamental ILO Conventions, and related recommendations, apply to all workers regardless of citizenship.

ILO Convention 97 on Migration for Employment is narrower in coverage and requires a member state to not discriminate between its treatment of “immigrants lawfully within its territory” and its own nationals, with respect to trade union and collective bargaining rights. However, Recommendation 151 of this Convention maintains that migrant workers in an irregular situation should still enjoy equal rights “arising out of past and present employment as regards remuneration, social security and other benefits as well as regards trade union membership and exercise of trade union rights.” This Convention has limited effect since most migrant destination countries, including Canada, India, Japan, the USA and all of the Gulf states, have not ratified ILO conventions 97 or 143. Indeed domestic policy is often used to undermine the freedom of association even in ratifying states, often preventing undocumented migrant workers or all migrant workers from joining trade unions, or denying migrant workers access to meaningful remedies for violations of rights.

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The ILO has consistently condemned any requirement that makes citizenship a condition for membership of a trade union or that disallows non-citizens from establishing a trade union (National Research Council 2004). In its 2016 General Survey, the ILO Committee of Experts maintained that the right to organise should be guaranteed to all workers, without distinction or discrimination of any kind.

In practice, many countries have ratified the Convention but exclude specific categories of workers, such as agricultural, domestic service, contract and public sector workers, from labour legislation that otherwise protects the right to the freedom of association and collective bargaining rights (Ibid.). For example, US law prohibits discrimination against workers because of union activity but excludes large sectors, including agricultural and domestic workers. Sometimes it is laws that discriminate by excluding documented migrant workers from organising, and other times, workers are caught between labour and immigration laws, with labour laws guaranteeing rights and immigration laws removing the same rights (Ibid.).

In other cases, migrant workers may be allowed to organise and join workers' associations but are denied the benefits of union membership through specific legal restrictions placed on activities such as collective bargaining and union elections. In Jordan, for instance, while migrant workers have been legally able to join existing unions since 2010, they still cannot participate in union elections or establish their own unions (ILO 2012).

FREEDOM OF PEACEFUL ASSEMBLY

The right to the freedom of peaceful assembly is recognised in the UDHR and ICCPR. The UN Human Rights Committee has maintained that aliens “receive the benefit of the right of peaceful assembly” (General Comment 15 (1986)). Similarly, article 5(a) of the UN Declaration on Human Rights Defenders recognises this right as a crucial component of peaceful protest against human rights violations.

A joint report of the SR FOAA and the UN Special Rapporteur on extrajudicial, summary or arbitrary executions notes that this right is increasingly being violated by the state, but that alongside elections, peaceful assemblies are fundamental to public participation in democracy and for “amplifying the voices of all people who are marginalized.” They



Sri Lankan domestic workers attend a rights workshop in Jordan.
Photo: Solidarity Center

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further note that assemblies facilitate engagement not only with the state but also other powerful actors, including corporations, as well as with public opinion more broadly (UN 2016a, paragraphs 5 and 6). The joint report states that assemblies can take various forms, such as rallies or sit-ins, in both private and public spaces.

States are obliged to respect rights not only by not restricting their exercise but also by shielding them against the actions of non-state actors. They are also required to “create, facilitate or provide the necessary conditions for the enjoyment of rights” (UN 2016a, paragraph 14). These obligations must be carried out without discrimination on prohibited grounds, which include “national or social origin.” In addition, “particular effort” and “additional measures” should be exercised to ensure the “equal and effective protection of rights of groups or individuals who have been historically discriminated against, including non-nationals (asylum seekers and refugees) and displaced persons.”

The right to the freedom of peaceful assembly is not absolute, but the restrictions envisaged by article 21 of the ICCPR must be justified. With respect to the state’s negative obligations, any restrictions must be necessary and proportionate to their aims and must be the least restrictive option (UN 2012, paragraph 39). According to the SR FOAA, the use of force in this context should be exceptional. Force should not be resorted to unless it is strictly unavoidable, and even then, it must comply with international human rights norms, which establish criteria such as necessity and proportionality. In turn, the positive obligation to give active protection to peaceful assemblies includes protection from state and non-state agents, including individuals or groups such as counter-demonstrators or provocateurs aiming to disrupt an assembly, and excludes the practice of ‘kettling’ or containment.

According to ILO jurisprudence, protest strikes to oppose a governmental social or economic policy are legitimate, and only an “acute national crisis” involving “serious conflict insurrection or national disaster in which the normal functioning of society are absent” would justify prohibiting strike action (Tajgman and Curtis 2000). Similarly, the ILO has determined that prohibition of picketing is only justified when a picket is no longer peaceful.

FREEDOM OF EXPRESSION

The right to the freedom of expression is considered a meta-right, as it enables the realisation of other rights, such as the rights of political participation, association, peaceful assembly and the right to vote. It is entrenched in both the UDHR and ICCPR and must be respected without any distinction. The ICCPR sets out that restrictions on the right to the freedom of expression must be provided by law and be necessary for the protection of “the rights and reputation of others” or for “national security or public order, health and morals” (article 19(3)). The Convention obliges states to prohibit by law “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence” (article 20). The UN Human Rights Committee has emphasised that states must ensure that “aliens” enjoy the freedom of expression to the same extent as citizens (UN 1986).

The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (SR FOE) has highlighted the increasing threat to the freedom of expression and interpreted that legitimate restrictions must (1) be provided by law, which must be sufficiently precise to regulate conduct and accessible to the public, (2) have a legitimate objective and (3) be necessary and proportionate, which requires that there be a “direct and immediate” connection between the expression and the threat, and that it be the least intrusive instrument to achieve the result. The SR FOE has maintained that such restrictions must not endanger the right to the freedom of expression as a whole and any abrogation must be applied by a politically neutral body (UN 2011).

While the freedom of expression applies to everyone, it has particular importance for the protection of excluded groups, including those living in extreme poverty, minorities, indigenous people and migrant populations. According to the SR FOE, while illiteracy is particularly a problem among the poorest people, impoverished social groups can participate more fully in public debate concerning social and political developments by exercising their right to the freedom of expression (UN 2010). States should therefore ensure access to communications, particularly electronic communications. In practice, this requires the establishment of specific mechanisms to ensure that those living in poverty can participate effectively in the life of the community. The SR FFOE reiterates

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that migrants and migrant communities, regardless of their legal migratory status, are fully entitled to exercise the freedom of expression.

REGIONAL APPROACHES TO MIGRANT WORKER AND REFUGEE PROTECTION

At the regional level, analogous connections can be found between regional human rights instruments that apply broadly and more specific instruments directed at refugees. Generally, the instruments that apply to refugees specifically contain fewer civil and political rights, while those that apply broadly contain the full spectrum of such rights.

In the African context, the 1969 Organization of African Unity Convention Governing the Specific Aspects of the Refugee Problem in Africa contains few civic rights, other than

a non-discrimination clause that prohibits discrimination on the basis of nationality. Negatively, under article 3, signatory states undertake to prohibit the activities of refugees in their territories that are likely to cause tensions between member states, particularly “by use of arms, through press, or by radio.” However, the African Charter on Human and Peoples’ Rights (1981) applies to everyone, without distinction of any kind, including on the basis of “national and social origin” and provides for the rights to association, peaceful assembly and expression. The African Commission on Human and Peoples’ Rights has developed a significant body of jurisprudence protecting the rights of refugees.

In the Americas, the right to seek asylum is well entrenched in article 22 of the American Declaration and the American Convention on Human Rights (ACHR, 1969). Adopted in 1984, the Cartagena Declaration on Refugees does not contain provisions on civic freedoms for refugees. However, the ACHR applies to all people irrespective of national



Migrant domestic workers rally for their rights in Kenya.
Photo: Solidarity Center

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and social origin and sets out a wide range of civil and political rights, including the rights to the freedoms of association, peaceful assembly, expression and thought. The Inter-American Court of Human Rights has held that international labour standards apply to both documented and undocumented non-citizens and that non-discrimination and equality are *jus cogens* – a fundamental principle of international law – that apply to all residents regardless of immigration status (Inter-American Court of Human Rights 2003). In subsequent cases, the court has ruled that it was a violation of the ACHR to refuse to issue birth certificates to stateless children of migrants in irregular status born in a country, and in doing so, deny them rights associated with citizenship (Inter-American Court of Human Rights 2005).

The European instruments addressing refugees include the Amsterdam Treaty (1999), which sets out the prerequisites for a system of standards regulating asylum claims, and the Common European Asylum System, based on the Refugee Convention and Protocol. The substantive provisions of the European Convention on Human Rights (ECHR, 1950) are extensive and include the freedoms of association, peaceful assembly and expression, and the prohibition of discrimination. However, significantly, article 16 of the ECHR upholds the differential treatment of non-citizens, which allows state parties to impose restrictions on the political activity of aliens. In the case of *Piedmont v France* (April 1995), a German citizen and member of the European parliament was invited to a French overseas territory, where she took part in anti-government protests and was subsequently deported and barred from re-entry. She claimed deportation violated her freedom of expression. The European Court of Human Rights held in her favour that this particular expulsion of a non-national was not necessary in a democratic society (European Court of Human Rights 1995).

SUMMARY

The civic rights contained in the Migrant Worker Convention and Refugee Convention are limited in both the range of rights and in the extent of their enjoyment. While the Refugee Convention recognises the freedom of association, this does not extend to political associations. The extent of the enjoyment of this right is dependent on the nature of a refugee's stay in the country. Association rights contained in the Migrant Worker Convention are also limited in content and scope, particularly with respect to

undocumented workers, while assembly rights are entirely absent. The focus on the recognition of these rights in the labour context has not resulted in the recognition of broader civic rights. However, according to its preamble, the aim of the Migrant Worker Convention is to apply the full panoply of human rights to migrant workers, while article 5 of the Refugee Convention maintains that nothing in the Convention diminishes rights existing beyond the Refugee Convention. Both these clauses could serve as important entry points for generalised human rights law.

Indeed, international human rights instruments, most significantly the ICCPR, apply broadly to all people, and a network of special rapporteurs and treaty body committees have gone a long way to elucidate the content of these rights. The jurisprudence emanating from these bodies is important to non-citizens generally, and to migrant workers and refugees specifically, because it reframes civic rights as not pertaining exclusively to citizens engaging in acts of self-governance, but as vitally important to enable the participation and voice of those who are marginalised for a number of reasons, including their legal status in a state. This jurisprudence has laid out not only the obligations of states to refrain from directly violating rights, but also their positive obligations, including actively to protect the freedoms of association, peaceful assembly and expression, and to put in place special measures so that groups that have historically been discriminated against are able to exercise their rights in relation both to states and private actors. While some UN Special Rapporteurs have expressly included refugees and migrants in this category, others have not, but their arguments can be extended by analogy to them.

Finally, the jurisprudence has responded forcefully to closing civic space, by interpreting internal limitations clauses narrowly, to make clear that restrictions on civic rights must be lawful, necessary and proportionate, and not undermine the wider purpose of the conventions.

IN-COUNTRY RESEARCH: CHALLENGES FOR EXERCISING CIVIC SPACE FREEDOMS

CASE SELECTION

FOR THIS STUDY, ONE country per region was selected in Africa, the Americas, Asia, Europe and the Middle East. Elements taken into consideration in country selection included the numbers and proportion of migrants and refugees, income levels, status of ratification of key international legal instruments, and ratings on the CIVICUS Monitor.

TABLE 1. COUNTRY SELECTION

Country	Refugees per 1,000 population (2015)	Percentage of population who are migrants (2015)	Country income group	State party to ICCPR?	State party to Refugee Convention?	State party to Migration Convention?	CIVICUS Monitor rating
Germany	3.1	14.9	High	Yes	Yes	No	Open
Jordan	89.55	41	Lower Middle	Yes	No	No	Obstructed
Kenya	12.31	2.4	Lower Middle	Yes	Yes	No	Obstructed
Malaysia	3.26	8.3	Upper Middle	No	No	No	Obstructed
Mexico	0.02	0.9	Upper Middle	Yes	Yes	Yes	Repressed
Source	UNHCR	World Bank	World Bank	UN	UN	UN	CIVICUS Monitor

As the table indicates, out of our five selected countries, Jordan has the highest proportion of both migrants and refugees. Germany was given priority in consideration of its recent reception of migrants and refugees, as well as the country's leadership role in the European Union on refugee issues. Kenya stands out for receiving large numbers of refugees from Somalia and South Sudan, many of whom have lived there for many years. Malaysia, one of the largest destination countries for migrant workers in Asia, has received much international attention due to reports of abuses of migrant workers, and also has inflows of refugees from neighbouring countries and the Middle East, notably Palestine, Syria and Yemen. Mexico was given priority for being on the route to the USA followed by migrant workers and refugees, mostly from Central America, many of whom end up staying in Mexico for years.

Our country selection includes one high-income country, Germany, two upper-middle income countries, Malaysia and Mexico, and two in the lower-middle category, Jordan

and Kenya, according to World Bank assessments. All but Malaysia are state parties to the ICCPR, and along with Jordan, Malaysia has also not ratified the 1951 Convention relating to the Status of Refugees. Mexico is the only state to have ratified the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Based on an analysis of multiple data streams, the CIVICUS Monitor assigns one of five civic space categories to countries: open, narrowed, obstructed, repressed and closed. Only one of the five countries, Germany, is assessed as having open civic space. In contrast, Mexico has repressed civic space, which means that civil society and citizen action is subject to severe levels of restriction. The other three countries – Jordan, Kenya and Malaysia – have obstructed civic space, indicating that while civic space is less restricted than in Mexico, it is heavily contested by the state and other forces.

IN-COUNTRY RESEARCH: CHALLENGES FOR EXERCISING CIVIC SPACE FREEDOMS

METHODOLOGY

To conduct fieldwork, CIVICUS and Solidarity Center partnered with **Wadi** in Germany, **Phenix Center for Economic and Informatics Studies** in Jordan, **Kituo Cha Sheria** in Kenya, the **Geutanyoe Foundation**, focusing on refugees, and the **North South Initiative**, focusing on migrant workers, in Malaysia, and **Sin Fronteras** in Mexico. All these organisations work directly with migrant or refugee populations on the ground and therefore had direct access to and were trusted by prospective interviewees. Respondents were selected by local staff from the migrant and refugee communities in their area. A survey containing a mix of multiple choice and open-ended questions was administered in person by trained interviewers in each location. Prior to full implementation, a 44-case pilot study was conducted in Nairobi, Kenya, in June 2018, after which the research questionnaire was adjusted and redeployed.

Survey questions were translated into local languages and answers were recorded in the language in which they were provided, and later translated for analysis. On average, each interview lasted approximately 30 minutes. Before starting the interviews, interviewers ensured that they clearly explained the purpose of the research and secured free, prior and informed consent, and reassured respondents that their anonymity would be guaranteed. All respondents were given the chance to respond to open-ended questions and describe their past and current experiences and challenges in exercising the freedoms of association, peaceful assembly and expression. A mobile app was used to collect all data, including numeric data, geolocation, text, photos and audio interviews. An analytics online platform was used for data analysis and visualisation.

SAMPLE AND LIMITATIONS

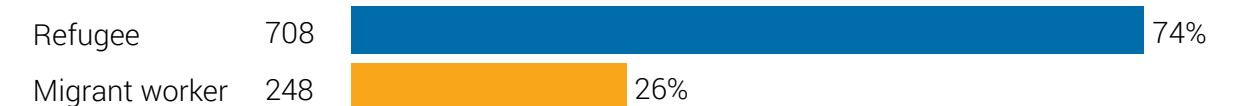
Samples were not constructed to ensure that they were representative of a country's overall migrant worker and refugee populations. Findings should therefore be viewed as indicative and not necessarily generalisable to the larger population of migrant workers and refugees.

After data cleaning and validation, 956 valid survey responses were obtained: 201 in Germany, 131 in Jordan, 358 in Kenya, 147 in Malaysia and 122 in Mexico. Overall, 26 per cent (248) of respondents self-identified as migrant workers, while 74 per cent (708)

identified as refugees. Country samples varied greatly on the representation of the two target groups: Germany's did not include any migrant workers; Kenya's contained 56 migrant workers and 300 refugees; Malaysia's included 82 migrant workers and 65 refugees; Jordan's reached 55 migrant workers and 75 refugees; and Mexico's, the smallest sample, was the most balanced, with 55 migrant workers and 67 refugees.

CHART 1. SAMPLE DEMOGRAPHICS

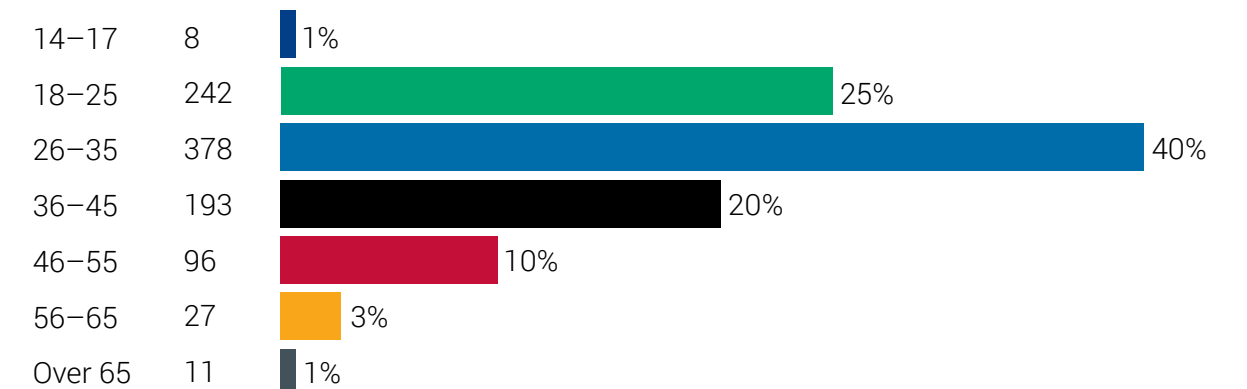
RESPONDENT TYPE



GENDER



AGE



IN-COUNTRY RESEARCH: CHALLENGES FOR EXERCISING CIVIC SPACE FREEDOMS

Overall, respondents across the five countries were 43 per cent female and 56 per cent male, a lower female proportion than the estimated 48.4 per cent of all migrants globally who are women (UN DESA 2017) and the roughly 49.5 per cent of global refugees who are women (UNHCR 2017).

Gender distribution varied substantially across countries and target groups. The overall samples for Germany (30 per cent women, refugees only), and Mexico (9 per cent women migrant workers and 27 per cent women refugees) were particularly gender-biased and should be used cautiously to infer the experiences of the broader population. In Kenya, the gender trend was reversed, across both target groups (with 75 per cent women migrant workers and 55 per cent women refugees). In Malaysia, the refugee sample was more balanced (49 per cent women), although the migrant workers sample was biased towards men (39 per cent women). A similar picture applied in Jordan, with the refugee sample more balanced (52 per cent women), while the migrant worker sample was skewed towards men (35 per cent women).

In summary, the gender sampling was not balanced and varied widely from country to country and group to group, with two countries presenting data that is particularly gender-biased.

In the below analysis, percentages are disaggregated by gender where variations are greater than five percentage points.

KEY FINDINGS

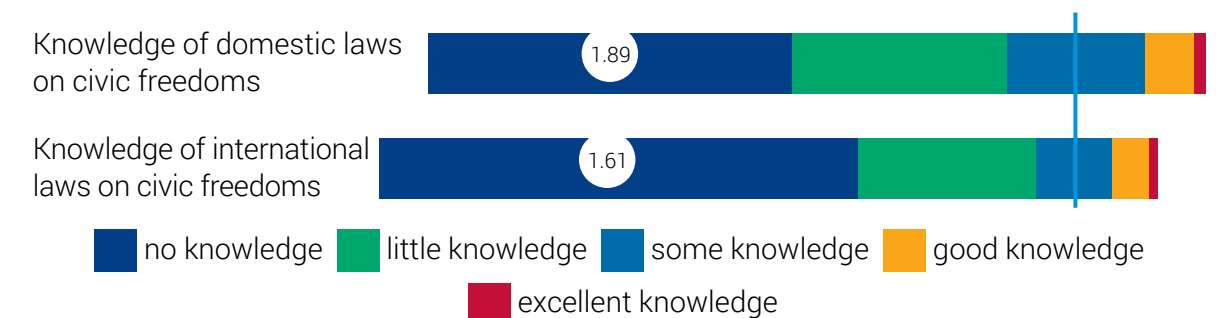
KNOWLEDGE OF LAWS RELATED TO CIVIC SPACE

Migrant workers and refugees in the five countries were asked about their knowledge of their host or destination country's laws and the international laws that regulate the rights to form associations and unions, protest and express opinions.

Almost three in four of those interviewed (74 per cent) said they had little or no knowledge of the national laws of their host country, with only 8 per cent claiming to have good or excellent knowledge. As for international laws, an even higher proportion (84 per cent) said they had little or no knowledge of them, while only 6 per cent said they had good or excellent knowledge.

Those interviewed in Mexico (89 per cent) and Kenya (86 per cent) reported being the least knowledgeable about domestic laws, and the highest proportions of interviewees with little or no knowledge of international laws were also found in Mexico (90 per cent) and Kenya (88 per cent), alongside Jordan (88 per cent). Overall, the level of knowledge of laws correlated with age – older people tended to know the laws better than younger ones.

CHART 2. KNOWLEDGE OF DOMESTIC AND INTERNATIONAL LAWS RELATED TO CIVIC SPACE



(Based on a 5-point Likert scale measuring agreement to statements)

TOGETHER WITH FREEDOM OF EXPRESSION AND OTHER RIGHTS, FREEDOM OF PEACEFUL ASSEMBLY AND OF ASSOCIATION LIES AT THE CORE OF ANY FUNCTIONING DEMOCRATIC SYSTEM. THESE RIGHTS ARE ESSENTIAL COMPONENTS OF DEMOCRACY, AS THEY EMPOWER MEN AND WOMEN TO “EXPRESS THEIR POLITICAL OPINIONS, ENGAGE IN LITERARY AND ARTISTIC PURSUITS AND OTHER CULTURAL, ECONOMIC AND SOCIAL ACTIVITIES, ENGAGE IN RELIGIOUS OBSERVANCES OR OTHER BELIEFS, FORM AND JOIN TRADE UNIONS AND COOPERATIVES, AND ELECT LEADERS TO REPRESENT THEIR INTERESTS AND HOLD THEM ACCOUNTABLE” (HUMAN RIGHTS COUNCIL RESOLUTION 15/21, PREAMBLE)

Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 14 July 2017, available at <https://undocs.org/A/72/135>.

IN-COUNTRY RESEARCH: CHALLENGES FOR EXERCISING CIVIC SPACE FREEDOMS

FREEDOM OF ASSOCIATION

The freedom of association is the right to join a formal or informal group to take collective action. This includes the right to form a new group or join an existing one. Associations can be civil society organisations (CSOs) of various kinds, including clubs, cooperatives, non-governmental organisations (NGOs), religious associations, political parties, trade unions, foundations and online associations, as well as less formal groupings such as social movements or networks. There is no requirement that the association be registered for the right to the freedom of association to apply. This right also includes the right of groups to seek and access funding and resources.

The freedom of association is recognised as one of the most fundamental human rights, within society at large, and in communities and workplaces. The freedom to organise and act alongside others towards a common purpose is crucial for the realisation of all other fundamental rights and is a core value of a democratic society. It is proclaimed in the UDHR, recognised in the ICCPR and UN Declaration on Human Rights Defenders, and enshrined in the ILO Constitution, ILO Declaration of Philadelphia and ILO Declaration on Fundamental Principles and Rights at Work, alongside a number of ILO conventions. As conceptualised by the ILO, the freedom of association also enables workers and employers to act together to better protect not only their economic interests but also their rights to life, security, integrity and personal and collective freedom.

The propensity to exercise this fundamental freedom varied widely among the different groups of migrant workers and refugees interviewed. Refugees in Germany and migrant workers in Malaysia appeared to be most likely to exercise their right to associate, as reflected in their higher proclivity to engage in CSOs, including trade unions, in their destination countries. As discussed in the following sections, not surprisingly, this propensity correlates strongly with the likelihood that people will exercise the other two civic freedoms, of peaceful assembly and expression. This attests to the indivisible character of civic space and the freedoms that enable it.

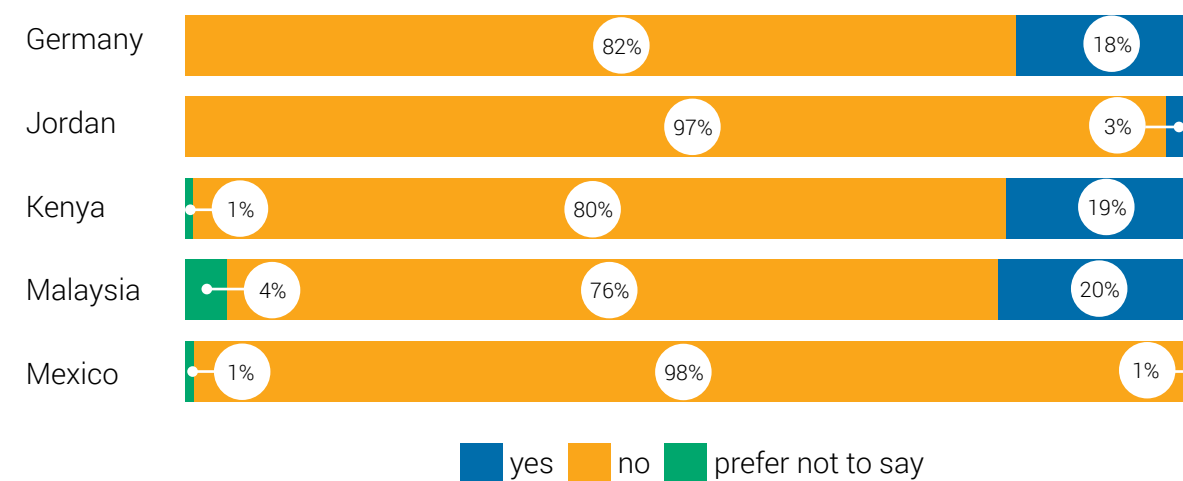
Across all countries, and for both migrant workers and refugees, previous experience of playing an active role in a CSO is a predictor of engagement in CSOs in host countries. Overall, 20 per cent of respondents in Malaysia, 19 per cent in Kenya and 18 per cent in Germany mentioned their involvement in setting up some kind of CSO, such as a

community group, NGO or workers' union.

Asked for the reasons why they would be involved in setting up such groups, several interviewees described the key role played by CSOs at the community level. Some migrant workers in Kenya emphasised the role of youth and women's groups set up to help women access loans, provide access to water and sanitation, or deal with serious social issues. An interviewee pointed out that the youth group she was part of:

... helps us women to heal. There are women who have lost their children ... and there are girls who have entered into marriage while young. And young men who have gotten into drug use ... so they come to us for advice.

CHART 3. INVOLVEMENT IN SETTING UP AN ASSOCIATION, UNION OR OTHER FORM OF CSO

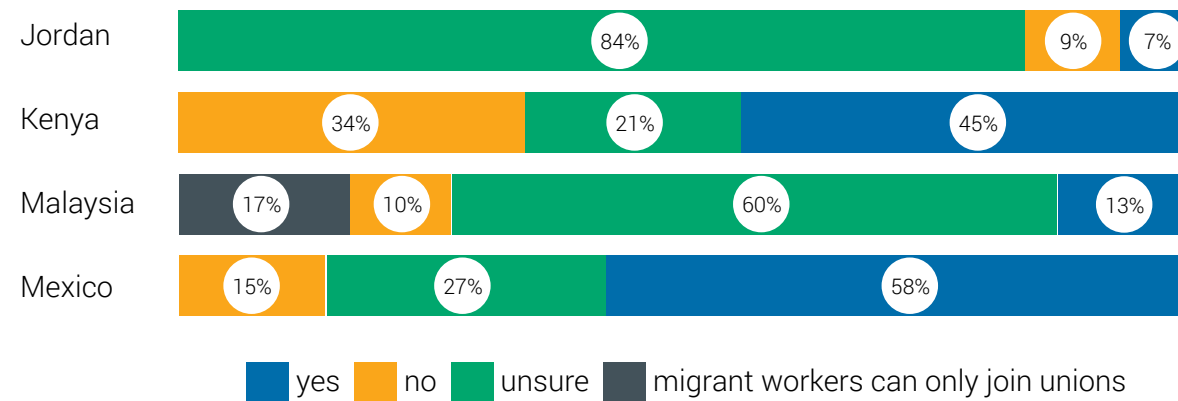


Prior activity in a labour organisation in the home country also emerged as a predictor of participation in active roles in labour unions in the destination country, albeit a less strong one than for civil society as a whole. Across our sample, however, great disparities were observed regarding interviewees' belief in their ability to form or join unions. While 53 per cent of respondents in Germany and 52 per cent in Mexico believed they were able to do so, only 12 per cent of respondents in Malaysia expressed this view, followed by 28 per cent in Jordan and 32 per cent in Kenya.

IN-COUNTRY RESEARCH: CHALLENGES FOR EXERCISING CIVIC SPACE FREEDOMS

The trend was strongest when looking at migrant workers alone. Previously unionised migrant workers were slightly more likely to engage in organised labour movements in host countries than refugees who had also previously been unionised. Among those self-identified as migrant workers in Mexico, 58 per cent said they were able to form or join a union. All of those who expressed this view in Mexico were men: of the women migrant workers in Mexico, 20 per cent said they were unable to join or form unions, while 80 per cent said they were unsure of whether they could do so. This compared to 45 per cent in Kenya (43 per cent of women and 50 per cent of men), 13 per cent in Malaysia (9 per cent of women and 16 per cent of men) and 7 per cent in Jordan. The highest proportion of respondents who said that they were not able to exercise this freedom was found in Jordan (84 per cent), while the majority of interviewees in Malaysia (60 per cent) responded that they were unsure. In Malaysia, in addition, 38 per cent of women migrant workers, but only 4 per cent of men ones, responded that they thought migrant workers could only join unions, but not form them.

CHART 4. ABILITY TO FORM OR JOIN UNIONS (MIGRANT WORKERS)



Perceived barriers to labour rights varied across countries. For migrant workers, harassment or pressure from employers was the main issue – or tied with another main issue – for women and men in all four countries surveyed. The exception was Germany, where the whole sample was made up of refugees. This was followed by concerns over governments or employers not listening to the needs of respondents in most countries,

an opinion shared by women and men. In this regard, however, Malaysia was an outlier, as women migrant workers ranked barriers to their right to strike (63 per cent of women compared to 22 per cent of men), followed by a lack of resources to organise (69 per cent of women and 17 per cent of men), as an equally important factor. This seems suggestive of a female-led movement, but causation cannot be established.

CHART 5. HARASSMENT OR PRESSURE FROM EMPLOYERS AS THE MAIN LABOUR RIGHTS CHALLENGE (MIGRANT WORKERS)

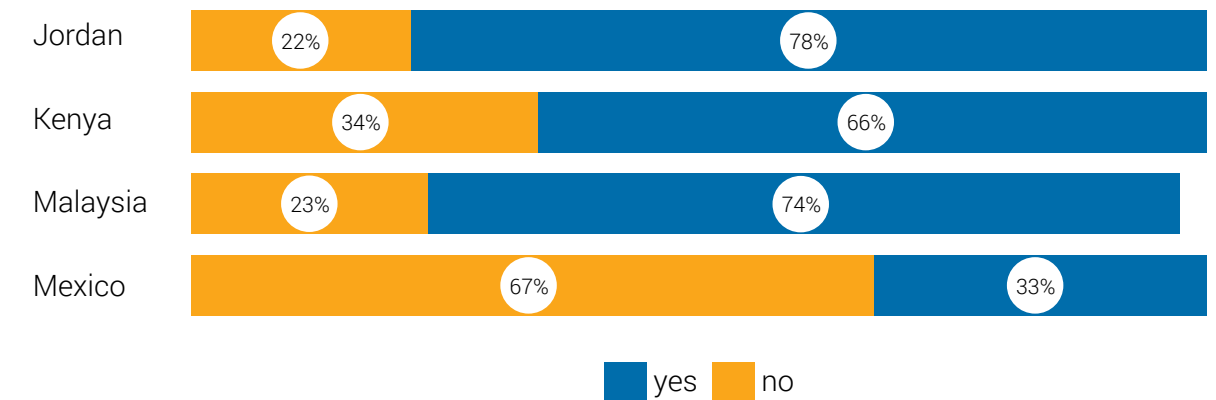
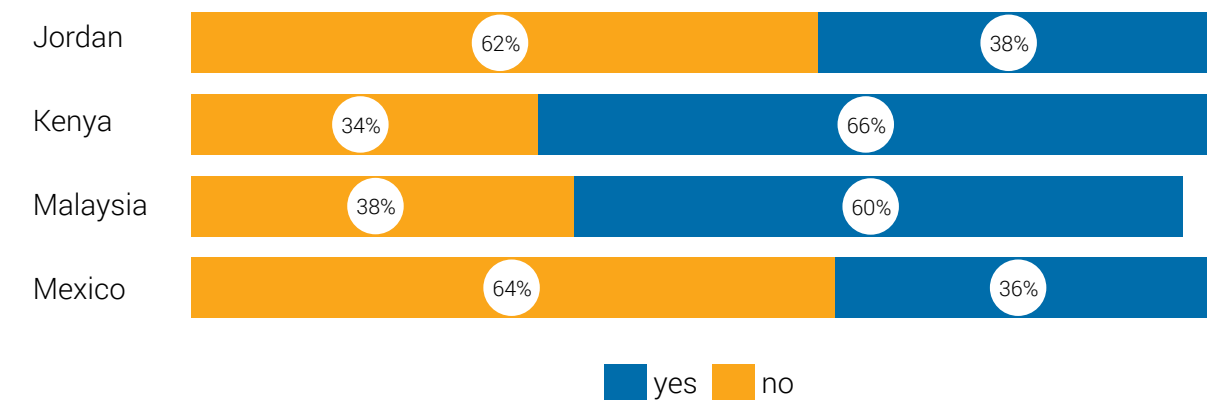


CHART 6. LACK OF ATTENTION FROM GOVERNMENT OR EMPLOYERS AS THE MAIN LABOUR RIGHTS CHALLENGE (MIGRANT WORKERS)



IN-COUNTRY RESEARCH: CHALLENGES FOR EXERCISING CIVIC SPACE FREEDOMS

CHART 7. LACK OF RESOURCES TO ORGANISE AS THE MAIN LABOUR RIGHTS CHALLENGE (MIGRANT WORKERS)

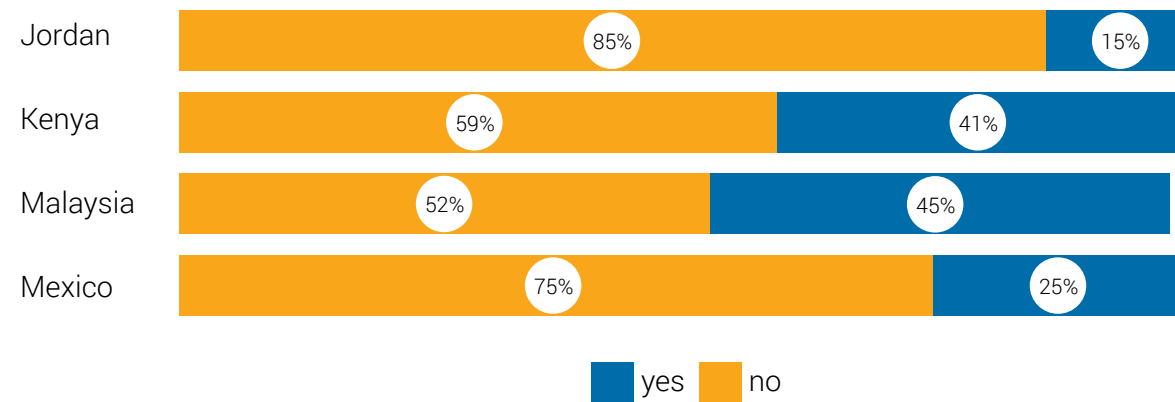
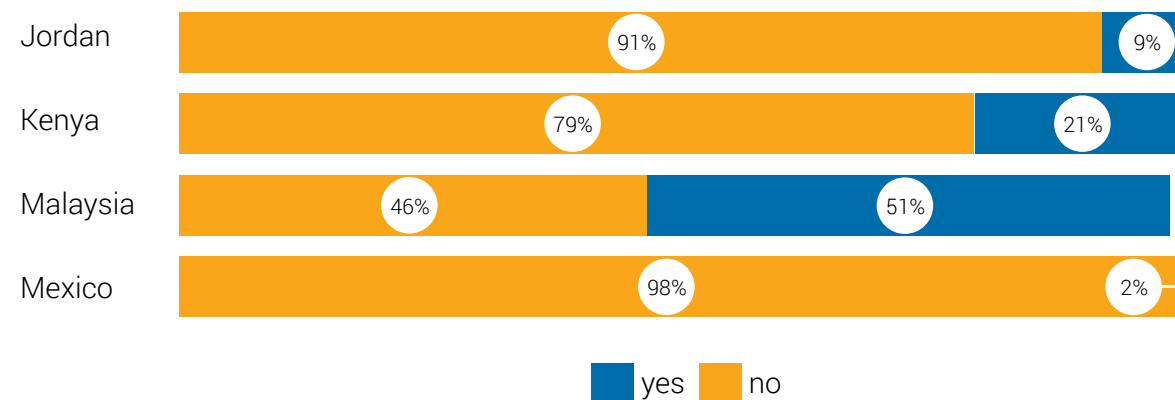


CHART 8. BARRIERS TO RIGHT TO STRIKE AS THE MAIN LABOUR RIGHTS CHALLENGE (MIGRANT WORKERS)



Most refugees across the five countries identified the lack of resources to organise as the leading barrier against the exercise of their freedom of association, followed by employer harassment or pressure. Again, however, Malaysia appeared as an outlier: refugees saw employer harassment (71 per cent of women and 68 per cent of men) and concerns that governments or employers were not listening to their needs (54 per cent of women and 74 per cent of men) as the primary barriers.

FREEDOM OF PEACEFUL ASSEMBLY

The freedom of peaceful assembly is the right to gather in private or public and collectively express, promote, pursue and defend common interests. This includes the right to participate in peaceful meetings, protests, strikes, sit-ins, demonstrations and other temporary gatherings for a specific purpose. States not only have an obligation to protect peaceful assemblies but should also take measures to facilitate them.

Despite its recognition as a fundamental right by the UDHR, ICCPR and UN Declaration on Human Rights Defenders, among other international instruments and standards, this freedom was identified by interviewees as a particularly difficult one to exercise.

Only a minority of interviewees said they had participated in protests in their host countries. Rates of participation, however, varied widely, ranging from 58 per cent in Germany – the only surveyed country where over half of people had participated in protests – to only 11 per cent in Jordan and Mexico. Several interviewees in these countries indicated – in the words of Bangladeshi migrant workers in Malaysia – that they believed foreign workers’ protests in their host country were “completely prohibited.” In their opinion, migrant workers “don’t [even] have a right to ask for their rights” and protesting “is illegal and [if we do it] the police will catch us.”

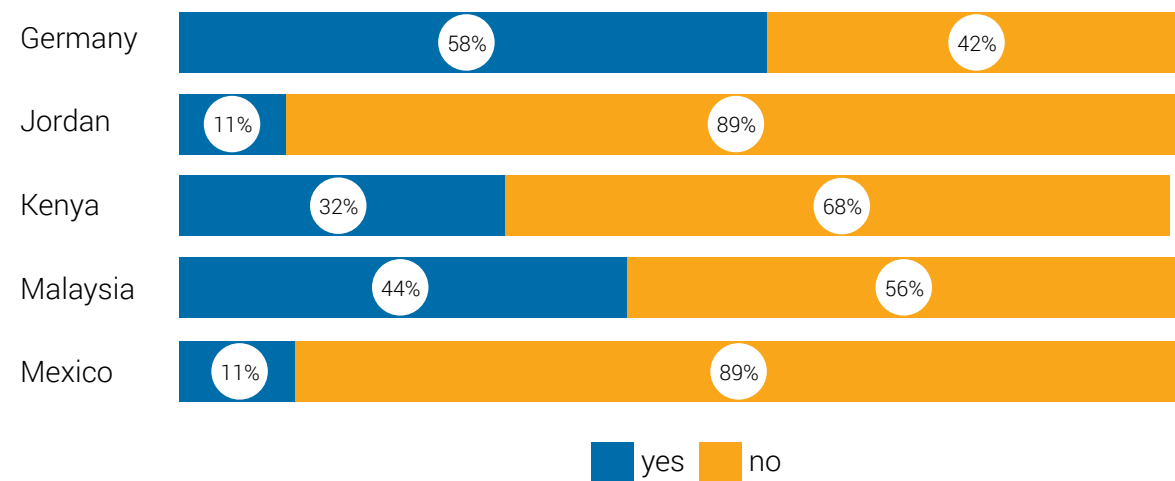
Women living in Germany were more likely than men to have participated in a protest, at 63 per cent versus 56 per cent. However, it should be noted that the 201 respondents from Germany represented a very homogenous group, being drawn from refugees from Syria. Among the Syrian refugees who participated in protests in Germany, one said he had “taken part in some protests in Germany against the Assad regime” and went on to add that:

... all protests or demonstrations were approved by the authorities. The invitations and calls for protests were sent via the internet. They were exclusively peaceful without any problem.

Another Syrian refugee said he had participated in a demonstration “against capitalism.”

IN-COUNTRY RESEARCH: CHALLENGES FOR EXERCISING CIVIC SPACE FREEDOMS

CHART 9. PARTICIPATION IN PROTESTS IN HOST COUNTRY



In Malaysia, the country with the second-highest participation in protests, 33 per cent of women and 54 per cent of men – both migrant workers and refugees – had taken part in protests. Kenya was the next highest, with a participation rate of 32 per cent for both women and men.

In contrast, in Mexico, only 4 per cent of women and 13 per cent of men had participated in protests. The proportion was similarly low but with genders inverted in Jordan, where 17 per cent of women and 6 per cent of men had participated in protests. The gender disparities across countries likely indicate different barriers or perceptions of potential repercussions perceived or faced by each group across the various states.

Syrian refugees in Germany were also the most likely to have participated in a protest in their home country, something that tightly correlates to this group's likeliness to protest in their host country. There could be a socio-economic dimension to this finding, as Syrian refugees in Germany were possibly more affluent or educated than migrant workers and refugees surveyed in other countries. A gender disparity could be observed in Germany as well: while women were less likely than men to have protested back home in Syria, they were more likely to have protested in Germany. While the

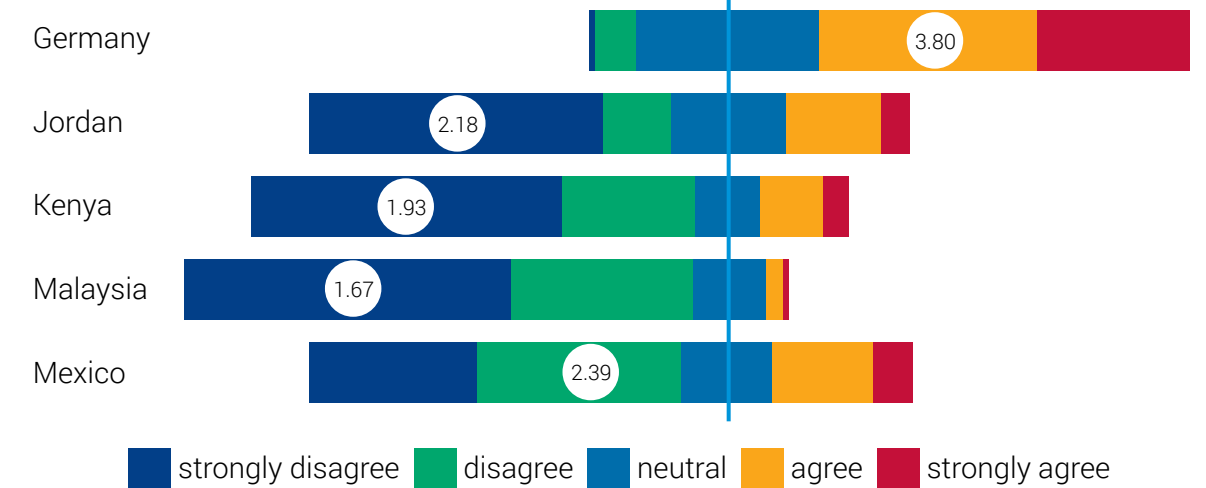
information provided in the interviews does not give evidence to suggest causation, it might be intuited that civic rights for women in Germany are more expansive than those in Syria, or that traditional gender roles were changed by migration.

Correlation between participation in protests in home countries and destination country is also observed in Malaysia. This holds true even when controlling for the lack of perceived safety felt by migrant workers and refugees when protesting in Malaysia, where only 4 per cent felt fully safe. However, refugees in Malaysia were far less likely than migrant workers to have protested in both their home and destination countries: only 22 per cent of refugees had taken part in protests, compared with 62 per cent of migrant workers. This gap may be partly explained by the country of origin of those involved, as migrant workers interviewed in Malaysia were mostly from Bangladesh, Indonesia, Nepal and the Philippines, while half of the refugees were from Myanmar, followed by Syria, Yemen and Palestine, four countries that are immersed in lengthy violent conflicts and experiencing tight restrictions on their civic space.

CHART 10. PERCEPTIONS OF SAFETY WHEN PROTESTING

STATEMENT:

I feel free when I protest on the streets



(Based on a 5-point Likert scale measuring agreement to statements)

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Previous participation in protests appears to be a better predictor of participation in destination countries than perceptions of safety and freedom in destination countries. Perceptions of safety, however, play a role. The overall feelings of safety reported in Germany, a country rated by the CIVICUS Monitor as having open civic space, stand in stark contrast to the other four countries, where a minority of respondents expressed feelings of safety. Perceptions of safety correlate with the overall share of migrant workers and refugees who have protested in each country, indicating that people are more likely to protest in countries where they feel that their assembly rights are better protected.

As mentioned above, Germany was perceived by interviewees as the country in which the freedom of assembly is least repressed, although even there, 14 per cent of respondents (both women and men) noted that the police or authorities had confined assemblies to a particular route or location. Mexico was also perceived as relatively safe and free, despite the fact that its civic space is rated as repressed. It should be noted, however, that a third of the interviews in Mexico were conducted in Mexico City, where civic space is more open than elsewhere in the country. Indeed, Mexico City hosts protests of all kinds so frequently that it has been referred to as ‘protest city’.

Interviewees in Mexico still expressed mixed feelings about their freedom of peaceful assembly. One refugee said that after participating in a demonstration:

We were pleased to be able to express ourselves and demand our rights [although] the authorities imposed some restrictions: we were told we could be in a certain place, in such and such streets, until a certain hour.

Another refugee said:

We feel safe [at protests], but still, demonstrating is not a good thing to do. Neither the government nor the Mexican people see it with good eyes. It is wrong to come cause disorder in a country that is not ours.

Malaysia was perceived as the least safe country, and the one where respondents were least likely to view the police as giving protection to protesters, followed by Kenya.

However, perceptions of safety did not have as large an effect on the willingness of migrant workers to protest in Malaysia. Despite viewing the situation overall as slightly less safe than refugees in Malaysia, migrant workers were still more likely to protest. This could be attributed to the support and protection some migrant workers receive from civil society groups.

In Jordan, migrant workers felt particularly threatened: three in four migrant workers interviewed felt they would be deported or detained for engaging in activism, while one in two migrant workers in Kenya felt they would be deported or detained, and one in three felt similarly in Malaysia.

Overall, around three in four respondents in Malaysia, and half of respondents in Jordan, Kenya and Mexico felt that the police do not do enough to protect them when protesting.

Among the migrant workers surveyed in Malaysia, several interviewees from the Philippines said they participated in the 2018 May Day (International Workers’ Day) rally. Two said they also joined the Bersih – Coalition for Clean and Fair Elections – rally. Two women interviewees stated they had joined the International Women’s Day March, and both mentioned the heavy police presence as a deterrent. One said she had to disguise herself as a local so that the police could not recognise her as a migrant. The other one said she had been unable to stay until the end because there were “a lot of police around.”

Several Rohingya refugees in Malaysia also told stories of protests that faced time or place restrictions, were deemed unauthorised, or were made to disperse. Three of them told similar stories of trying to protest outside the Burmese Embassy in Kuala Lumpur:

We went for protest near the Burmese Embassy. We paid for our own transportation to go there for our rights. Suddenly some policemen came and said: “You can’t protest here, you need to go to another place.” They gave us another location, but we went there and some were detained by authorities. The women were crying.

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I was once involved in a demonstration in front of the Burmese Embassy... We did not confirm but went there and the police said there was no permission for a demonstration.

I went for protest in front of Burmese Embassy. They didn't let us to do it.

In Kenya, migrants also described participating in a variety of protests, including one by domestic workers, who “are not considered as workers like others” and therefore marched to parliament to demand “a new law which would represent domestic workers.” Some of them tell stories of repression, such as the following:

The [Kenyan] lady [who belonged to an NGO and led the protest] was arrested and beaten. When the police lobbed teargas, she fell down and broke her leg... Other protesters were also beaten with batons.

When they were evicting hawkers in Eastleigh, the hawkers decided to protest. We arrived at the city council's office, but once we got there, they

lobbed teargas to disperse us, so the protest could not happen. They did not listen to our complaint.

Refugees in Kenya also tell stories both of police repression and police indifference in the face of attacks by counter-protesters:

We protested because we were being denied access to our rights to food, shelter and seeking asylum. We carried only our placards, we didn't have any weapons, but once we arrived at the protest venue, the police came to disperse us, and we resisted. The police told us that according to Kenyan law, we did not have the right to protest. The police used force to disperse us. I escaped but my friends were beaten and taken to the police station.

Protesting is a challenge to us, even when we were denied our rights at the UNHCR, some people went to protest there, and they were arrested and beaten, so that is why I avoid involving myself in [protests].



Rohingya refugees mark two years since the crisis began.
Photo: Allison Joyce/Getty Images

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In Kayole, refugees were being attacked for taking up jobs... We held a demonstration, and locals also came to hold a counter-protest. They started beating refugees and taking their property. The police only came after the chaos had ended. What I saw is that there are no laws protecting refugees' rights to protest.

Even in the generally safe setting of Germany, where refugees overwhelmingly responded that they felt able to protest and felt safe when doing so despite expressing a mixed knowledge of the freedom of peaceful assembly, around one in four respondents felt that the police did not do enough to protect refugees when protesting. Two Syrian refugees interviewed in Germany who claim to have been among the organisers of a protest tell quite different stories of how the experience turned out. Both seemed to know the procedures and said that all the legal requirements had been fulfilled; however, the attitudes of the police towards their protests diverged, something that could have been linked to the issues raised and the target of the claims being made. In the first case, everything went well:

Friends, colleagues of mine and I decided to organise a protest against the attack of ISIS on the city of As-suwaida. We informed the responsible authority and got permission for that. Signs and pictures condemning the attack were raised. The protest ran for about two hours and was completely peaceful and problem-free. In addition, the German police were there to protect us.

The second case, in which the target of the protest were the German authorities and their treatment of refugees, diverged in key respects:

We wanted to organise a protest to improve the situation of the refugees in a refugee hostel. The situation there was quasi inhumane. It was considered a reception centre and not a permanent residence. Despite its capacity to receive about 100 people, more than 800 refugees lived in it. Getting a permit for the protest was very difficult... We asked the help of our German friends, to make the permit in their name. After we had done the official procedures, we wanted to start our protest in the hostel. However, we were shocked by

the attitude of the German police, who were supposed to be there to protect us but turned against us. A couple of people from the Malteser organisation had been sent to the hostel a few hours before the protest to warn the refugees not to protest... They admitted that they got the order to threaten the refugees from the police. Because of these threats, the refugees were of course scared – that's why only 100 out of 400 people who had promised to protest took part. Furthermore, during the protest march, the police did not provide any protection against protest opponents. We were attacked and insulted in front of the police's eyes, without their doing anything against it.

A third interviewee who said he had taken part “in several demonstrations against AfD [Alternative for Germany] and other extremist parties,” explained that although overall they had gone well because “the police were always there to protect the demonstrations,” he felt that “counter-protests by nationalists or right-wing extremists were better protected by the police.”

Migrant workers in Mexico were far more likely than migrant workers in other countries to feel they would face either no consequences for protesting (31 per cent), or only workplace consequences (51 per cent). Roughly one in five (18 per cent) of interviewees in Mexico felt they would be detained or deported for protesting, the lowest among the countries surveyed.

Perceptions of public support for those protesting were mixed. In Germany, Jordan and Kenya roughly one in five migrant workers and refugees felt that the public support their protests. In Malaysia, only 19 per cent of migrant workers and 12 per cent of refugees said that they felt the public support their actions. As expressed by two refugees in Kenya, some widespread public perceptions related to migrants and refugees created hostility among the public in host countries, including the idea that foreigners “take up jobs” and that their presence “makes commodity prices [and particularly rent] go up.” In Germany in particular, there seems to be a divergence between public policy and public opinion: while the legal framework and the public policy in place support refugees' freedom of peaceful assembly, some segments of the public seem to be becoming increasingly hostile towards refugees.

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In Mexico, in contrast, both migrant workers (63 per cent) and refugees (36 per cent) tend to feel a level of public support. One refugee, for instance, declared that he felt that:

Mexico supported me since I arrived. I have felt the support of existing organisations. Thanks to them I was informed about my rights.

Another refugee in Mexico emphasised the fact that the 300-people caravan he was travelling with in October 2017 was allowed to proceed through the country without impediments.

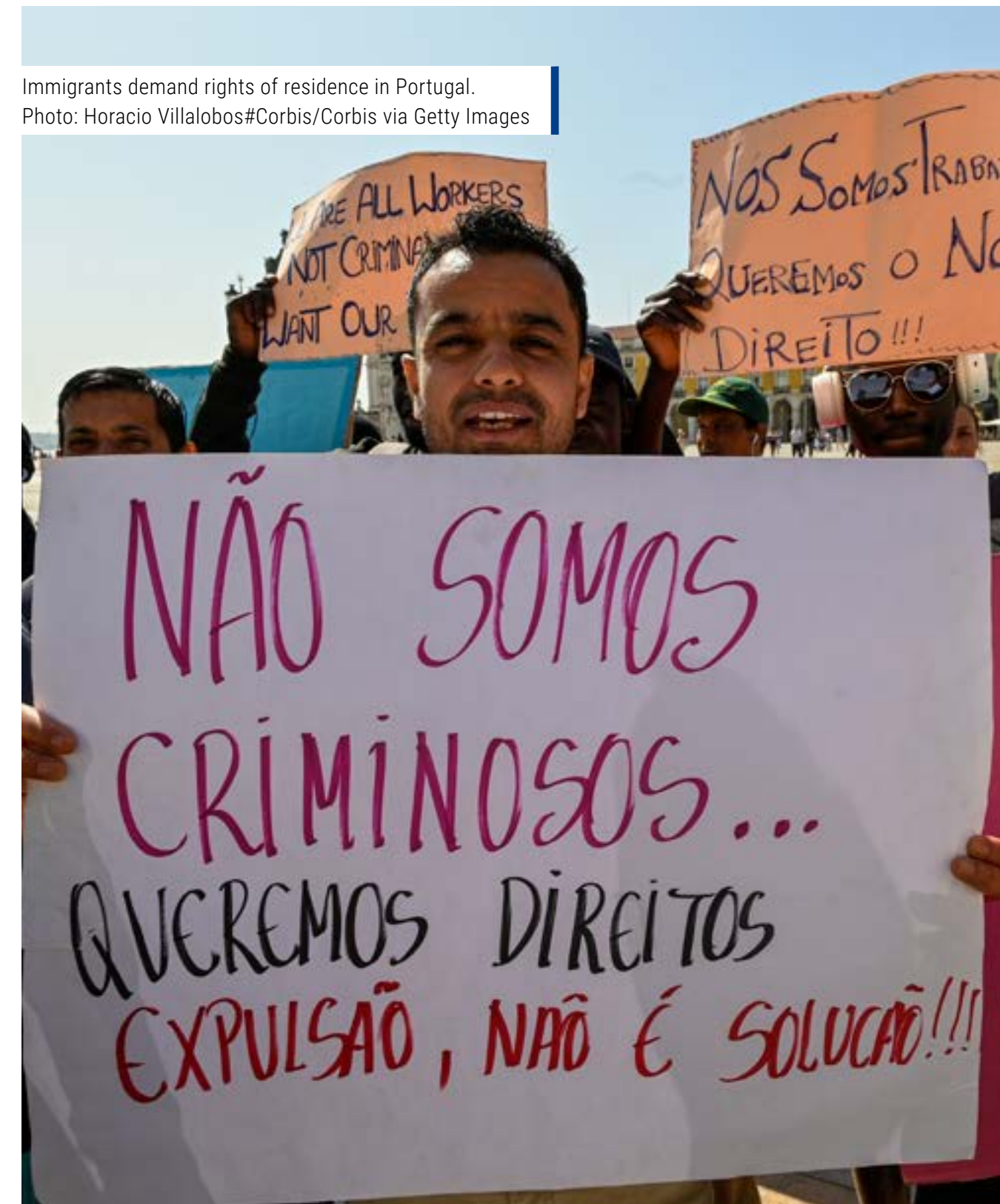
FREEDOM OF EXPRESSION

The freedom of expression includes the right to access information, critically evaluate and speak out against the policies and actions of state and non-state actors, and publicly draw attention to and carry out advocacy actions to promote shared concerns, without fear of retribution from any quarter. Under this right, CSOs, including trade unions, and other organisations are guaranteed the freedom to carry out investigations and document their findings.

Recognised as a fundamental right in the UDHR, ICCPR, UN Declaration on Human Rights Defenders, ILO Constitution and ILO Declaration of Philadelphia, the freedom of expression underpins most other rights and allows them to flourish. At the same time, groups that are already marginalised and discriminated against tend to face higher barriers to the exercise of the freedom of expression than the rest of the population, which helps feed the cycle of marginalisation and exclusion.

As with the freedoms of association and peaceful assembly, the prior exercise of the freedom of expression in home countries – expressed in interviews as experience of having signed a petition or attempted to influence the government – is tightly correlated with the likelihood of exercising this freedom in destination countries. However, a substantial variation is observed between migrant workers and refugees: refugees who had previously signed a petition in their home countries were almost 75 per cent more likely to do so in their host country than migrant workers who had also petitioned the government in their home countries (although this finding should be viewed carefully,

Immigrants demand rights of residence in Portugal.
Photo: Horacio Villalobos#Corbis/Corbis via Getty Images



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given that the refugee sample was skewed by the Germany-based group, made up exclusively of refugees and living in conditions of open civic space).

Women who had petitioned the government in their home countries were more likely to do so in their destination countries than their male counterparts who had also petitioned at home (around 30 per cent more likely). This held true both for migrant workers and refugees.

Barriers to the freedom of expression varied substantially across countries. In Germany, refugees pointed to language barriers (around 75 per cent regardless of gender) followed by a lack of access to information (around 38 per cent of both women and men) as the main challenges. Around one in 10 interviewed did not see any particular barriers (8 per cent of women and 18 per cent of men). Only 3 per cent cited the police force as a barrier. Overall (57 per cent of women and 67 per cent of men), respondents in Germany were highly confident in their ability to safely criticise authorities.

In Jordan, refugees mostly did not identify any applicable barriers to their freedom of expression (around 67 per cent, with no significant difference between women and men), mainly noting a lack of access to information (around 8 per cent both for women and men) as their main challenge. This contrasts with the perspectives of migrant workers in Jordan, who feel threatened with deportation or detention for speaking out (47 per cent of women and 72 per cent of men) and feel harassed or intimidated when they do speak out (32 per cent of women and 44 per cent of men). Only one in four migrant workers and one in three refugees in Jordan were confident in their ability to criticise the authorities safely.

In Kenya, refugees identified language barriers (73 per cent of women and 56 per cent of men) as their main challenge, followed by lack of access to information (43 per cent of women and 40 per cent of men) and harassment of refugees who express public opinions (35 per cent of women and 52 per cent of men). For migrant workers, the main challenge was that people felt threatened with expulsion from their work, deportation or detention for speaking out (62 per cent of women and 71 of men) and had been harassed or intimidated when they did speak out (62 per cent of women and 57 per cent of men). In Kenya, trust that the authorities would meet interviewees' needs was

the second worst in any of the five countries, with less than 10 per cent of migrant workers expressing confidence in their ability to criticise the authorities safely, and only one in nine refugees.

In Malaysia, refugees pointed to language barriers (73 of women and 58 per cent of men), followed by harassment of refugees who express public opinions (50 per cent of women and 48 per cent of men). More male refugees than women were concerned about legal action taken against journalists reporting on refugee issues (9 per cent of women compared to 30 per cent of men) and overall censorship of the media (16 per cent of women compared to 21 per cent of men). This contrasts with migrant workers, who felt threatened with expulsion from their work, deportation or detention for speaking out (50 per cent of women and 41 per cent of men) and harassed or intimidated when they did speak out (24 per cent of women and 43 per cent of men). Around 45 per cent of migrant workers interviewed in Malaysia also felt that language barriers were a key issue. Trust in the authorities to meet their needs was the lowest among refugee groups across the five countries, with only 4 per cent of respondents expressing confidence in their ability to criticise the authorities safely, a figure that stood at only 13 per cent of migrant workers.

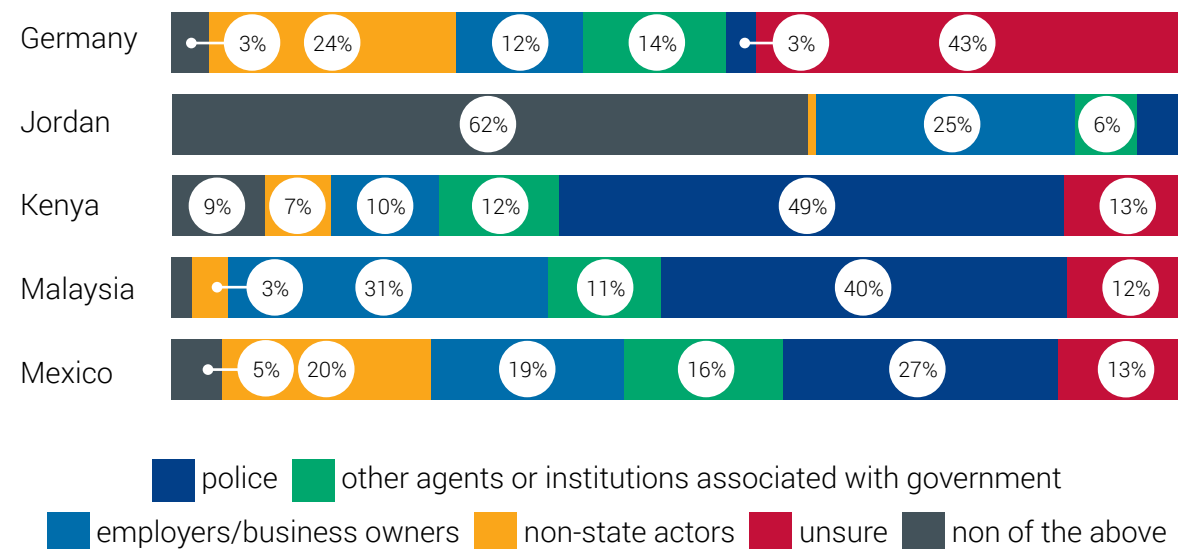
In Mexico, refugees highlighted as a key barrier the fear of being detained, deported or dismissed for expressing their opinions. There was a gender divide on this question, with more women (67 per cent to 56 per cent) expressing that concern than men. (However, it should be noted that the sample of refugee women in Mexico was very small (18) compared to the larger sample of refugee men (47), which could skew this result. The percentages expressed here also included responses for 'all of the above' being applicable barriers to the freedom of expression.) Approximately 30 per cent of male refugees felt that all the options for barriers to free speech given in the survey applied in Mexico. The second biggest concern of female refugees was the harassment of refugees who express their opinions. There was also a gender split among migrant workers in Mexico on the extent to which the fear of detention or deportation is a barrier to the freedom of expression: 80 per cent of women felt threatened with expulsion from work, deportation or detention for speaking out, compared to 45 per cent of men. It should be noted, however, that the sample of women migrant workers in Mexico was far smaller (5) than the sample of men migrant workers (49). Male migrant workers in Mexico also highlighted a lack of access to information and harassment as key issues. Trust in the authorities to meet their needs

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was comparatively high among refugees in Mexico, with 38 per cent of respondents expressing confidence in their ability to criticise the authorities safely; this compared to low trust among migrant workers, at 13 per cent.

There was wide variation across the countries and the two groups, migrant workers and refugees, when it came to identifying the actors responsible for the restrictions they face on their freedom of expression. In Germany, almost half of refugees interviewed (around 43 per cent of both women and men) could not pinpoint a particular entity or group responsible for violating their right to the freedom of expression, which made sense as most people pointed to situations – language barriers, followed by lack of access to information – rather than to direct acts of harassment, violence, or censorship, perpetrated against them. Around 25 per cent pointed to non-state actors, which roughly corresponds to the proportion of interviewees mentioning acts of harassment, intimidation, legal action, or censorship as barriers to the exercise of the freedom of expression.

CHART 11. MAIN FREEDOM OF EXPRESSION VIOLATORS, OVERALL (MIGRANTS AND REFUGEES)*



* Samples include both migrant workers and refugees in all cases except for Germany, where it includes only refugees.

In Jordan, almost all refugees interviewed (around 95 per cent of both women and men) could not pinpoint a particular party responsible for violating their right to the freedom of expression, while migrant workers mostly pointed to private sector employers (around 60 per cent of both women and men). In Kenya, the majority of refugees interviewed (around 53 per cent of both women and men) noted that the police were the main violators of their right to the freedom of expression, while migrant workers mostly identified private-sector employers (around 40 per cent of both women and men), followed by the police (around 30 per cent of both women and men). In Malaysia, the majority of refugees interviewed identified the police as the main violators of their right to the freedom of expression, while again migrant workers mostly pointed to private-sector employers (approximately 46 per cent of both women and men), followed by the police (approximately 32 per cent of both women and men). Finally in Mexico, the main violators of their freedom of expression reported by refugees were non-state actors (around 30 per cent of both women and men), followed by the police (around 25 per cent of both women and men). Migrant workers principally identified private-sector employers and the police (close to 30 per cent in both cases of both women and men).

In summary, overall the police and other government institutions, private employers and –notably in Germany and Mexico – non-state actors were identified as the main violators of the freedom of expression. Looking separately at migrant workers and refugees, however, the role of private-sector employers in restricting this right for migrant workers becomes clear. While in most cases refugees either could not point at a specific actor or identified non-state actors and the police as the main violators of the freedom of expression, migrant workers consistently pointed first at private-sector employers and secondly at the police force, which in many contexts is seen as more or less at the service of private employers and corporations.

STEREOTYPES AND MISPERCEPTIONS

Although this was not the specific focus of the interviews, across countries migrant workers and refugees took every chance they found to emphasise that they feel the burden of stereotypes and negative misperceptions. They reported that these weigh them down and they would like to have the opportunity to rectify them: to show the public, in the words of a refugee interviewed in Mexico “that we are dreamers and not

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An applicant fills out a form at a jobs fair for refugees at the Occupation Information Center in Germany. Photo: Sean Gallup/Getty Images

criminals, as they believe,” and, as pointed out by a Syrian refugee based in Germany, that a refugee is “a normal human being.” As the latter pointed out, however:

The word ‘refugee’ is always associated with the image of a foreigner who does not or could not belong to this society.

What ‘belonging’ means is something that respondents across countries repeatedly reflected on. Many insisted that in order to belong, they should be allowed to get their paperwork in order as soon as possible, and to get a job, school their children, rent a place to live or access a loan under the same conditions as everybody else. The goal, as a migrant worker in Kenya put it, is for them “to become like other Kenyans.” Several respondents insisted that they do their part by obeying the laws of the countries that received them, and that in this regard they are the opposite of criminals: they are law-abiding residents. They also said that their hosts should know about the “challenges,” “difficult experiences” and “terrible things” they went through, and should understand that, as a Central American refugee in Mexico put it:

We were all forced to flee our countries – to leave our jobs, our studies, our homes – not because we wanted to do that.

Finally, they insisted that their destination countries have much to gain from their presence. Several migrant workers in Kenya stated that they were giving back to the community by “helping those around us.” As a refugee in Mexico pointed out:

You come here for a better life and, and while doing that, you promote new ways of working and social progress.

These sentiments were summarised by another refugee interviewed in Kenya:

Refugees are human beings, and they have a lot of skill and potential. They are capable of bringing a lot of change in the community, but many are not given the opportunity. They have a lot of talent, but do not have the opportunity to use it.

CONCLUSIONS

EVERYONE SHOULD HAVE THE ability to exercise their fundamental freedoms. These freedoms are a prerequisite for participation in decision-making, democracy and the development of sustainable and inclusive societies, in which there are better policies to address the situation of migrant workers and refugees. Migrant workers and refugees must have the opportunity to come together, advocate for their well-being without fear of reprisal and hold states to account for delivering on their obligations under international law.

As noted by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, “States have obligations under international human rights law to ensure that everyone within their jurisdiction is able to exercise his or her rights. Those obligations include refraining from violating [civic freedoms and] workers’ rights, taking positive measures to fulfil the rights and protecting against violations by third parties.” Significantly, as stated by the UN Special Rapporteur, “Workers are entitled to the rights to freedom of peaceful assembly and of association regardless of their status within a country. Further, those rights are central to ensuring that workers can claim their rights to just and favourable conditions of work in the face of structural obstacles that keep them and their issues marginalized.” (UN 2016b)

The study presented here is exploratory and therefore preliminary, and more research needs to be conducted to deepen our understanding of the issues it has explored. However, it is clear from our findings that migrant workers and refugees want to participate in society and exercise their civic freedoms, and when they are able to do so, exercise them whenever, wherever and however they can. They do so to advance their enjoyment of other rights and improve their situations, acting out of need if not necessarily out of the full understanding that they are no less deserving of the rights to organise, protest and speak out than citizens are.

At the same time, according to our data, a large proportion of the migrant workers and refugees interviewed are not actively exercising their civic freedoms of association, peaceful assembly and expression in destination countries. Only in Germany did more than half of respondents participate in a protest. One reason behind this lack of participation may be that many migrant workers and refugees do not have enough knowledge of their destination countries’ national laws and international laws related

to civic space. In other words, they are not fully aware of their civic rights.

In response to the survey’s open questions, some people apologetically explained that if they had protested in their destination countries, they had done so out of need, but they thought it was not appropriate for them to ‘create trouble’ in a country that was not theirs. This suggested that they saw the exercise of these freedoms as a privilege recognised for certain categories of people, rather than a universal human right.

On the freedom of association, across all countries, this study identified previous experience of playing an active role in a CSO, including trade unions, in home countries as a predictor of engagement in CSOs in destination countries, both for both migrant workers and refugees.

Perceived barriers to the exercise of labour rights were found to vary across countries. For migrant workers, harassment or pressure from employers topped – or was tied – as the main issue for women and men in four countries, excluding Germany, where all respondents were refugees. These were followed by concerns over governments or employers not listening to the needs of respondents in most countries, both for women and men. Among refugees, the lack of resources was highlighted as a major limitation to organising.

As for the factors that seemed to influence the exercise of the freedom of peaceful assembly, it was observed that even in countries with perceived restrictions on safety and freedom, people with experience of protest participation in their home countries were more likely to protest in destination countries. Perceived safety also played a role: people were more likely to protest in countries where their assembly rights were better protected. But overall, a feeling prevailed among survey participants that the police do not do enough to protect them when they protest, and even in Germany, the country perceived as the least repressed, restrictions on the freedom of assembly were recorded. Among migrant workers, the biggest deterrents against protesting were the threats of deportation or detention. Additionally, perceptions of public support for those protesting were mixed, but the percentages of respondents who were confident that the public supported their protests were generally low. However, perceptions of lack of safety or support did not always function as a deterrent, as shown by the fact

CONCLUSIONS

that some groups – such as migrant workers in Malaysia – reported that they mobilised regardless.

Barriers to the freedom of expression varied substantially across countries, and in some cases diverged for migrant workers and refugees. In varying order depending on the country, the main barriers identified were language, lack of access to information, police activity, threat of deportation or detention for speaking out, harassment when speaking out, expulsion from work and media censorship. The confidence of respondents in their ability to criticise the authorities safely also varied from country to country: it was highest in Germany, followed by Jordan, Mexico, Kenya and Malaysia.

Where restrictions on the freedom of expression were seen as deriving from someone's actions rather than from a situation, such as a language barrier, the police and non-state actors were identified by refugees as the main violators; migrant workers consistently pointed first at private-sector employers and secondly at the police.



People demonstrate in Berlin, Germany, to demand safe passage for migrants as rescue ship approaches Lampedusa in July 2019. Photo: Sean Gallup/Getty Images

CALL TO ACTION

IN THE LIGHT OF these findings and the input directly provided by migrant workers and refugees, CIVICUS and Solidarity Center call on all states to create and maintain, in law and in practice, an enabling environment in accordance with the rights enshrined in the International Bill of Rights, the UN Migration Convention, ILO standards and other international laws and standards. The ability of people on the move to exercise their civic freedoms requires a comprehensive and holistic approach to the labour market and civic space. It requires policy coherence that recognises that migrant workers and refugees must be integrated into the economic, social and political spheres of their host or destination countries, and provided with opportunities to be enfranchised instead of marginalised as political actors. For instance, refugees' right to work must be accompanied with full rights at work.

In addition, as governments negotiate bilateral and multilateral trade and investment agreements that directly or indirectly impact on migrant workers and refugees, they must consult with trade unions, as part of social dialogue and tripartite processes, and others in civil society.

More specifically, the following recommendations are provided to help address the challenges experienced by migrant workers and refugees in trying to exercise their fundamental civic freedoms.

FREEDOM OF ASSOCIATION

- States should take measures to foster a safe, respectful and enabling environment for migrant workers and refugees, including by removing legal and policy measures that unwarrantedly limit their right to association.
- States should recognise in law and practice that all workers, regardless of status, have a right to associate freely, organise and bargain collectively. This means that migrant workers and refugees must be guaranteed the right to form or join unions or workers' associations to advocate for better wages and working conditions through collective bargaining and other means.
- States should ensure that everyone can exercise such rights in the workplace without discrimination based on the type of work, employment, workplace, enterprise or

sector, immigration status, or other limitations contrary to international law and standards.

- States should ensure that migrant workers and refugees are able to exercise their right to the freedom of association without fear of reprisals, intimidation, harassment, expulsion from their workplace, or threats of deportation or detention from their employers or state authorities.
- States should address the barriers that unwarrantedly limit the freedom of association of migrant workers and refugees, particularly those that arise from harassment or pressure from employers, lack of resources to organise, lack of attention to their needs from governments and employers, and barriers on their right to strike and bargain collectively.
- States and civil society should educate migrant workers prior to departure from their home country and after arrival in a destination country, and educate refugees on arrival in host countries, about their association rights, including the right to join unions or associations in their workplaces and communities.
- Trade unions should support the participation and engagement of migrant workers and refugees in their workplaces and organisations and help to channel their demands to states and employers.
- Diplomatic missions should take steps to support their nationals in host or destination countries to form unions or other associations to organise and advocate for their rights.
- Employers should ensure that migrant workers and refugees are provided with adequate time off to exercise their right to the freedom of association. Employers should halt all forms of harassment, intimidation, retaliation and abuses against migrant workers and refugees who work for exercising their right to the freedom of association.

CALL TO ACTION

FREEDOM OF PEACEFUL ASSEMBLY

- States should take positive measures to ensure that all migrant workers and refugees have the knowledge and ability to exercise their right to the freedom of peaceful assembly effectively, as provided for by domestic and international laws and standards, and ensure that there are no restrictions or discrimination in law and practice.
- States should instruct all police and law enforcement officials that it is their duty to facilitate peaceful assemblies involving migrant workers and refugees, and ensure steps are taken to ensure their safety.
- States should ensure that law enforcement authorities and non-state actors that violate the assembly rights of migrant workers and refugees are held accountable for such violations.

- Civil society should send a strong message to government leaders, civil servants and the media that hate speech, racism and xenophobia against migrant workers and refugees will not be tolerated.

FREEDOM OF EXPRESSION

- States should review all laws that restrict the rights of migrant workers and refugees to express their opinions or criticise the authorities, in line with best practices and international standards in the area of the freedom of expression.
- States and civil society should educate migrant workers and refugees about their right to the freedom of expression under international and domestic laws.
- States should address barriers faced by migrant workers and refugees against exercising their right to the freedom of expression, including language challenges and lack of access to information.



Search and rescue enters peak season for MOAS operations.
Photo: Chris McGrath/Getty Images

CALL TO ACTION

- States should ensure that migrant workers and refugees are able to exercise their right to the freedom of expression without fear of reprisals, intimidation, harassment, expulsion from their workplace, or threats of deportation or detention from their employers or state authorities.
- States should take action against perpetrators who impede or restrict migrant workers and refugees from speaking out, whether they be state or non-state actors, including private-sector employers, the police and other government agencies.
- Employers should halt all forms of harassment, intimidation and abuses against migrant workers and refugees who work for exercising their right to the freedom of expression.

INTERNATIONAL COMMITMENTS

- States should guarantee the fundamental freedom of all people on the move, regardless of their legal status, as provided for in the New York Declaration for Refugees and Migrants.
- States and international institutions should ensure that all bilateral and multilateral agreements related to migrant workers and refugees guarantee their civic freedoms and do not include provisions that allow for these freedoms to be restricted in law or in practice.
- States should ratify the 1951 UN Convention on Refugees, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the ILO Conventions on Freedom of Association, Right to Organize and Collective Bargaining (No. 87 and 98) and No. 189 on domestic workers.

Finally, CIVICUS and the Solidarity Center urge state representatives, activists and academics to foster and conduct more comprehensive and rigorous research on the civic space of migrant workers and refugees. As governments engage in the implementation of the two UN global compacts and make pledges to further their objectives, the respect of the fundamental civic freedoms – of association, peaceful assembly and expression – of migrant workers and refugees need to be ensured. Better policies will require a

better understanding of the factors enabling or limiting the exercise of these freedoms by migrant workers and refugees, which will in turn require further data collection and analysis and the constitution of a more robust body of research around these issues.



People across Germany demand safe passage for migrants in July 2019.
Photo: Sean Gallup/Getty Images

ANNEX: LITERATURE REVIEW

CRITICAL LITERATURE ON MIGRATION and human rights points out that international instruments on migration and refugees reflect the tension that exists between the recognition of the human right to migrate and the sovereignty of states to legislate on the extent and content of the rights enjoyed by foreign nationals within their territories. In that sense, migration is never fully recognised as a human right, for if it were, its exercise could not result in limitations on the exercise of other rights, which is indeed the case, given that foreigners do not enjoy the same rights as nationals.

Reports that examine the enjoyment and enforcement of the rights and freedoms recognised to migrants and refugees by international law, including by the UN and the ILO, tend to offer grim overviews. Whether migrant workers have migrated through irregular channels and are undocumented, or they are documented or have migrated in the context of temporary, circular or guest worker programmes, the usually encounter specific restrictions when trying to exercise the freedoms of association, peaceful assembly and expression (ILO 2015).

Reports place most focus on the freedom of association for migrant workers and refugees, both in general and pertaining to the right of migrant workers to join and organise unions. A 2016 report by the UN Special Rapporteur on the rights to freedoms of peaceful assembly and of association specifically highlights the precarious situation of migrant workers (UN 2016). This and other reports on the situation of migrant workers emphasise their condition not only as a severely exploited and socially excluded group, but also as a politically disenfranchised one.

According to the 2016 report, migrant workers are routinely subjected to abuses, including extremely low wages, denial of access to healthcare, leave and other social benefits, forced labour and slavery, forced isolation, restricted freedom of movement and lack of access to justice. Because they often are effectively, if not by law, barred from forming and joining unions and inhibited from protesting, they are unable to seek protection and remedies for these and other abuses. Despite being documented, temporary migrant workers are frequently charged high recruitment fees, which often leads to debt bondage, cheated of their wages, threatened, beaten, raped, starved and imprisoned. Some report having their passports confiscated by their employers; others report being fired and blacklisted for complaining of working conditions or attempting

to organise, as a result of which they must leave the country or face deportation. This is happening in specific economic sectors not only in countries with autocratic regimes, but also in global north democracies such as the UK and USA.

A similar situation is reported by Robertson (2008) in Malaysia, one of the five countries covered in our study. Robertson points out that the Trade Union Act disqualifies migrant workers from serving as union leaders and that work permits are issued to migrant workers upon conditions that include the prohibition of joining any sort of association. Although these restrictions are in violation of the Employment Act, they are also often written by employers into migrant workers' contracts, and their violation can be punished by termination, which leads to the revocation of a work permit and initiation of deportation proceedings. The threat of being fired and deported prompts fear and discourages any efforts of workers to organise for mutual support and assistance.

The 2016 report by the UN Special Rapporteur on the rights to freedoms of peaceful assembly and of association also compiles examples from Africa – such as a 2015 case of 245 Zimbabwean migrant workers who were harassed, intimidated and suffered retaliation and physical violence for organising to demand a wage increase on a vegetable farm in South Africa – and from Latin America – including a case in which migrant farmworkers at one of Mexico's biggest tomato exporters were physically assaulted when they complained about lack of food or tried to leave the workcamp where they were kept “as prisoners.” Several ILO reports highlight countless other cases, including that of Kuwait, where foreign workers – who make up 80 per cent of the labour force – can only join a union, without voting rights, after spending at least five years in the country and obtaining a certificate of morality and good behaviour. Additionally, they are not allowed to hold union positions, a restriction that is quite common in a number of countries (ILO 2004, 2009). A situation similar to Kuwait's was described by Keane and McGeehan (2008) in the United Arab Emirates.

There are fewer studies focusing on the exercise of the freedom of expression by migrants or refugees, but those that exist also emphasise the restrictions encountered, driven by similar factors. As pointed out by Andersson (2013) in relation to Uganda, fears of conflict and instability are being increasingly instrumentalised to reduce pluralism, including through limitations on refugees' civic freedoms. Andersson focused on the

ANNEX: LITERATURE REVIEW

Ugandan Refugees Act of 2006, which introduced restrictions on refugees' political rights, and specifically on their freedom of expression. According to two refugees' organisations interviewed in his research, "it is not allowed for refugees to think, speak or write about anything related to politics" (Andersson 2013). CSOs and journalists dealing with migration issues were also silenced.

The issue in the USA was recently discussed by Kagan (2015), who analysed a 2015 legal argument by lawyers of the Department of Justice in the federal district court in San Antonio, Texas, which stated that immigrants who were not legally admitted into the USA did not have free speech rights under the First Amendment. Kagan warned that this could have consequences for the millions of unauthorised immigrants in the USA, who could in the future be censored or punished for making their opinions heard. While arguing that everyone in the USA, including non-citizens regardless of their immigration status, enjoys the protection of the First Amendment, Kagan pointed out that immigrant free speech was quite precarious constitutionally, and concluded that "if a new President uses prosecutorial discretion aggressively against immigrants who are currently sheltered by the Obama Administration, it may become a serious crisis" (Kagan 2016).

Beyond the literature that focuses on migrant worker rights, and specifically on their exercise of the right to the freedom of association to unionise and bargain collectively, there is an abundant literature on the political engagement of immigrants and immigrant communities around the world. References to refugees, on the other hand, are limited and circumstantial, as this subgroup of people on the move is typically apprehended through the lens of humanitarian law rather than of civic and political rights.

Through a series of ethnographic studies, Reed-Danahay and Brettell (2008) examine the political engagement of immigrants in Europe and the USA, on the basis of the idea that "political incorporation entails not only naturalization and the rights and duties of legal citizenship, but political and civic engagement (or forms of 'active citizenship')." They focus on active or participatory citizenship and seek to portray immigrants as capable of agency. In that sense, they base their analysis on a distinction between citizenship as a legal status and citizenship as action (Kymlicka and Norman 1994) and recognise that people who have not yet "become citizens" in the legal sense of the term can in fact "be citizens" by acting as such (Castles and Davidson 2000). Often this



People march for migrant workers' rights on International Workers' Day.
Photo: David McNew/Getty Images

ANNEX: LITERATURE REVIEW

form of citizenship is exercised as a local level, and is facilitated by CSOs and social movements.

Case studies of immigrants' civic engagement and associational life, as well as of their structural and cultural determinations, go back a long way and include analyses of the experience of North African immigrants in France (Hamidi 2003), Vietnamese immigrants in Paris (Bousquet 1991), Turkish immigrants in Berlin (Yurdakul 2006), Chinese and Indian immigrants in New York City (Lin 1998, Rangaswamy 2000, Khandelwal 2002, Bretell 2005) and Vietnamese (Gold 1992, Hein 1995, Do 1999) and Mexican (Hardy-Fanta 1993, Jones-Correa 1998, Smith 2001, Escobar 2004, Bada, Fox and Selee 2006) immigrants across the USA. Activities engaged in by immigrants in associations in these studies have ranged widely, from solidarity and the provision of a variety of services, to advocacy (in favour of migrants in general or migrant workers in particular) and the organisation of collective action, including protests, both on domestic issues and issues concerning the homeland.

Although ethnographic studies of migrant community and organisational life are most frequent, there is also a growing number of analyses of migrant mobilisation and claims-making processes, including the experience of Latin American immigrants in the UK (Però 2008), anti-racist mobilisations in France (Gibb 2008) and immigrant students in the USA (Austin Hinton 2015). An interesting comparative analysis is provided by Kemp, Raijman et al. (2000) on the associations formed by African and Latin American migrants in Israel, who at that time accounted for around 30 per cent of migrants in the country, and the role of these organisations in political negotiations and struggles for access to nationality. Given the existing gaps in research, the authors prioritised the analysis of grassroots organisations and communities of undocumented migrants and inquired about the forms of political participation that democratic societies, and those aspiring to be, could offer migrants in a world that is being constantly changed by massive migration. This was informed by the view that while the state had not progressed much in recognising the political rights of foreigners, it had not prevented other forms of political participation, including autonomous, ground-up forms of participation through which migrants can negotiate their rights.

A takeaway from Kemp, Raijman et al. (2000) is that immigrants, including migrant workers and refugees, can make significant contributions when they break into the

public sphere to defend their rights. Particularly when their focus has been on the defence of human rights, they have been successful in unbundling rights from citizenship status, but in doing so, they have posed a real challenge to democracies, which must face the dilemma of whether to recognise the rights of undocumented people. The authors also conclude that the impact of migrants' demands depends heavily on their level of organisation, which is why African migrants in Israel have achieved more than Latin Americans.

As the number of people on the move has reached record levels, a new generation of literature on refugee and migrant protest and solidarity movements emerged to explore the multiple ways in which migrant activism is reconfiguring citizenship (Caraus 2018, Caraus and Paris 2019). A 2013 special issue of *Citizen Studies* focused on immigrant protests (Tyler and Marciniak 2013) and a 2016 special issue was dedicated to the processes of organisation and mobilisation by migrants, refugees and political allies in several border regions and countries around the world (Ataç, Rygiel and Stierl 2016). The self-organisation process and struggles by migrants and refugees for the right to stay in Germany were examined by Odugbesan and Schwiertz (2018), and other case studies were presented in Rosenberger, Stern and Merhaut (2018). The recent book edited by Bekaj and Antara (2018) on the political participation of refugees includes chapters on the involvement of refugees in CSOs and protests in two of the countries included in this study – Germany and Kenya – among others, while an article by Nah (2010) focuses on refugees in urban areas of Malaysia. Another country covered in this study is examined by Clarke (2017), who seeks to explain why Syrian refugees have staged very few protests in Lebanon and Turkey, while mobilising frequently and tenaciously in Jordan's Za'atari Camp. His analysis points to the concentration of a large number of refugees in the Za'atari Camp, along with the camp's fragmented and uncoordinated administration, which allowed for the emergence of autonomous leaderships and informal networks among refugees. The author concludes that, while at time the protests resulted in chaos and instability, they led to the establishment of more responsive and inclusive governance and welfare provision than elsewhere in the Middle East.

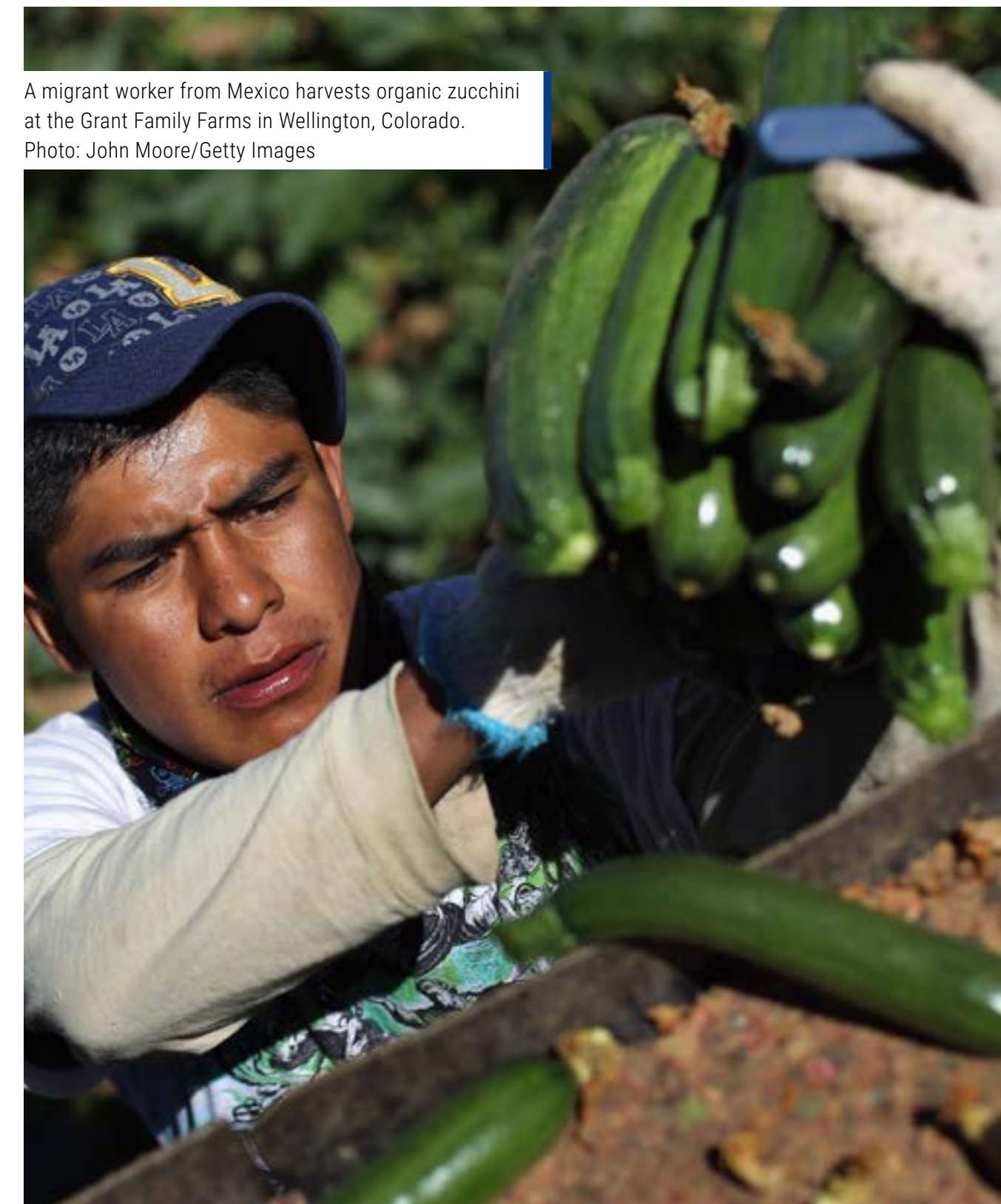
Finally, from the perspective of political theory and philosophy, much of the literature has emphasised the importance that the exercise of civic freedoms that are political in

ANNEX: LITERATURE REVIEW

character – the freedoms to organise collectively, form and voice opinions, and express them through various means, including through protest with the aim of influencing public decision-making – has for vulnerable populations who are constantly in need of safeguarding other rights that they enjoy precariously, including the most basic rights. However, it is precisely their vulnerable position that makes these groups less likely to exercise these rights. Not surprisingly, the academic debate goes on to question why these populations should be excluded from the exercise of other political rights, particularly voting rights, that are key to holding policy-makers accountable and can help guard against the characterisation of foreigners as scapegoats for a number of social evils, from insecurity, crime and disease to unemployment, overburdened social services and tax fraud.

Even democratic states that ostensibly address migration from a rights perspective have continued to reproduce hierarchies between nationals and foreigners, and among various categories of foreigners, resulting in the structuration of hierarchical forms of citizenship. As a general rule, immigrants, who participate in social life and contribute to the development of the societies they inhabit, are reduced to the status of “infra-citizens” (De Lucas 2006) or people who enjoy “membership without citizenship” (Brubaker 1989, Hammar 1990), while undocumented immigrants, who may enjoy some economic and social benefits but permanently risk deportation, are conceptualised as “margizens” (Martiniello 1994).

This brings to the fore the discussion of the meanings and interconnections of membership, citizenship and nationality (Faist 2000, Levitt and Glick Schiller 2004, Penchaszadeh 2012). As migration flows have increased, societies have tended to experience a separation between societal and political communities (Rubio Marín 2000). For democratic states, this poses a legitimacy challenge. In that sense, migration may offer a “democracy test” (De Lucas 2006). For several authors, the solution to the problem of the political exclusion of migrants would be to move towards the convergence of residence and citizenship (Brubaker 1989, Rubio Marín 2000, Ibarra Palafox 2006). Small steps in that direction have been taken by some states that allow some categories of resident non-nationals to participate in some, mostly local, elections (Groenendijk 2008), but much remains to be done.



A migrant worker from Mexico harvests organic zucchini at the Grant Family Farms in Wellington, Colorado.
Photo: John Moore/Getty Images

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