

Factsheet: Assembly & association rights in the workplace

Special Rapporteur Maina Kiai's report to the General Assembly, October 2016 (A/71/385)



Are labour rights different from other human rights?

No

Labour rights are fundamental human rights, enshrined in the same international instruments that protect our other rights (A/71/385, para 50-56). The right to form and join trade unions (which are a type of association) is explicitly mentioned in the three major international human rights documents: the [Universal Declaration of Human Rights](#), the [International Covenant on Civil and Political Rights](#) (ICCPR) and the [International Covenant on Economic, Social and Cultural Rights](#) (ICESCR). These same documents also enshrine the more general rights to freedom of peaceful assembly and of association, which protect everyone, including workers. The right to strike, meanwhile, is recognized in Art. 8 of the ICESCR, [International Labour Organization Convention No. 87](#) and customary international law, among others.

Are assembly and association rights important in the workplace?

Yes

The rights to freedom of peaceful assembly and association are the starting point for the exercise of all labour rights because they allow workers to meet, organize and have a collective voice (A/71/385, paras 2 and 17). When workers have the ability to form unions, bargain collectively and to strike, it levels the unequal relationship between workers and employers and lets them prevent or correct workplace abuses, negotiate fair wages, demand better working conditions and more (*Id.*, para 16). The need to maintain paid work is all-consuming for most people, leading them to accept less than ideal working conditions. Without the protection of assembly and association rights, workers have little power to change the conditions that entrench poverty, fuel inequality and limit democracy.

Are States doing enough to protect workers' assembly and association rights?

No

States increasingly promote labour markets that fundamentally depend on powerless workers and a low-wage environment. Employers and others who evade the law and disrespect standards are rarely punished; instead, they gain a competitive advantage over compliant employers, at the cost of workers' rights to freedom of peaceful assembly and association. The lack of effective cross-border and national legal and enforcement frameworks rewards and spreads noncompliance, even lawlessness. Violence by State and private actors against trade unionists and rights activists, including during peaceful strikes or demonstrations, make the realization of decent work impossible (A/71/385, para 13-14).

Do States have an obligation to facilitate workers' assembly and association rights?

Yes

International human rights law imposes upon States a positive obligation to actively respect, protect, promote, and facilitate the enjoyment of fundamental rights – including labour rights (A/70/266, para 4 and A/71/385, para 55). This means that States cannot take action to undermine rights, and that they cannot maintain a “neutral” or “hands-off” approach in response to third party actions that undermine these rights (A/HRC/32/36 Add.2, para. 68). Further, the notion that States should promote trade unionism amongst workers is implicit in the [ICESCR](#). States must also take measures to ensure that third parties do not interfere with union rights. A key obligation is for States to provide access to effective remedies for workers – especially those in vulnerable situations – who often lack legal recourse for rights violations (A/71/385, para 81).

Is the concentration of corporate power helping weaken labour rights?

Yes

Unconstrained power, whether public or private, is a critical threat to the protection of human rights, including workers' assembly and association rights (A/71/385, para 9). The dominance of multinational companies has driven structural changes in the global economy aimed at cutting costs, increasing corporate profits and decreasing respect for workers' rights (*Id.*, para 18). Production and the provision of services are divided amongst different locations with different employers in different countries. Lead firms have shifted production to companies in countries with lower labour costs and weaker regulations, putting pressure on manufacturers and service providers in global supply chains to cut costs. These structural shifts have drastically changed traditional employment relationships and systems. All of this has made it harder for workers to exercise their rights.

Are particular workers more at risk of assembly and association rights violations?

Yes

The report focuses on several groups that face some of the biggest challenges in exercising their assembly and association rights in the workplace: Migrant workers (A/71/385, paras 27-33), women workers (*Id.*, paras 34-44), supply chain workers (*Id.*, paras 22-26), informal workers (*Id.*, paras 19-21) and domestic workers (*Id.*, paras 45-49). Workers in each group face distinct challenges, though the membership of each group often overlaps (e.g., in the case of a migrant woman domestic worker). Some of these challenges are described in more detail on the back of this factsheet.

What is this report about?

This report examines the exercise and enjoyment of the rights to freedom of peaceful assembly and of association in the workplace, with a focus on the most marginalized portions of the world's labour force, including global supply chain workers, informal workers, migrant workers, domestic workers and women workers. Although States are obligated under international law to respect, protect and fulfil workers' assembly and association rights, the Special Rapporteur finds that many governments are failing dismally at this task (A/71/385, para 4). This failure has eviscerated critical tools in leveling the unequal relationship between workers and employers. This, in turn, is exacerbating broader problems such as global inequality, poverty, violence, child and forced labour, human trafficking and slavery (*Id.*).

How are assembly & association rights used at work?

All of workers' traditional tools for asserting their interests in the workplace are fundamentally rooted in the rights to freedom of peaceful assembly and of association: Trade unions, workers' associations, strikes, collective bargaining, and more.

Why are workers' rights so important now?

In recent decades, economic globalisation has led to growing productivity and wealth, but it has also contributed to severe inequality and to a dramatic rise in the power of large multinational corporations. At the same time, States' power to regulate these business entities has eroded. This new global economic order has had a profound impact on workers' ability to exercise their assembly and association rights. Labour's traditional tools for asserting rights have been significantly weakened across the globe. The majority of the world's workers are often excluded from national legal protective frameworks, and some are not even defined as “workers” (A/71/385, para 10 and 46). With the globalized economy changing at a lightning pace, the Special Rapporteur argues that the tools we use to protect to labour rights must adapt just as quickly.

Where can I find the report?

The report (A/71/385) is available at the following link: <http://freeassembly.net/reports/workers-rights> (and via OHCHR's site)

Factsheet: Assembly and association rights in the workplace

Special Rapporteur Maina Kiai's report to the General Assembly, October 2016 (A/71/385)

“OUR WORLD AND ITS GLOBALIZED ECONOMY ARE CHANGING AT A LIGHTNING PACE, AND IT IS CRITICAL THAT THE TOOLS WE USE TO PROTECT LABOUR RIGHTS ADAPT JUST AS QUICKLY. A FIRST STEP ... IS TO OBLITERATE THE ANTIQUATED AND ARTIFICIAL DISTINCTION BETWEEN LABOUR RIGHTS AND HUMAN RIGHTS GENERALLY. LABOUR RIGHTS ARE HUMAN RIGHTS.”

A/71/385, para 17

Migrant workers (paras 27-33)

Background: The ILO estimates that there are 150.3 million migrant workers globally today, most of whom migrate in search of economic opportunities.

Risks: Many migrants are denied assembly and association rights due to irregular status or inability to access legal remedies. This can lead to economic exploitation, social exclusion and political disenfranchisement. Many find themselves trafficked into conditions of forced labour or slavery, and most are effectively barred from forming and joining unions and are unable to advocate to improve wages and working conditions.

Example: Visas granted under the United States' H-2B work visa program are linked to a specific employer. H-2B visa recipients have reported being cheated of their wages, threatened, raped, starved and imprisoned. If the worker is fired - even unlawfully, for exercising their assembly or association rights – they face prompt deportation, making many workers fearful of exercising their rights.

Domestic workers (paras 45-49)

Background: Situated at the intersections of gender, race, migration and informality, most domestic workers are excluded from the right to freedom of peaceful assembly and association. The ILO estimates that 67 million people globally are domestic workers; 80% are women.

Risks: Many countries do not recognise domestic labourers as “workers” under the law, meaning they have little ability to exercise their assembly and association rights at work. Migrant domestic workers are typically worst off, and can be subject to extreme abuses, including forced labour, trafficking and gender-based violence. The isolation inherent in private home settings often prevents them from organizing to defend their rights.

Example: A number of jurisdictions exempt domestic workers from laws covering trade union representation, including Canada (Ontario), Ethiopia and Jordan.

Women workers (paras 34-44)

Background: About half of the world's women are in the labour force, though on average they only make 77% of what men earn.

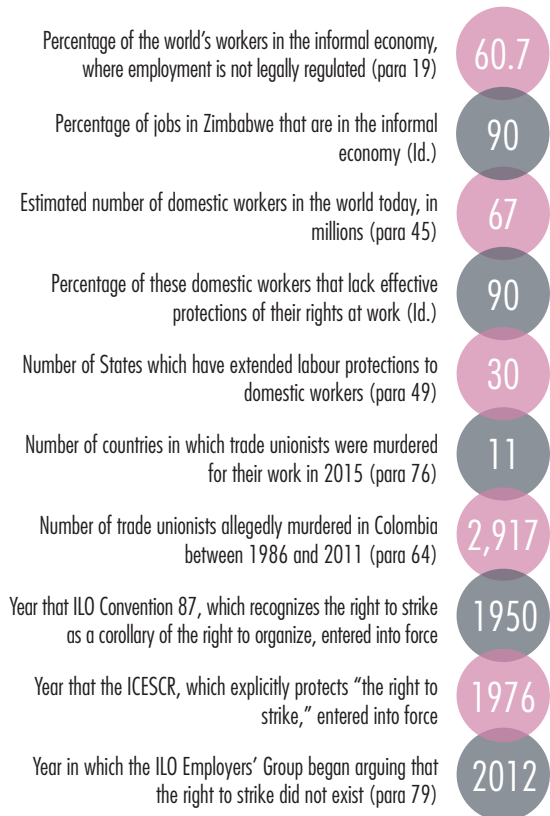
Risks: Three-quarters of the world's working women labour in informal and unprotected work, meaning they are far less likely than men to be in trade unions and enjoy their assembly and association rights. Further, many jobs done by women are concentrated in low-wage work where labour law protections are scarce. Women can also face gender-based violence at work including physical abuse, verbal threats, bullying, sexual harassment and more.

Example: Women union leaders in Guatemala are “especially targeted” with threats and violence, and report being punched to force miscarriages and abductions.

Selected recommendations from the report (paras 94-102)

- **States:** Ensure that assembly and association rights can be exercised in the workplace by everyone without any distinction whatsoever
- **States:** Take affirmative measures to ensure that workers in vulnerable situations have the ability to exercise effectively their assembly and association rights;
- **States:** Ensure effective remedies for the violation of peaceful assembly and association rights that are available to all and not subject to migration status;
- **States:** Uphold the protection of workers' rights in trade and investment agreements and ensure that non-State actors, particularly businesses, comply with international human rights norms and standards.
- **Civil society:** Commit to the idea that labour rights are human rights, and recognize the need for human rights organizations to work on labour issues as a part of their core mandates.

By the numbers: Assembly & association rights in the workplace



Paragraph citations refer to the report: [A/71/385](#)