



Regulating recruitment of migrant workers:

A policy position paper of the ASEAN
Confederation of Employers

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About ASEAN Confederation of Employers (ACE):

The ASEAN Confederation of Employers (ACE) was established in 1978 and represented by Employers' Organizations in ASEAN, to optimize liaison, co-operation and representation in the fields of labour and social legislation, industrial relations and practices.

The five founding members, Employers' Association of Indonesia (APINDO), Employers' Confederation of The Philippines (ECOP), Employers' Confederation of Thailand (ECOT), Malaysian Employers Federation (MEF), and Singapore National Employers Federation (SNEF), firmly supporting the fundamental objectives of ASEAN in its pursuits of effective measure for regional economic co-operation, declared their agreement to unite and establish the ASEAN Confederation of Employers. The Cambodian Federation of Employers and Business Associations (CAMFEBA) later became a member of ACE in 2004.

ACE is governed and administered by a Board of Directors consisting of a designated representative from each member. The President holds office for a period of two-years at which point it is rotated amongst the board members. Annual meetings for the Board and Chief Executive Officers take place. Overall ACE's objectives are to:

- safeguard and promote the interests of ASEAN employers;
- collate and disseminate information on legislative changes and general developments in the fields of labour, social and economic matters, which are likely to affect the interests of employers;
- foster closer relations and co-operation between and among the members, and to render mutual assistance in matters of common interest;
- maintain closer relations and co-operation with regional and international organizations having similar aims and objectives;
- promote harmonious industrial relations, help maintain peace, and encourage improved productivity; and
- coordinate the views of members and to represent their views at regional and international levels.

About International Labour Organization's Bureau for Employers' Activities:

The Bureau for Employers' Activities (ACT/EMP) is the specialized unit within the International Labour Organization that maintains direct and close relationships with employers' organizations. Employers' organizations advance the collective interests of employers at country and regional levels. ACT/EMP assists employers' organizations with becoming strong representative organizations that help to shape conducive business environments.

About ILO Tripartite Action for the Protection and Promotion of Rights of Migrant Workers (ASEAN TRIANGLE Project):

The ASEAN TRIANGLE Project (ATP) was launched in April 2012 and aims to increase labour rights protection, labour mobility, and decent work opportunities for women and men migrant workers in the ASEAN Region. ATP promotes regional approaches to address shared concerns, makes regionalism more effective and enhances the capacity of institutions, such as the regional representative bodies of workers' and employers' organizations, in the ASEAN region. The ATP promotes close engagement with social partners on all aspects of migration management and one of its three objectives is to enhance the capacity of social partners to influence labour migration policy and protect the rights of women and men migrant workers.

Overview

In recent years, labour migration flows within and from South East Asia have grown in volume and complexity. According to the World Bank the stock of international migrants has been estimated at 247 million in 2013 and it is expected to surpass 250 million in 2015.¹ The number of migrant workers departing ASEAN countries each year is estimated to be over 14 million and the number of documented migrant workers within the region is close to 6 million.² Business and its representatives are key stakeholders in the migration process and it is imperative for national business communities across the ASEAN region to prepare for ASEAN Economic Community (AEC) in 2015.

In order to fully engage employers' organizations in the ASEAN processes on labour migration, an Action Plan was developed for the employers' component of the ATP. Overall the Action Plan entailed regional meetings, trainings, policy work and research work undertaken with the main implementing partners ACE together with ten national employers' organizations: National Chamber of Commerce and Industry Brunei Darussalam; Cambodian Federation of Employers and Business Associations (CAMFEBA); Employers' Association of Indonesia (APINDO); Laos National Chamber of Commerce and Industry (LNCCI); Malaysian Employers Federation (MEF); Myanmar Federation of Chambers of Commerce and Industry (UMFCCI); Employers' Confederation of The Philippines (ECOP); Singapore National Employers Federation (SNEF); Employers' Confederation of Thailand (ECOT); Viet Nam Chamber of Commerce and Industry (VCCI). The activities aimed at strengthening the voice of employers, through ACE, at national and regional level policy discussions on labour migration. This 3-year ATP programme with ACE was designed to have a relevant impact at regional level and has three main objectives:

1. To strengthen the capacity of ACE and its members to engage in effective policy dialogues based on empirical evidence to promote a sound governance framework for Mobility and Migration in the ASEAN region.
2. To strengthen the capacity of ACE to convene members around labour migration-related issues, in order to raise awareness and share good practices among them.
3. To develop regional guidelines and other tools and products that can be customized at the national level by employers' organizations into demand driven products that can practically assist enterprises.

¹ The World Bank. 2015. *Migration and remittances: Recent developments and outlook* (Washington DC, World Bank)

² UNDP. 2015. *The right to health: the right to health for low-skilled labour migrants in the ASEAN countries*. (Bangkok, UNDP).

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- Five priority areas were identified by ACE in relation to labour migration and mobility with regional employers' workshops convened for each of them. These were:
- The role of employers' organizations in matching skills and increasing mobility across the ASEAN region – 6 November 2013, Bali, Indonesia
- Increasing productivity through enhancing the safety and health of migrant workers – 29 - 30 April 2014, Bangkok, Thailand
- The role of the recruitment sector in facilitating more effective ASEAN intra-regional labour mobility - 6-7 November 2014, Bangkok, Thailand
- Businesses' perspective on addressing forced labour in ASEAN migration – reputational risks and practical responses– 31 March – 1 April 2015, Bangkok, Thailand
- Managing diversity and workplace integration in the ASEAN countries – 2016

This publication presents the ACE policy position paper on **the policy and regulatory environment for recruiting, placing and protecting ASEAN migrant workers** that was drafted, discussed and adapted during the regional workshop. A background paper that was used for the meeting can be found in the accompanying publication *Managing labour mobility: Opportunities and challenges for employers in the ASEAN region*. Through presentations by regional and global experts and open discussion between ASEAN employers, the workshop aimed to:

- provide a better understanding of the recruitment industry and the opportunities it can provide to facilitate more effective labour market outcomes, nationally and across the ASEAN region;
- increase businesses' understanding of the implications of having regional recruitment infrastructure conducive to the freer flow of labour; and
- enable ASEAN employers' organizations to identify priority issues related to recruiting workers leading up to the AEC 2015 and to develop draft policy positions to address each issue.

ACE policy position paper on the policy and regulatory environment for recruiting, placing and protecting ASEAN migrant workers

Background

In preparation for the ASEAN economic integration in 2015 the ASEAN Confederation of Employers (ACE) adopted an Employers' policy framework for sustainable labour migration in the ASEAN region. This framework identifies five key areas requiring the attention of ASEAN businesses and policymakers in order to achieve effective labour mobility in 2015 and beyond:

- better matching of employers' skills needs and increasing mobility across the ASEAN region;
- increasing productivity through enhancing migrant workers' safety and health at the workplace;
- effective recruitment procedures to facilitate labour migration;
- enhancing competitiveness through embracing diversity; and
- a commitment to combating forced labour and human trafficking.

The ASEAN employers strongly believe that promoting labour mobility is crucial for all workers regardless of their skill levels. However, to date, there are two dynamics running at parallel at the regional level regarding labour movement. One concerns higher skilled workers, where the aim is to improve their mobility in conjunction with the ASEAN Economic Community (AEC). The other concerns low- and semi-skilled workers, where the approach is aimed at protection and promotion of their rights and less on promoting their mobility.

At the same time, concrete progress made on promoting labour mobility, even for the higher-skilled workers, has been limited, largely due to restrictive national laws and regulations on employment of foreigners in the ASEAN Member States.

As for low- and semi-skilled workers, while attempting to protect and promote their rights, recruitment process in some countries and/or for some sectors are laden with bureaucracies, impeding these workers' labour mobility while not necessarily improving their protection.

Indeed, labour mobility within the ASEAN region must be taken seriously. Labour mobility can benefit both labour-receiving and labour-sending countries and their workers if well managed. ASEAN governments need to establish a vision of what mobility is, focus on legal

and regulatory changes to facilitate mobility and optimise the benefits it can bring to ASEAN economies and its people.

ASEAN employers should be actively involved in the formulation of national labour migration laws, policies and procedures concerning recruitment and admissions of migrant workers, as any change in policy could affect their manpower planning. Hence, this paper, that outlines in broader detail ASEAN employers' policy positions on recruitment, is pertinent. It can be taken forward by ACE members when engaging with policy makers on necessary reforms, policies and programmes required for enabling effective labour mobility and protecting ASEAN migrant workers.

ACE policy positions on improving the environment for recruiting, placing and protecting ASEAN migrant workers

In order to facilitate labour mobility while protecting ASEAN migrant workers and employers involved in cross-border recruitment, the ASEAN governments should:

- Set a three-pronged goal - made up of facilitating labour mobility, protecting workers and protecting employers - and clearly orientate each policy and regulation concerning cross-border recruitment in ASEAN around these three prongs. This includes revisiting existing national legislations to assess them vis-a-vis their relevance to these three pillars.
- Put in place predictable, accessible and simplified policies, regulations and administrative procedures - since uncertainty, cumbersome or incomprehensible requirements open doors for malpractices, exploitations and violations, and prompt actors to seek less legal or formalized methods to bypass bureaucracies in order to speed up the process.
- Ensure transparency of policies and regulations and widely disseminate information on them. One- stop centres should be created and expanded to enable potential and existing migrant workers, employers and recruitment agencies to access information on policy and regulatory requirements, and their individual rights, roles and responsibilities. A database identifying good employers and recruitment agents should be built and made accessible to all; this also provides incentives to be good employers and recruitment agents.
- Build incentive mechanisms into regulatory structures to incentivize employers and recruitment agencies to comply with laws and regulations and to adopt good practices.
- Take into consideration capacities to enforce regulations when designing them to ensure they remain realistic and impactful. Legal and enforcement infrastructures need to be strengthened alongside changes to regulations. This should include putting in place heavy penalties and enforcing them to prevent government personnel involved in the recruitment process from exploiting their positions.
- Adopt a broad based perspective by considering other policies and regulations related to labour mobility, such as wage policies towards foreign workers, as they can have indirect impacts on the dynamics in cross-border recruitment.

ASEAN governments should take a coordinated approach - mismatches between national policies and regulations with respect to cross-border recruitment fuel manipulations by unscrupulous actors. Some actions ASEAN governments can take to reinforce co-ordinations are:

- creating standards within the ASEAN framework to be followed by all ASEAN

members, such as on eliminating child labour and forced labour, and referencing the relevant ILO labour standards where applicable;

- establishing common mechanism to enforce compliance. This is particularly important to overcome issues of multiple jurisdictions involved in cross-border recruitment. Discussions should start by first evaluating what such a common mechanism should mean and how it can be established;
- expanding the 1998 Hanoi Plan³ for a more cohesive and less abusive ASEAN region and extend to less skilled workers in order to address abuses. Technical assistance from the International Labour Office, involving consultations with workers and employers in this region, could be useful; and
- shifting mindsets to see each other as collaborators rather than competitors. Win-win situations can be created with collaborations, without having to compromise national competitiveness, which in the global economy today goes beyond cost competitions.

Recruitment agencies facilitate labour mobility by providing information, matching assistance and logistical support. They act as coordinators of the recruitment process and their presence is necessary to cope with the distance between labour supply and demand. However, ASEAN employers acknowledge that laws regulating recruitment agencies sometimes present serious gaps that could lead to malpractices and abuses. To better regulate recruitment agencies:

- each country should create or strengthen national recruitment agency regulatory frameworks to ensure accountable, transparent and responsible recruitment agencies; and
- ASEAN Member States can come together to establish a regional common code of conduct for recruitment agencies, referencing international standards such as the ILO Private Employment Agencies Convention, 1997 (No. 181) and its associated Recommendation 188. This can help to reduce mismatches between policies and regulations.

In designing and implementing policies and regulations related to recruitment, the ASEAN governments should consult actors on the ground, such as employers, recruitment agencies and workers, in order to understand the realities of labour migration to prevent designing counterproductive policies and risk expanding informal economy where rules and regulations are harder to apply. Effective action will require working relationships between governments, business and other non-state actors to produce a coordinated approach. A multi-stakeholder perspective is needed in regulating the recruitment process to ensure both the needs of migrant workers and employers are heeded.

³ ASEAN Secretariat. 1998. "Hanoi Plan of Action." Available at <http://www.asean.org/news/item/hanoi-plan-of-action> [25 July 2015]

Some initiatives ASEAN governments can embark on that involve other actors:

- engage media, employers, recruitment agencies and migrant workers' centres to raise awareness and improve perception of migrant workers, mitigating prejudice against them;
- work closely with recruitment agencies to tap on the information advantage they possess due to their roles of being intermediaries;
- identify a set of common policies or regulations for the adoption of tripartite partners that is applicable to both labour sending and receiving countries; and
- institutionalize consultation mechanisms at the regional and national level to ensure employers' voices are heard, given they are the clients of recruitment agencies and/or are the actors directly involved in the recruitment process. Such consultations need to be on an ongoing basis to enable feedback mechanisms for continuous improvements. Indeed, business have strong interests in ensuring workers are recruited through proper channels and are not exploited or abused in the recruitment process, since it can affect workers' productivity and companies' reputations.

Ultimately, full commitment from ASEAN governments is needed. Governments must initiate and lead the changes ahead because political will is crucial for the success of any policies and regulations. Governments have a clear obligation to protect human rights, including those of migrant workers. Governments are the primary duty bearers under international law.

Employers, on the other hand, must respect national laws and regulations where they operate. Where employers recruit from another country, they must also respect the laws, regulations and practices of the source countries. Employers have responsibilities and roles to ensure, within the best of their capacities, that they obtain employees through proper channels and that migrant workers are protected during the recruitment process.

While some employers have more resources and capacities to monitor their labour supply chains and have developed sophisticated approaches to monitor the recruitment process, there is a limit to how much they can do, given they are not in the source countries themselves. The real possibilities for employers to influence the labour supply chains are very varied and depend especially on the number of agents and sub-agents, structure and complexity of the labour supply chains as well as on the personnel and financial capacities of the companies. Other actors need to realise that there are limits to what business and employers who are at the end of the labour supply chain can do and should frame their expectations grounded in reality.

Furthermore, efforts by employers to protect and promote the rights of migrant workers should not divert attention from the urgent need for national governments to create the underlying legal framework for protecting and promoting the rights of migrant workers and to take action when those rights are denied.

Next steps for ACE and national employer organizations:

To enhance labour mobility while protecting workers and employers in cross-border recruitment, ACE and its member organizations will commit to the following actions:

- provide a platform for best practice sharing between member companies;
- publicize good practices by member companies to encourage other companies to do the same;
- build business case for small- and medium-sized enterprises to improve their recruitment practices;
- raise awareness of recruitment policies and regulations across ASEAN countries through its meetings and websites;
- identify responsible and accountable recruitment agencies and inform employers through media engagements, seminars etc;
- actively engage in policy dialogues on labour migration at the regional level;
- seek to develop regional guidelines and tools to practically guide enterprises seeking to lawfully recruit migrant workers; and
- organize activities, both national and regional, to educate human resource and hiring managers of member companies on good recruitment practices.

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This publication presents the ASEAN Confederation of Employers policy position paper on hiring migrant workers in ASEAN countries. This document was agreed upon and drafted as a result of a technical workshop on hiring migrant workers held for the employers' component of the ASEAN TRIANGLE project on 6-7 November 2014.

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