



# Forced labour and human trafficking:

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.

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## **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.

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## **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.<sup>1</sup> 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.<sup>2</sup> 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.

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

<sup>2</sup> 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 **forced labour in migration** 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 risk of forced labour in a company's operations and in the supply chain, nationally and across the ASEAN region;
- increase businesses' understanding of the business case against forced labour; and
- enable ASEAN employers' organizations to identify priority issues related to forced labour in ASEAN, labour migration and develop policy positions to address each issue.

# ACE policy position paper: Forced labour in migration in ASEAN countries

## 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 in 2013. 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 labour mobility across the ASEAN region;
- increasing productivity through enhancing migrant workers' safety and health at the workplace;
- effective recruitment procedures to facilitate labour migration;
- a commitment to combating Forced Labour and human trafficking, and
- enhancing competitiveness through embracing diversity.

The ACE employers' framework for sustainable labour migration in the ASEAN region signals ACE's firm opposition to any form of exploitation and abuse of migrant workers and its commitment to the goal of combating forced labour and human trafficking.

ACE and its members recognise the strong business case for employers to address and prevent forced labour:

- Forced labour is morally unacceptable.
- Forced labour is a criminal act in both international and national laws across all ASEAN countries; failing to comply with legal obligations can lead to both criminal prosecutions and sanctions.
- Forced labour practices can lead to imposition of sanctions by trade partners; increasingly more trade policies include labour provisions, including binding prohibition of forced labour which if violated can result in trade barriers.
- A workplace free from forced labour is both an attractive attribute to reputation-sensitive buyers and a fundamental requirement by global buyers in their supply chains. Compliance may lead to commercial gains, such as more businesses and awarding of licenses to use a global brand name, while systematic failure to comply may lead to reduction in orders or even termination of contracts.

- The financial case for ensuring operations are free from forced labour is compelling given investors and financial institutions – with the objective of promoting responsible investment - are including social criteria such as labour standards in their assessments. Forced labour practices deter potential investors as well as cause existing investors to divest from the company, sector, or country.
- The reputational cost of associating with forced labour allegations or findings is high, reflected through fall in sales and share prices, and because forced labour practices by one player can tarnish the whole industry and/or country.
- Forced labour tilts the playing field in favour of unscrupulous employers who benefitted from large illicit profits and artificially low labour costs to gain price competitiveness and win more businesses.
- Forced labour is one of the core labour standards, and appropriate application of core labour standards is found to enhance labour productivity, when sound and timely government regulatory and support policies are in place.<sup>3</sup> Furthermore, business in compliance may receive beyond-compliance trainings from buyers to improve their efficiencies and hence productivity.
- Forced labour practices may lead to new cost items for business which were previously unaccounted for, such as increase in audit fees and/or penalties for violation imposed by buyers and governments.

This policy statement consolidates ACE's perspectives on the roles of ASEAN governments in supporting employers' efforts to address and prevent forced labour in labour migration. It can be taken forward by ACE members when engaging in policy discussions.

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<sup>3</sup> Area of critical importance on productivity and working conditions in small and medium-sized enterprises. GB.320/POL/2. 12 Feb 2014. 320th session, Geneva, 13-27 March 2014. International Labour Office.

# ACE policy proposals to governments

Governments must ensure that the recruitment of foreign workers is carried out through proper legal channels and that workers are afforded all the legal protections they are entitled to.

It is the primary duty of governments to uphold human rights, consistent with international standards, including those of migrant workers, and to create an enabling legal and policy environment (including clear and consistent guidelines) for eradicating forced or compulsory labour and trafficking of people.

Governments must initiate and lead efforts for effective and sustainable policy, regulatory and behavioural changes needed to more effectively and efficiently address and prevent forced labour and human trafficking. When doing so, governments should engage and consult stakeholders on the ground, including employers' and workers' organizations, in a timely manner to ensure employers' perspectives are heard and to find ways to support employers in fulfilling expectations on them to prevent and address forced labour.

This policy statement proposes that ASEAN governments adopt a four-pronged approach in addressing and preventing forced labour and human trafficking:

1. addressing root causes;
2. ensuring comprehensive and conducive policies and regulations;
3. strengthening enforcements and where applicable, monitoring and reporting; and
4. establishing partnerships, which include all the relevant stakeholders, to engage in consultations.

ACE believes that combating root causes of forced labour is necessary to bring about long-term change. ASEAN governments should:

- promote economic development in their countries and the ASEAN sub-region, given continued economic development is needed to create decent and productive employment opportunities;
- strengthen social protection to promote individual resilience to sudden income shocks which may lead individuals to accept jobs even under exploitative conditions. Here, it must be noted that social protection programmes should be fiscally sustainable, targeted and accessible;
- promote access to quality education for all, especially on ensuring literacy; and
- disseminate information widely, as information asymmetry may subject individuals to deceptions and manipulations, and generate fear. This can be done through seminars to educate potential migrant workers and their employers on rights and responsibilities, and through establishing one-stop centres.

Policies and regulations need to be comprehensive and cohesive to be impactful and efficient. ASEAN governments should:

- when regulating private recruitment agencies, simultaneously raise entry barriers into the industry to prevent forced labour resulting from intense competition;
- go beyond stick-only approach to embed incentives to encourage best practices of employers and recruitment agencies;
- support due diligence by the private sector to prevent and respond to risks of forced labour; and
- ensure labour mobility is not compromised and the environment for cross-border recruitment remains conducive for employers to fill manpower needs.

To strengthen enforcements, ASEAN governments should:

- treat all workers fairly in the enforcement, regardless of their legal statuses, to send a strong message that exploitation of undocumented workers is not tolerated;
- simplify policies, regulations and administrative procedures and make them predictable and accessible, given uncertainty and cumbersome or incomprehensive requirements may generate malpractices;
- take into consideration capacities to enforce regulations to ensure regulations are credible, realistic and impactful;
- facilitate business registration as it enables law enforcement, since it is difficult to reach out to firms that are not known to exist; and
- besides punishing those exploiting workers and making illegal profits from forced labour, also apply heavy penalties to tackle bribes and corruption by government personnel involved in recruitment and migration process.

Finally, partnerships are crucial; partnerships can increase outreach and help create synergies. This includes partnerships and dialogues with national actors as well as between governments.

At the national level, each ASEAN government should:

- establish national action plans to address and prevent forced labour in labour migration in consultation with employers' and workers' organizations to obtain their perspectives and their buy-in, and to identify existing work by the social partners that can be built on to enhance impacts; and
- work with trade partners, especially on capacity building, to eliminate forced labour.



At the regional level, governments should:

- align stance, policy and legislations regarding forced labour across the ASEAN sub-region to prevent arbitrage between jurisdictions;
- cooperate to educate and raise awareness of workers and employers on their rights and responsibilities;
- standardize and exchange data collection method across ASEAN to enable more reliable regional figures to measure trends, better understand risk factors and identify areas for co-operations;
- collaborate on rehabilitation plans for victims of forced labour and human trafficking;
- expand the 1998 Hanoi Plan<sup>4</sup> for a more cohesive ASEAN region and extend to less skilled workers. Technical assistance from the International Labour Office and other relevant agencies, involving consultations with workers' and employers' organizations in this region, could be useful;
- shift 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; and
- keep communication channels open between governments to update each other of any discoveries of wrongdoings and illegal recruiters and employers.

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<sup>4</sup> ASEAN Secretariat, 1998, Hanoi Plan of Action, available at <http://www.asean.org/news/item/hanoi-plan-of-action> [25 Jul. 2015]

# Next steps for ACE and national employer organizations:

ACE's member organizations, which are national employers' organizations, have supported the adoption of the ILO Conventions against forced labour.<sup>5</sup> As constituents of the ILO, employers will be part of the development of the ILO framework for action for the implementation of the new Protocol to the Forced Labour Convention, 1930 (No. 29) and its accompanying Recommendation.

ACE will continue to support and engage with other stakeholders to address and prevent forced labour. ACE will focus on the following three areas of work, particularly for the main sectors at risk of forced labour.

## 1. Provide information and guidance to support its member organizations' efforts, through:

- awareness-raising campaigns to improve knowledge of the forced labour issue and to strengthen the business case for action;
- clear guidance to enterprise and association members on different forms of forced labour, different national labour practices, ways it can be identified and the remedial actions that can be taken by businesses;
- advice on relevant legislations; and
- capacity building on core labour standards, key international instruments and buyers' code of conduct related to the elimination of forced labour and explaining to firms how these instruments impact on their operations.

## 2. Represent ASEAN employers to engage relevant stakeholders. For example:

- organize or participate in forums to promote mutual understanding of the expectations and requirements of global buyers, and through the forums, discuss ways in which buyers can build capacities of the suppliers to meet their requirements;
- represent ASEAN employers, including both large and small enterprises, in dialogues with buyers, governments and international organizations to ensure suppliers' voices are heard and their concerns are taken into consideration;
- develop joint strategies for effective prevention and abolition of forced labour and human trafficking. The decision on whether and who to involve will be based on the need to gain assistance or recognition and driven by the priorities and the means of engagement of employers; and

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<sup>5</sup> Forced Labour Convention, 1930 (No. 29) and Abolition of Forced Labour Convention, 1957 (No. 105)

- engage workers' organizations to, raise awareness of workers' rights and safe migration, provide channels to voice workers' grievances and implement remediation mechanism to victims of forced labour.

### **3. Leverage on the ACE networks to:**

- discuss pertinent issues with implications on forced labour, such as recruitment service fees, to form basic guidelines for ASEAN employers, taking into account national practices and realities;
- consolidate and share examples of good company practices regarding forced labour, treatment of foreign workers and cross-border recruitment;
- promote capacity building to ensure transparent hiring and labour practices;
- incentivise and reward exemplary company practices; and
- lobby governments to improve laws and regulations and close the gaps in law enforcement.

# **Forced labour and human trafficking: A policy position paper of the ASEAN Confederation of Employers**

This publication presents the ASEAN Confederation of Employers' policy position paper on forced labour and human trafficking of migrant workers in ASEAN countries. This document was agreed upon and drafted as a result of a technical workshop on forced labour and human trafficking held for the employers' component of the ASEAN TRIANGLE project from 31 March - 1 April 2015.

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