



Second Joint Dialogue between the ASEAN Trade Union Council and the ASEAN Confederation of Employers

4-5 April 2019
Hotel Jen, Manila, The Philippines

Concept Note

1. Background

While the role of social partners at national and regional level in effective governance of labour migration is widely acknowledged within ASEAN, their partnership to jointly contribute to policy dialogue and concrete actions is relatively limited. Traditionally, few joint activities have been undertaken between the ASEAN Confederation of Employers (ACE) and the ASEAN Trade Union Council (ATUC).

Recognising the importance of regular dialogue between ACE and ATUC, as regional groupings of social partners, TRIANGLE in ASEAN supported the first *Joint Dialogue between ATUC and ACE* in March 2016. After the meeting, both ACE and ATUC acknowledged the value of holding such joint dialogues to build trust, address emerging issues, and develop and put forward common positions on labour migration. The most important such ongoing frameworks and processes includes the ASEAN Committee on the Implementation of the Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW), the implementation of the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers (adopted in Nov. 2017), and the Global Compact of Migration (GCM).

The second Joint Dialogue was hosted by the ATUC, with support from the International Labour Organization (ILO) and its Bureau for Workers' Activities (ACTRAV) and the Bureau for Employers' Activities (ACT/EMP) and the ILO/TRIANGLE in ASEAN programme¹.

The First Joint Dialogue of ACE and ATUC, 8-9 March 2016 in Bangkok

The 2016 Joint Dialogue acknowledged the importance of labour migration in ASEAN and the development contribution to countries of origin and destination that migrant workers make. However, it also noted that despite the positive experiences, migration is still too frequently associated with unacceptable labour abuses and migrant workers and their families are commonly marginalised from the economic consequences they have contributed to. It recognized that the benefits of labour migration can only be maximized through the effective promotion and respect of workers' rights, including basic human rights, fundamental principles and rights at work enshrined in UN and ILO Conventions, and the promotion of decent work for all.

¹ TRIANGLE in ASEAN delivers technical assistance and support with the overall goal of maximizing the contribution of labour migration to equitable, inclusive and stable growth in ASEAN. The programme engages at the regional level through ASEAN institutions and has country level interventions in six key countries (Cambodia, Lao PDR, Malaysia, Myanmar, Thailand and Viet Nam). TRIANGLE in ASEAN is supported by the Australian Department of Foreign Affairs and Trade (DFAT) and the Government of Canada (GAC).

During the Joint Dialogue, ATUC and ACE identified a number of areas of mutual concern which should be addressed in forthcoming Joint Dialogues. These included (1) labour mobility and the implementation of the mutual recognition of skills; (2) Expanding social protection for migrant workers; (3) ethical and fair recruitment of migrant workers and (4) protection of migrant workers throughout the migration cycle.

Building on the success of the 2016 meeting, TRIANGLE in ASEAN aims to continue to support such meetings regularly, and this TOR outlines the framework for the second follow-up Joint Dialogue, to be hosted by ATUC (as agreed by the 2016 meeting).

2. Proposed themes

Noting the areas of mutual concern identified by the 2016 meeting and taking recent regional and global processes and agreements into consideration, the proposed topics for discussion for the 2018 ATUC-ACE Joint Dialogue are:

- 1. Review of the progress of the first Joint Meeting recommendations,**
- 2. ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers, and**
- 3. Reach an agreement on common areas of joint action by ATUC and ACE on migration.**

Four areas of mutual concern identified in the first Joint Dialogue of ATUC and ACE include (1) labour mobility and the implementation of the mutual recognition of skills; (2) expanding social protection mechanisms for migrant workers; (3) ethical and fair recruitment of migrant workers; and (4) protection of migrant workers. The second Joint Meeting will review progress made in these areas, and lessons learned. The discussion will include progress updates from ATUC and ACE, as well sharing of relevant global and regional developments and updates from TRIANGLE in ASEAN work on protection of migrant workers, mutual recognition of skills, social protection for migrant workers and fair recruitment. Important global developments include, among others, the ILO's work to define recruitment costs. Reducing the cost of recruitment is a priority under the Sustainable Development Goals, and will be measured under SDG indicator 10.7.1: Recruitment Cost borne by employee as a proportion of yearly income earned in country of destination. The vital Tripartite Meeting of Experts on Defining Recruitment Fees and Related Costs arranged by ILO Headquarters in Geneva on 14-16 November succeeded in adopting a globally agreed definition of migration costs payable under the relevant international labour standard. The definition is very important as it established for the first time an agreement between tripartite stakeholders as to which recruitment related fees and costs should be borne by the employer (and not by the worker) and other discussions around the 'zero-fee' concept contained in the ILO's Private Employment Agencies Convention 1997 (No. 181).

The **ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers** (ASEAN Consensus) was signed by the heads of all ASEAN Member States in November 2017². The Consensus represents an important step forward from the 2007 ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (Cebu Declaration), as it expands obligations of ASEAN Member States in many areas and establishes rights for migrant workers and members of their family as non-binding principles. For workers' organizations, most significant is migrant workers' right to join trade unions and associations subject to national laws, regulation and policies. Migrant workers also have the right to employment contract, fair treatment in the workplace, reasonable accommodation

² The Consensus is a result of 10 years of negotiations among ten ASEAN member states since the adoption of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (Cebu Declaration) in 2007.

and right to hold their own passports and other personal documents. In addition to above, of particular relevance to ASEAN employers are the provisions related to employer education programmes and action taken against employers who illegally employ or detain migrant workers, or confiscate their passports. It should be noted, however, that the Consensus is non-binding and allows national discretion in how the rights and obligations are implemented. Further, all commitments in the Consensus are subjected to principles “pursuant to the prevailing national laws, regulations and policies.

The Action Plan 2018-2025 of ASEAN Consensus was adopted at the 33rd ASEAN Summit in November 2018. The Action Plan covers five areas: (i) education/ information; (ii) protection; (iii) enforcement; (iv) recourse; and (v) reintegration. It is inter-sectoral in nature and includes migrant workers related projects of various bodies under the ASEAN Political-Security Community (APSC) Pillar and the ASEAN Socio-Cultural Community (ASCC) Pillar. The 12th ASEAN Committee on Migrant Workers (ACMW) meeting in February 2019 decided to make the Action Plan public, but it has not been uploaded on the ASEAN website.

The meeting will discuss the strengths and weaknesses of the ASEAN Consensus and its Action Plan, analyse their implications for employers and workers organizations in the region, and identify areas of shared commitments and regional advocacy priorities for ATUC and ACE. Importantly, it will develop and adopt a Joint ATUC-ACE Statement on the ASEAN Consensus.

3. Objectives

Noting the areas of mutual concern identified by the 2016 Joint Dialogue and taking recent regional and global processes and agreements into consideration, the proposed objectives for the 2018 ATUC-ACE Joint Dialogue are:

1. To promote dialogue and cooperation between ACE and ATUC on migration issues;
2. To review the progress of the 2016 agreement and lessons learned from its implementation;
3. To discuss the ASEAN Consensus and its Action Plan to identify areas of shared commitments and actions for its implementation.

4. Dates and Venue

The 1.5 day meeting will be held 4-5 April 2019 in Hotel Jen, Manila, the Philippines.

5. Participants

Approximately 28 participants as follows:

1. Workers’ organization from each ASEAN Member State and 2 regional representatives from ATUC **(12)**
2. Employers’ organization from each ASEAN Member State and 2 regional representatives from ACE **(12)**
3. ILO **(5)** including regional ACTRAV 1, regional ACT/EMP 2, and TRIANGLE in ASEAN 2.

To ensure gender balance, ATUC and ACE will be encouraged to nominate male and female representatives to their respective delegations.

6. Technical, Financial and logistical support

TRIANGLE in ASEAN will provide financial support to this meeting and will organize the conference venue, flights and accommodation of delegates. The meeting will be organised in partnership with ILO ACTRAV and ACTEMP colleagues and the Regional Migration Specialist.