

ASEAN Trade Union Council (ATUC) on the Global Compact for Safe, Orderly and Regular Migration

Asia-Pacific Regional Preparatory Meeting for the Global Compact for Safe, Orderly and Regular Migration, 6-8 November 2017, Bangkok, Thailand.

The following are ATUC inputs to the thematic discussions on key issues in the Asia-Pacific region for facilitating safe, orderly and regular migration.

Legal and orderly labour migration as a contribution towards all dimensions of sustainable development, including decent work, labour mobility, recognition of skills and qualifications and other relevant measures

1. Fair recruitment is essential to legal and orderly labour migration. Recruitment of migrant workers should promote and ensure the implementation of the [ILO General principles and operational guidelines for fair recruitment](#), including non-payment of recruitment fees or related costs by the workers or jobseekers. Also, Article 7 (1) of the [ILO Convention 181](#) prohibits private recruitment agencies from charging directly or indirectly, in whole or in part, any fees or costs to workers.

The practice of allowing payments from workers including in countries where placement or recruitment fees are disallowed should be abolished by harmonizing the terms “fees”, “costs” and “charges”.

Payment of recruitment fees may lead to debt bondage and forced labour. Non-payment of recruitment fees unburdens workers of financing their overseas employment.

2. The burden of skills development should not rest mainly on the countries of origin and migrant workers. Bilateral cooperation between countries of destination and origin in skills development should be promoted, such as the establishment of training centres and institutions in Myanmar¹, Philippines and Sri Lanka² in cooperation with or with the initiative of Singapore, a key country of destination in ASEAN. This can be expanded with the engagement of employers’ and workers’ organizations in both countries of destination and origin.
3. Rights-based government to government (G to G) recruitment schemes should be replicated. With further improvement, the recruitment of Bangladeshi workers in the Malaysian plantation sector is a promising practice. The G to G mechanism has drastically reduced recruitment costs by about 8 to 10 times from \$3,000-\$4,000 to about \$400³. Direct recruitment by employers through alternative means with proper guidance and government oversight could streamline the recruitment process and could result in better skills matching. Governments, intergovernmental and sub regional organizations such as the ASEAN, in consultation with the social partners and other stakeholders, could provide the appropriate technology and platform.
4. The example of the Bahrain Labour Market Regulatory Authority (LMRA) in registering and monitoring recruitment agencies and a joint liability clause as mandated by Philippine regulations

¹ Thant, Htoo: [‘Myanmar, Singapore ink MoU to establish skill standards for workers,’](#) *Myanmar Times*: Yangon, 12 June 2017.

² PNA/Xinhua/Philippine News: [Singapore keen on hiring Pinoy construction workers](#), GMA News Online: Manila, 3 January 2013.

³ Wickramasekara, Piyasiri: ‘Executive summary,’ In: [Review of the government-to-government mechanism for the employment of Bangladeshi workers in the Malaysian plantation sector](#), ILO: Dhaka and Bangkok, 2016, p. xiv.

should be considered⁴. The LMRA validates the authenticity of documents and existence of the job and blacklists offending employers and recruitment agencies. Arriving migrant workers receive an explanatory brochure in their language and SIM card with information about their work permit and which can be used to report violations. In the Philippines, a joint liability clause for the recruitment agency in the country of origin and the employer extends the responsibility and liability of recruitment actors for the protection of migrant workers in the country of destination.

5. States could commit compliance with or harmonize implementation of the comprehensive normative frameworks for international labour migration adopted by the international community, such as the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and various International Labour Organization conventions and recommendations, including decent work and the fundamental principles and rights at work outlined in the ILO core conventions. Participative implementing and monitoring mechanisms could go further in the protection of the rights of migrants and ensure orderly labour migration.
6. Migrant workers should be treated as local workers and should be covered by national labour and social legislation regardless of immigration status. Migrant workers especially in the domestic, agriculture, fishery, construction and other vulnerable sectors should enjoy equality of treatment with nationals. Employment contracts with clear work responsibilities and human and labour rights provisions should be written in a language understood by the worker and discussed with him/her. More elaborate and innovative inspection of workplaces of migrants, including domestic and hard to reach workers, could encourage enforcement of labour standards and employment contracts. The deputation of workers' representatives as labour inspectors, such as the example of the Philippines⁵, could augment the pool of inspectors and help enforce labour standards.
7. Justice delayed is justice denied. Complaints and dispute resolution mechanisms at all levels, including informal channels with recruiters and employers, should be accessible to migrant workers. Migrant workers need to receive proper information on their rights and the available procedures to settle their grievances, including free and easy access to translation services and legal assistance⁶.

ATUC is piloting a system that will allow migrant workers to make inquiries online and be referred to a complaint mechanism run by national labour centres initially within ASEAN. The system is based on trained focal points for migrant labour who are front liners for service. This requires building and strengthening partnerships with other trade unions, labour attaches, other government agencies, migrant-focused CSOs/NGOs and other organizations to ensure migrants' access to justice and dispute resolution.

8. Equality of treatment of migrant workers should include access to social protection. Migrant workers should be covered by national social protection floors with a basic level of social security including health care benefits and old age pension.

Common understanding of portability of social protection should be developed for extending benefits to migrant workers and their family members either at source or destination. Standard

⁴ ILO: [*Common interests, shared goals: Promoting decent work from Asia and Africa to the Middle East \(Background Paper to the Interregional Consultation on Labour Migration and Mobility from Asia and Africa to the Middle East, 4-5 October 2017, Beirut, Lebanon\)*](#), p. 20.

⁵ Ang, Paul: [*DOLE trains 55 volunteer labor inspectors*](#), DOLE: Manila, 3 July 2017.

⁶ ILO: *Common interests, shared goals: Promoting decent work from Asia and Africa to the Middle East*, p. 24.

bilateral and multilateral agreements on social security should be developed and promoted along key migration corridors and within regional intergovernmental groupings⁷.

9. Mutual recognition, especially of low and medium skills and qualifications, would facilitate labour mobility and reduce the vulnerability of the overwhelming majority of migrant workers. ATUC supports the establishment of sector-based work permits where migrant workers can legally change employers within their sectors or the elimination of employer-based work permits and/or visas.

Workers losing employment with their original employers should have protection from descending into irregular status and subject to harassment and deportation. They need to retain their status while they pursue cases in adjudication institutions.

Addressing the drivers of migration, including adverse effects of climate change, natural disasters and human-made crises, through protection and assistance, sustainable development, poverty eradication, and conflict prevention and resolution

10. The global compact for safe, orderly and regular migration should reinforce and harmonize the implementation of the numerous normative frameworks to address the many drivers of migration. For many, migration is a tool to escape poverty and improve their economic and social conditions. A growing population with economically active young workforce finds opportunities in countries or regions with ageing population and shortage of skills.
11. It is in this context that migration and development policies should be aligned to stress the positive contributions of migration to economic growth and development at different levels in the countries of origin as well as countries of destination.

The engagement of workers' organizations in the development of appropriate monitoring tools and mechanisms could increase the progress of implementation of the 2030 Agenda for Sustainable Development and related frameworks and instruments in translating global commitments into national and regional actions.

12. Some trade unions engage in peace and conflict-prevention initiatives and many more will get involved with defined role in national conflict situations.

ATUC supports the belief that effective implementation of the 2030 Agenda for Sustainable Development and other relevant frameworks could prevent conflicts and human-made crises. Where human-made crises fuel forced displacement and migration, humanitarian considerations and human rights protection based on international law and standards should prevail.

13. Peace, development and human rights are essential in a multi-faceted approach to conflict prevention and resolution and global commitments should translate into actual assistance to migrants in crises. The global compact for safe, orderly and regular migration should identify and address the gaps in the international framework in the protection of migrants caused by human-made crises.
14. Mapping of areas, countries and regions that are susceptible to environmental changes could help predict vulnerabilities and migration especially of communities whose livelihood and sustenance

⁷ UN: [Report of the Special Representative of the Secretary-General on Migration \(The Sutherland Report\)](#), 3 February 2017, pp. 22-23, paras. 64-65(a)-(d).

are dependent on natural resources. Existing international and regional instruments can help in the preparation of mitigation and adaptation plans relating to climate change and natural disasters.

Trade unions propose the development of a comprehensive strategy for a “just transition” for workers and communities for a sustainable, low-carbon economy that benefits from decent and green jobs. Social protection for workers and their families, including emergency and temporary relief for irregular migrants, is essential in reducing risks during natural disasters.

Smuggling of migrants, trafficking in persons and contemporary forms of slavery, and issues of appropriate identification and protection and assistance to migrants and trafficking victims

15. For proper cooperation in formulating preventive initiatives, countries and stakeholders need to compile, compare and share information on the profile of smugglers of migrants, the strategies they use and the network of connections that facilitate smuggling.

Workers’ organizations and other grassroots organizations could be engaged in drawing up such initiatives because of their experience, presence and interaction with their members and their families in affected communities.

16. Prohibitive costs, restrictive requirements, lack of regular pathways and unclear recruitment and migration procedures encourage people to use the services of smugglers. Rationalizing national legislation is required to effectively address smuggling of migrants. Strengthening bilateral, regional, global and stakeholder cooperation within existing frameworks could be effective in reducing irregular movements and tackling networks in facilitating smuggling of migrants.
17. The existence of international frameworks on human trafficking and global commitments to these frameworks need to be translated into effective coordination and implementation at the local, national, regional and global levels. Social dialogue and cooperation with stakeholders are necessary to reflect actual human trafficking incidents particularly cases of labour exploitation. Goal 8 of the 2030 Agenda for Sustainable Development aims to achieve decent work for all and requires compliance with the fundamental principles and rights at work and international labour standards for migrant workers. Similar attention should be given to supply chains and the recruitment networks that deploy migrant workers into forced labour and slavery.
18. The complexity of human trafficking requires human rights-based, holistic and multi-stakeholder approaches considering that vulnerable groups are often the victims of trafficking. As recommended by the [Conference room paper on smuggling of migrants and trafficking in persons in Asia and the Pacific](#), innovative approaches to prevent human trafficking should be prioritized by creating legal migration channels, understanding and addressing underlying vulnerabilities, and reducing demand for cheap goods and services produced by trafficked persons and exploited migrants.
19. The development and adoption of standards on appropriate identification are essential in providing protection and assistance to migrants, trafficking victims and persons in need. This requires closer cross-border and regional cooperation in extending services to migrants and trafficking victims in their access to justice, dispute resolution and other assistance.

The engagement of non-government stakeholders including workers’ organizations, because of various expertise and experience in providing services to migrant workers, would strengthen access to protection and assistance.

20. The increased vulnerability of women and children to being trafficked requires greater attention in formulating effective prevention and protection. Effective actions need to establish harmonized standards for receiving migrants and trafficking victims, and identifying persons with protection needs through innovative screening approaches.

Regional cooperation and governance about migration in all its dimensions, including at borders and during transit, entry, return, readmission, integration and reintegration.

21. Effective regional cooperation and governance of labour migration requires social dialogue at all levels and respect of human and labour rights of migrants. Extending the various regional consultative processes could broaden the discussion of possible actions addressing migration.
22. The contributions of workers organizations and other key stakeholders to the sound governance of labour migration is essential and should be promoted at all levels – international, regional, sub regional, bilateral and national levels. More direct participation of workers’ and employers’ organizations in various forums at each level needs to be strengthened especially in developing, implementing and monitoring frameworks and instruments on labour migration, including in the global compact for safe, orderly and regular migration.
23. Bilateral labour agreements (BLAs) between countries of origin and destination can be effective in the governance of labour migration. The model agreement in [ILO Recommendation No. 86](#) concerning migration for employment should be the basis of such agreements to address key concerns such as the protection of migrant workers’ rights, fair and transparent recruitment processes, skills development and skills-jobs matching, equality of treatment and portability of social security benefits.

The engagement of workers’ and employers’ organizations in the negotiations, development implementation and monitoring of BLAs would ensure better protection of migrant workers.

24. The governance of labour migration involves numerous government ministries and agencies with various concerns. Every country should seriously consider the establishment of a framework for the coordination among relevant government agencies to align labour migration policies, interventions and goals.

The inclusion of workers’ and employers’ organizations and relevant stakeholders including local governments in the coordination framework would strengthen coherence of policies including those on fair recruitment, protection of migrants, skills development and recognition of skills, and improve public ownership of country initiatives.⁸

25. Governance of labour migration in transit, on entry and at borders should apply a human rights-based approach considering the challenges of protecting borders and vulnerabilities faced by migrants regardless of immigration status. Migrant workers in irregular situation should have access to regular migration pathways to reduce their vulnerabilities and facilitate social inclusion. This requires policy coherence and alignment of government approaches among various ministries and engagement of relevant stakeholders, including local governments and workers’ and employers’ organizations who may be directly involved in the governance of labour migration at certain stages of the migration cycle.

⁸ Ibid, p. 26, para. 74, and ILO: [Common interests, shared goals: Promoting decent work from Asia and Africa to the Middle East](#), p. 31.

26. Return, readmission, integration and reintegration requires the involvement of stakeholders other than the government for effective policy formulation and implementation. Upholding the principle of non-refoulement or not forcing migrants to return to a country where they will be persecuted is essential. Effective integration requires equality of treatment to prevent putting downward pressure on labour and social standards to the detriment of both migrants and nationals. The return and reintegration of migrant workers could contribute to the country of origin and should consider the needs and capacities of migrants, including policy coherence with the country's economic agenda. Monitoring of reintegration programs could improve the effectiveness and adoption of appropriate interventions.
27. Some workers' organizations in countries of origin and destination have promoted bilateral and multilateral rights-based cooperation on managing labour migration. ATUC adopted an [inter-union agreement](#) as a framework for cooperation on labour migration among its affiliates, including establishing information centres for migrant workers, providing easier access to justice and dispute resolution mechanisms and raising migrant worker concerns such as social protection and regularization of the status of migrant workers in tripartite consultations.

This was expanded and improved in a [Memorandum of Understanding](#) with the Arab Trade Union Confederation (ArabTUC) and South Asia Regional Trade Union Council (SARTUC) with the inclusion of a system of regular coordination, monitoring and periodic evaluation of activities. The three organizations agreed to establish a joint Migrant Resource Centre (MRC) in a destination country in the Arab region, in addition to MRCs in their sub regional jurisdiction.

28. ATUC supports the establishment of a financing facility for migration as proposed in the Sutherland Report. Some countries, including their tripartite constituencies, would need financing in building their capacities on the governance of international migration to ensure effective implementation of the global compact.

Extending the financing facility to programs implemented by membership-based and grassroots organizations could improve migration governance in key stages of the migration cycle.