

LAMPIRAN

**ASEAN CONSENSUS ON THE PROTECTION AND
PROMOTION OF THE RIGHTS OF MIGRANT WORKERS**

TABLE OF CONTENT

Chapter 1	General Principles
Chapter 2	Definitions
Chapter 3	Fundamental Rights of Migrant Workers and the Members of Their Families
Chapter 4	Specific Rights of Migrant Workers
Chapter 5	Obligations of Sending States
Chapter 6	Obligations of Receiving States
Chapter 7	Commitments of ASEAN Member States
Chapter 8	Amendments



ASEAN CONSENSUS ON THE PROTECTION AND PROMOTION OF THE RIGHTS OF MIGRANT WORKERS

The Governments of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Republic of the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand, and the Socialist Republic of Viet Nam, Member States of the Association of Southeast Asian Nations (ASEAN), hereinafter collectively referred to as "ASEAN Member States" or individually as "ASEAN Member State";

CONVINCED that this Consensus will help establish a framework for cooperation on migrant workers in the region and contribute to the ASEAN Community building process;

PURSUING the ASEAN vision of a caring and sharing ASEAN Community that is people-oriented, people-centred, rules-based and socially responsible and where the well-being and livelihood of the peoples are enhanced, as prescribed in the ASEAN 2025: Forging Ahead Together adopted at the 27th ASEAN Summit in 2015 in Kuala Lumpur, Malaysia;

REAFFIRMED our adherence to the purposes and principles of ASEAN as enshrined in the ASEAN Charter, in particular the respect for and promotion and protection of human rights and fundamental freedoms, as well as the principles of democracy, the rule of law and good governance;

RECALLING the Universal Declaration of Human Rights, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC), and other appropriate international instruments which ASEAN Member States are parties to, in order to safeguard the human rights and fundamental freedom of individuals;

COMMITTING to implement the purposes and commitments contained in the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers adopted at the 12th ASEAN Summit in 2007 in Cebu, the Philippines;

NOTING the achievements made by ASEAN Member States towards the protection and promotion of the rights of migrant workers, as well as the importance and usefulness of bilateral and multilateral agreements in this field;

CONFIRMING the shared and balanced responsibilities of the Receiving and Sending ASEAN Member States to protect and promote the rights of migrant workers and members of their families in the entire migration process;

RECOGNISING the contributions of migrant workers to the societies and economies of both Receiving and Sending States of ASEAN;

RECOGNISING the sovereignty of ASEAN Member States in determining their own migration policies relating to migrant workers, including determining entry into and departure from their territory and under which conditions migrant workers may remain;

RECOGNISING further the responsibilities of stakeholders within the entire migration process to abide by the laws, regulations and policies of Sending and Receiving States;

ACKNOWLEDGING the legitimate concerns of the Receiving and Sending States over migrant workers, as well as the need to adopt appropriate and comprehensive migration policies on migrant workers within their jurisdiction, including those related to labour intermediaries;

ACKNOWLEDGING also the need to address cases of abuses and violence against migrant workers whenever such cases occur;

HEREBY ADOPT THIS CONSENSUS AS FOLLOWS:

CHAPTER 1

GENERAL PRINCIPLES

1. To implement the Consensus, ASEAN Member States will act in accordance with the following general principles:
 - (a) Respect for the principles of ASEAN as embodied in Article 2 of the ASEAN Charter;
 - (b) Strengthen the political-security, economic and social-cultural pillars of the ASEAN Community by promoting the full potential and dignity of migrant workers in a climate of freedom, equity and stability in accordance with the laws, regulations, and policies of respective ASEAN Member States;

- (c) Recognise that migrant workers have fundamental rights as stipulated in the applicable international and regional treaties which ASEAN Member States are parties to, in accordance with the prevailing national laws, regulations and policies of ASEAN Member States;
- (d) Uphold the fundamental rights and dignity of migrant workers without undermining the application by the Receiving States of their laws, regulations and policies;
- (e) Uphold fair treatment with respect to gender and nationality, and protect and promote the rights of migrant workers, particularly women, in accordance with the obligations of ASEAN Member States under appropriate international instruments to which they are parties;

In Article 44 concerning family members of migrant workers already residing with them, the obligations of ASEAN Member States under appropriate international instruments to which they are parties shall apply; and

- (f) Pursue a constructive, non-confrontational and cooperative approach to enhance the protection and promotion of rights of migrant workers.
2. This Consensus only covers migrant workers who are documented and those who become undocumented through no fault of their own.

CHAPTER 2

DEFINITIONS

3. "Migrant worker" refers to a person who is to be engaged or employed, is engaged or employed, or has recently been engaged or employed in a remunerated activity in a State of which he or she is not a national. The applicability of the Consensus to different categories of migrant workers shall be subject to the laws, regulations, and policies of respective ASEAN Member States.
4. For the purpose of this Consensus, an "undocumented migrant worker" is a person who fails to comply with the conditions provided for him or her to legally enter the Receiving State and to stay legally for the duration of employment pursuant to the applicable laws, regulations and policies of the Receiving State. This definition includes a migrant worker who has recently been in employment but is no longer legally employed in a remunerated activity.

This definition of an "undocumented migrant worker" is applied to Articles 56 and 57 of this Consensus.
5. "Sending State" refers to the ASEAN Member State of which the migrant worker is a national.
6. "Receiving State" refers to the ASEAN Member State which hosts a migrant worker.

7. "Fair treatment" refers to just and reasonable treatment applied to migrant workers in the workplace with respect to working conditions, safety, and access to recourse in the event of employment subject to the prevailing national laws, regulations and policies of the Receiving State.

CHAPTER 3

FUNDAMENTAL RIGHTS OF MIGRANT WORKERS AND THE MEMBERS OF THEIR FAMILIES

Pursuant to the prevailing national laws, regulations and policies of ASEAN Member States:

8. Migrant workers may be visited by their family members for purposes and length of time that the national legislations, regulations and policies of the Receiving State may allow.
9. Migrant workers have the right to hold their own passports and original government-issued work and personal documents subject to laws, regulations, and policies of the Receiving State.
10. Subject to national laws, regulations and policies of the Receiving states, migrant workers have the rights no less favourable than those applied to nationals of the Receiving States when they are committed to prison or placed in custody pending trial or while detained for any other reason.

11. Migrant workers have the right to file their grievances with the relevant authorities of Receiving States and/or seek assistance from their respective embassies, consulates, or missions located in Receiving States.
12. Migrant workers have the right to freedom of movement in the Receiving State, subject to laws, regulations and policies of the Receiving State.

CHAPTER 4

SPECIFIC RIGHTS OF MIGRANT WORKERS

Pursuant to the prevailing national laws, regulations and policies of ASEAN Member States:

13. Migrant workers have the right to access information on matters pertaining to their employment and employment-related conditions from relevant authorities, bodies and/or recruitment agencies of Sending and Receiving States.
14. Migrant workers have the right to be issued an employment contract or proper documentation by relevant authorities/bodies and/or employers with clear and basic terms of employment subject to national laws, regulations, and policies.
15. Subject to national laws, regulations, and policies of the Receiving State, migrant workers have the right to fair treatment in the workplace.

16. Migrant workers have the right to adequate or reasonable accommodation subject to national laws, regulations and policies of the Receiving State.
17. (a) Migrant workers, regardless of gender, have the right to fair and appropriate remuneration and benefits in accordance with the laws, regulations, and policies of the Receiving State.

(b) If migrant workers leave the Receiving State, they should not lose their rights to benefits arising from their employment in accordance with the national laws, regulations, and policies of the Receiving State.
18. Migrant workers have the right to transfer their earnings and savings in any modes of transfer in accordance with laws and regulations on currency transmission in the Receiving and Sending States.
19. (a) Migrant workers shall have the right to file a complaint or make a representation under the law relating to labour dispute in the Receiving State against termination of employment and/or breach of an employment contract in the Receiving State and, subject to the national laws, regulations, and policies relating to immigration, be allowed to continue staying in the Receiving State pending the disposal of his or her case.

(b) If the decision on appeal is favourable to the migrant worker, he or she shall be entitled to any relief for loss of his or her rights arising from the employment contract.

20. Migrant workers have the right to join trade unions and associations subject to the national laws, regulations and policies of the Receiving State.

CHAPTER 5

OBLIGATIONS OF SENDING STATES

Pursuant to the prevailing national laws, regulations and policies of the respective Sending States:

21. The Sending State, in close coordination with the Receiving State, will organise a pre-departure orientation/education programme, including human and labour rights, general working and living conditions, laws, policies, regulations, culture, norms, and practices of the Receiving State, avenues of assistance in the Receiving State and such other matters as will enable them to comply with administrative or other formalities of the Receiving State.
22. The Sending State will ensure that migrant workers are informed and aware of the terms and conditions of their work through a written employment contract or proper documentation and in language that they understand.

23. (a) The Sending State will set reasonable, transparent, and standardised fees for passport issuance and other relevant documents.
- (b) The Sending State will likewise take necessary actions to prohibit overcharging of placement or recruitment fees by any parties chargeable to migrant workers in the Sending State.
24. The Sending State will take all necessary actions to simplify the administrative processes for overseas placements such as, but not limited to, "one stop service centre" where appropriate.
25. The Sending State will ensure migrant workers meet the health requirements of the Receiving State before departure.
26. The Sending State will develop a comprehensive reintegration programme for returned migrant workers and their families as well as an employment programme for returned migrant workers taking into account their skills obtained overseas.
27. The Sending State will take the necessary measures to promote better local employment and livelihood opportunities for their citizens as sustainable alternatives to migration of workers.
28. The Sending State will ensure the right of returned migrant workers to establish associations, participate in policy making and programmes affecting migrant workers, and to access services for returned migrant workers and their family members in accordance with the national laws, regulations and policies of the Sending State.

29. The Sending State will take appropriate actions against any parties within its territory who willfully destroy, mutilate, tamper, or forge travel, work, or personal identity documents of migrant workers issued by the Sending State.

CHAPTER 6

OBLIGATIONS OF RECEIVING STATES

Pursuant to the prevailing national laws, regulations and policies of the respective Receiving States:

30. The Receiving State will, in accordance with its national legislations, regulations, and policies, protect the fundamental human rights, promote the welfare and uphold human dignity of migrant workers.

In doing so, the Receiving State will take necessary and appropriate measures to:

- (a) Ensure fair treatment towards migrant workers;
and
- (b) Prevent abuses, exploitation and violence towards them.

31. The Receiving State will make every effort to issue authorisation for migrant workers to stay and engage in employment for at least the same period of time as they are authorised to engage in the remunerated activity where separate authorisations to stay and engage in employment are required by national laws and regulations.
32. The Receiving State will in accordance with its national legislations, regulations, and policies:
 - (a) Undertake employer education programmes to explain the procedure for legally hiring a migrant worker;
 - (b) Take appropriate actions against employers who illegally detain migrant workers;
 - (c) Take appropriate actions against employers who willfully destroy, mutilate or confiscate a migrant worker's passport and work permit issued by any government agency; and
 - (d) Take appropriate actions against employers who illegally employ migrant workers¹.
33. The Receiving State will take necessary actions to prohibit overcharging of placement or recruitment fees chargeable to migrant workers by any parties in the Receiving State.

¹ The term "take appropriate actions" in Article 32.b, 32.c, and 32.d was understood by ASEAN Member States as a broader term that may include "penalisation".

34. The Receiving State will, through its relevant authorities or bodies, ensure that migrant workers are provided with adequate information within reasonable timeframe among others of their rights and responsibilities, occupational safety and health measures, avenues of assistance after their arrival in accordance with the labour laws, policies and regulations, and customs and traditions of the Receiving State.
35. The Receiving States will promote harmony and tolerance with the view of providing the conditions under which migrant workers are able to integrate with local communities as well as their religions, and customs and traditions subject to the national legislations, regulations and policies.
36.
 - (a) The Receiving State will issue regulations or guidelines prescribing the terms and conditions of employment that must be included in employment contracts or proper documentation for migrant workers in accordance with the legislations, regulations, and policies of the Receiving State.
 - (b) The Receiving State will ensure that migrant workers are provided with a copy of employment contract or proper documentation for their work in accordance with the applicable legislations, regulations, and policies of the Receiving State.
 - (c) The Receiving State will regulate the employment of migrant workers by ensuring that clear employment terms and conditions, such as wages, employment benefits, working conditions, health and safety, employment dispute mechanisms and repatriation are provided in

national laws, regulations, contracts of employment, or other appropriate documentation.

37. The Receiving State will ensure that migrant workers are provided with fair and appropriate remuneration and other benefits in accordance with the applicable national legislations, regulations, and policies of the Receiving State.
38. The Receiving State will in accordance with its national legislations, regulations, and policies, provide migrant workers the right to join trade unions and associations.
39. The Receiving State will, in accordance with its national legislations, regulations, and policies, ensure that migrant workers are provided with adequate or reasonable accommodation.
40. The Receiving State will, in accordance with its applicable national legislations, regulations and policies, provide fair treatment to migrant workers in respect of:
 - (a) Working condition and remuneration;
 - (b) Occupational safety and health protection;
 - (c) Protection from violence and sexual harassment; and
 - (d) Gender and nationality in the workplace.

41. The Receiving State will provide migrant workers with access to adequate medical and health care in accordance with the applicable laws, regulations and policies of the Receiving State.
42.
 - (a) The Receiving State will facilitate migrant workers with access to legal recourse and assistance, including language interpretation if necessary, when they become victims of discrimination, abuse, exploitation and/or violence in accordance with the national laws, regulations, and policies;
 - (b) The Receiving State will facilitate the exercise of consular functions by consular or diplomatic authorities of the Sending States when a migrant worker is arrested or committed to prison or custody or detained in any other manner under the laws, regulations, and policies of the Receiving State and in accordance with the Vienna Convention on Consular Relations of 1963.
43. The Receiving State will protect the employment rights of migrant workers during repatriation including ensuring the compliance with the applicable/relevant repatriation processes of the Receiving State upon termination of employment contract/work pass.

CHAPTER 7

COMMITMENTS OF ASEAN MEMBER STATES

For purposes of protecting and promoting the rights of migrant workers, ASEAN Member States in accordance with the national laws, regulations, and policies, will:

44. Take into account the fundamental rights and dignity of migrant workers and family members already residing with them without undermining the application by the Receiving States of their laws, regulations and policies;
45. Consult and cooperate with a view to promoting decent, humane, productive, dignified and remunerative employment for migrant workers;
46. Endeavor to recognise an employment contract containing the terms and conditions of employment;
47. Collaborate in promoting human resources and skills development of migrant workers;
48. Collaborate to take concrete measures to prevent and eliminate any illegal or clandestine movement involving migrant workers and employment of migrant workers in an irregular situation, with due regard to the safety, welfare, and access to justice of migrant workers;
49. Collaborate to raise public awareness and disseminate accurate information on labour migration;

50. Enforce laws, regulations and policies related to the protection of migrant workers including those related to labour intermediaries within the jurisdiction of each ASEAN Member State;
51. License, regulate, and supervise public and private recruitment agencies with a view to eliminating recruitment malpractices and to ensuring compliance with the law, regulations, and policies of the respective ASEAN Member States. In doing so, ASEAN Member States will adopt effective measures to eliminate malpractices in the recruitment system;
52. Take measures to ensure effective prevention and suppression of smuggling and trafficking in persons, establishment and implementation of systems to identify victims, stiffer penalties for those who are involved in these activities, and provision of support for victims;
53. Facilitate information sharing through development or strengthening of their respective database and information systems on matters relating to migrant workers, for the purpose of enhancing policies and programmes concerning migrant workers in both Sending and Receiving States;
54. Enhance cooperation aiming at:
 - (a) Building capacity and sharing of information including on laws, regulations, policies, and practices in relation to protection and promotion of migrant workers' rights and welfare;

- (b) Encouraging constructive dialogue, consultation, cooperation, and regular exchange of information, for the purpose of effective enforcement of policies and programmes concerning migrant workers;
- 55. Cooperate and coordinate to extend assistance to migrant workers who are caught in conflict or crisis situations in the Receiving States through the services of Embassies and Consular Offices of the Sending States and authorities in the Receiving State;
- 56. For humanitarian reasons, closely cooperate to resolve the cases of migrant workers who, through no fault of their own, have subsequently become undocumented;

Nothing shall be interpreted as implying the regularisation of the situation of undocumented migrant workers;

- 57. Take measures to prevent and curb the flow of undocumented migrant workers and explore cooperation and coordination among ASEAN Member States in providing assistance to those who are in need of protection subject to prevailing national laws, regulations and policies of ASEAN Member States;
- 58. Encourage collaboration with ASEAN Dialogue Partners and other countries, international organisations, and other stakeholders in respecting the principles and taking measures to protect and promote the rights of migrant workers as contained in this Consensus;

59. Develop, through the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW), an action plan based on consensus to protect and promote the rights of migrant workers as reflected in the Consensus, report the progress of implementation of the Consensus and its action plan to the ACMW, and may share best practices including those from the existing bilateral engagements between ASEAN Member States. The progress of the implementation of this Consensus and its corresponding action plan will be subject to review by ACMW;
60. Endeavor, through ACMW, to resolve peacefully all disputes which concern the interpretation of this Consensus in a timely manner through good offices and consultation in the spirit of the ASEAN Charter.

CHAPTER 8

AMENDMENTS

61. Any Member State may propose amendments to this Consensus.
62. Proposed amendments to this Consensus shall be submitted by the ASEAN Coordinating Council by consensus to the ASEAN Summit for its decision.

Done at Manila, the Philippines, this Fourteenth Day of November in the Year Two Thousand and Seventeen, in a single original copy in the English Language.

For Brunei Darussalam:



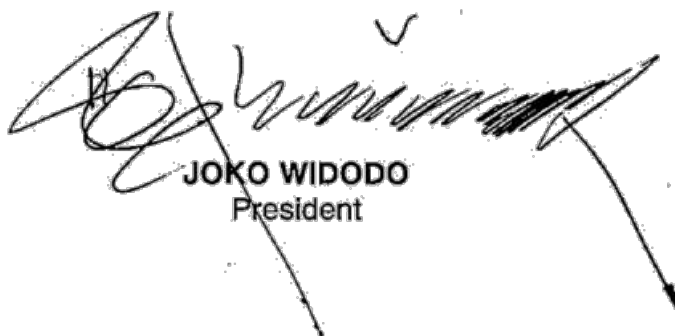
HAJI HASSANAL BOLKIAH
Sultan of Brunei Darussalam

For the Government of the Kingdom of Cambodia:



SAMDECH AKKA MOHA SENA PADEI TECHO HUN SEN
Prime Minister

For the Republic of Indonesia:



JOKO WIDODO
President

For the Lao People's Democratic Republic:



THONGLOUN SISOLITH
Prime Minister

For Malaysia:



DATU' SRI MOHD NAJIB BIN TUN ABDUL RAZAK
Prime Minister

For the Republic of the Union of Myanmar:



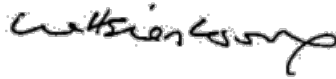
AUNG SAN SUU KYI
State Counsellor

For the Republic of the Philippines:



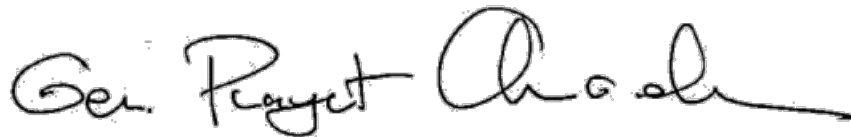
RODRIGO ROA DUTERTE
President

For the Republic of Singapore:



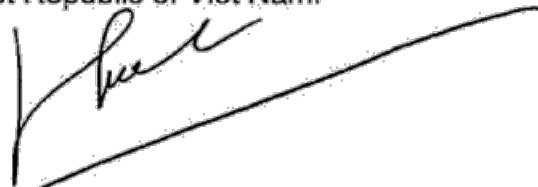
LEE HSIEN LOONG
Prime Minister

For the Kingdom of Thailand:



GENERAL PRAYUT CHAN-O-CHA (RET.)
Prime Minister

For the Socialist Republic of Viet Nam:



NGUYEN XUAN PHUC
Prime Minister

**PROGRAM MAGISTER
ILMU HUBUNGAN INTERNASIONAL**

Konsentrasi : Diplomasi, Kerjasama Internasional, Resolusi Konflik
Terakreditasi B Berdasarkan SK 183/SK/BAN PT/Akred/M/IV/2014



Nomor : 274/C.6-III/MIHI/V/18
Lampiran : -
Hal : Permohonan Ijin Penelitian

Yogyakarta, 8 Mei 2018

Kepada Yth.
Kepala Direktorat Jendral Kerjasama ASEAN
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Assalaamu'alaikumwr.wb


Sehubungan dengan penyusunan Tesis Program Magister Ilmu Hubungan Internasional Universitas Muhammadiyah Yogyakarta, yaitu sebagai berikut :

Nama : Sitti Nurtina
NIM : 2016106002
Jurusan/ Program : Magister Ilmu Hubungan Internasional /S2
Judul Penelitian : Analisis Perkembangan Regulasi Perlindungan Buruh Migran
Tempat Penelitian : Dirjen kerjasama ASEAN
Waktu Penelitian : Mei- Juni 2018

Dengan ini kami mohon berkenan memberikan ijin kepada mahasiswa tersebut di atas untuk melakukan penelitian.

Demikian atas perhatiannya dan bantuannya, kami sampaikan terimakasih.

Wassalaamu'alaikumwr.wb

Ka. Prodi

Dr. Surwandono

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FOTO WAWANCARA



Wawancara dengan bapak Ridwan Wahyudi dari INFEST Yogyakarta, 24 Mei 2018.



Wawancara dengan bapak Hariyanto selaku Ketua Serikat Buruh Migran Indonesia (SBMI), 29 Mei 2018.



Wawancara dengan ibu Andriyeni dari Solidaritas Perempuan, 29 Mei 2018.



Wawancara dengan bapak Adhy Buwono dari Direktorat Jendral Kerjasama ASEAN, Divisi Kerjasama Sosial Budaya ASEAN, di Kementerian Luar Negeri Indonesia, 11 Juli 2018.