

ASEAN's Migrant Rights Policy Dilemma and Deadlock on Migrant Worker Protection



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ABSTRACT

Remittances generated by migrant workers, particularly those from Indonesia, play a significant role in supporting the economic stability of households and national economies. However, the magnitude of these contributions contrasts sharply with the limited legal and social protection available to migrant workers. This research examines the key factors underlying the persistent impasse in migrant worker protection policies within ASEAN and explores potential strategies for improvement through a comparative assessment of the European Union experience. Using normative juridical methods that combine conceptual, regulatory, and comparative analyses, the study evaluates ASEAN legal instruments and compares them with the European Union framework for protecting migrant workers. The analysis identifies three main causes of policy stagnation in ASEAN. First, the region lacks binding obligations that require member states to adopt uniform minimum standards. Second, existing enforcement mechanisms are weak and do not ensure consistent implementation. Third, member states resist the establishment of supranational authority, limiting opportunities for stronger regional governance. Despite these challenges, functional adaptation through the selective adoption of European Union practices offers viable options, including harmonizing minimum standards, establishing regional complaint procedures, and facilitating the portability of social rights. The research concludes that a gradual and priority based approach, especially for high risk sectors, can enhance migrant worker protection while remaining consistent with the principles of the ASEAN Way.



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1. Introduction

The migration and border control industry is currently undergoing new patterns, dangers, problems, and revolutions in global management, particularly regarding the relocation of cross-border criminal activities.¹ There have also been big increases in the number of travelers, forced displacement, undocumented

¹ Ridwan Arifin and others, 'Unveiling Indonesia's Migration and Border Governance: Challenges and Imperatives Post-Pandemic', *Social Sciences & Humanities Open*, 10 (2024), 101202 <https://doi.org/10.1016/j.ssaho.2024.101202>

people, migrant workers, cyber threats, and health problems along Indonesia's borders. There have also been illegal moves and returns. Another important feature of global international migration is that migrant workers are in charge.² The increasing complexity of global migration and border management, highlighted by the rise in travelers and varied migration motivations, reveals deficiencies in current frameworks for effectively tackling escalating risks and challenges, including illegal migration, cyber threats, and health emergencies, which notably affect Indonesia's border control.³

ASEAN, a regional group, has started to focus on protecting migrant workers to stop migration that is not helpful and goes beyond humanitarian limits. The Cebu Declaration (2007), also known as the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, was signed at the 12th ASEAN Summit in Cebu, Philippines, in 2007. This marked the start of this project. In 2018, ASEAN agreed to and committed to the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers.⁴ Labor migration in ASEAN accelerated during the 1970s and 1980s as newly industrializing states in Southeast Asia, including Singapore, Malaysia, and Thailand, expanded their manufacturing sectors and faced significant domestic labor shortages. These states adopted export-oriented industrialization strategies that increased demand for low and medium-skilled labor beyond the capacity of their local workforces. To meet this demand, they actively recruited workers from countries with larger populations and surplus labor. This recruitment process institutionalized cross-border labor mobility and transformed it into a structural component of regional economic development rather than a response to temporary fluctuations in labor supply. Consequently, labor migration became embedded in ASEAN's economic systems and continues to shape production patterns and labor market dynamics across the region.⁵

Indonesian migrant workers send money home and work abroad, which benefits both their families in Indonesia and the country's economy. The World Bank's research on Indonesia's Global Workers indicates that Indonesian migrant workers seek employment abroad because they can earn significantly more money

² Terrence A. Alladin and Don Hummer, 'Immigrant and Citizen Reincarceration in Pennsylvania', *American Journal of Criminal Justice*, 47.3 (2022), 547–66 <https://doi.org/10.1007/s12103-021-09609-w>

³ Juliana Fernandes and Moritz Cleve, 'Labeling Immigrants: Examining the Effects of Labels on Associations toward Immigrants', *International Journal of Intercultural Relations*, 108 (2025), 102230 <https://doi.org/10.1016/j.ijintrel.2025.102230>

⁴ Daniel Lemus-Delgado and Carlos Cerda, 'ASEAN, Gender Equality and Women's Empowerment in STEM', *Asian Education and Development Studies*, 14.2 (2025), 299–313 <https://doi.org/10.1108/AEDS-07-2024-0138>

⁵ Darlene Milagros Rocha-Rojas and others, 'Perception of Discrimination by the Head of the Household and Household Food Insecurity in Venezuelan Migrants in Peru: Cross-Sectional Analysis of a Population-Based Survey', *Preventive Medicine Reports*, 53 (2025), 103050 <https://doi.org/10.1016/j.pmedr.2025.103050>

there, often up to six times more than they do at home. Factory workers (8%), agricultural workers (19%), domestic helpers or nannies (32%), and construction workers (18%) are the primary occupations they hold. There are also drivers (2%), caretakers for the elderly (6%), individuals working in shops or hotels (4%), and cruise ship staff (0.5%).⁶ A 28% rise in remittances from migrant workers also makes it significantly less likely that an Indonesian family will fall into poverty. This means that the wages and remittances of Indonesian migrant workers play a significant role in improving household well-being and reducing poverty.⁷

The official data from the Indonesian Migrant Workers Protection Agency (BP2MI) says that the number of Indonesian migrant workers (PMI) grew to 5,184,369 people between 2007 and December 2024. In 2021, almost 3.3 million people from Indonesia worked outside of the country. BP2MI thinks that there are currently more than 5 million unauthorized migrant workers living overseas. If someone works for a home, an individual employer, a legal entity, or as a crew member on a ship or fishing vessel, they are considered a PMI. Prospective PMIs are Indonesian workers who are registered with the government agency responsible for job placement and meet the requirements for job seekers. Indonesian migrant workers are Indonesian citizens who work abroad for a specified period.⁸

The official BP2MI report for 2023 presents a comprehensive profile of Indonesian migrant workers (PMI), including their educational background, gender distribution, employment sector, and destination countries. According to the report, 16.2 percent of PMIs had completed elementary school (SD), 23.4 percent had completed junior high school (SMP), and 44.6 percent had attained a senior high school (SMA) qualification. Only 3.6 percent possessed a diploma from a higher education institution, while 17.8 percent did not provide information on their educational attainment. The data also show that 69.8 percent of PMIs were men, indicating a predominance of male participation in overseas employment during this period. Furthermore, 99.5 percent of PMIs were employed in the formal sector, demonstrating that the vast majority of workers were placed

⁶ Muhammad Salahudin Al Ayyubi and others, 'Migrant Workers and Labor Market Recovery during the COVID-19 Pandemic in Indonesia', *Social Sciences & Humanities Open*, 12 (2025), 101715 <https://doi.org/10.1016/j.ssaho.2025.101715>

⁷ Arthur Josias Simon Runturambi and Ridwan Arifin, 'New Patterns and Trends of Migration: Hybrid-Crimes among Indonesian Migrant Workers in Southeast Asia', *Regional Science Policy & Practice*, 17.10 (2025), 100215 <https://doi.org/10.1016/j.rsp.2025.100215>

⁸ Helena Verusha Ali, Setiono Sugiharto, and Christine Manara, 'Navigating Identity and Agency through English Education: Narrative Inquiry of an Indonesian Migrant Worker in Kuwait's Kafala System', *Social Sciences & Humanities Open*, 12 (2025), 101816 <https://doi.org/10.1016/j.ssaho.2025.101816>

through regulated and officially recognized channels.⁹ However, many people faced serious health, mental, or financial problems, even while some people made money from it. From 2019 to 2022, IOM and SBMI helped 544 migrant workers who were being abused in different ways, including physically, mentally, and sexually. From 2015 to mid-2023, SBMI also recorded 3,335 cases of Indonesian workers being trafficked in the Middle East. But only 2% of the victims were able to get justice. In 2015, Jakarta stopped sending workers to 21 countries in the Middle East and North Africa because two Indonesian domestic workers were executed in Saudi Arabia. But these things keep happening.¹⁰

In the area of human trafficking and illegal immigration, which starts in Indonesia and spreads to Southeast Asian countries, a new pattern is starting to emerge. This is in addition to big developments in the world of transnational crime. A new type of crime is on the rise, and it's different from the usual trafficking methods, which involve Indonesian domestic workers in Malaysia or illegal work on palm oil fields.¹¹ Also, the range of labor exploitation is growing to include a wide range of criminal activities, such as participating in cryptocurrency schemes, internet fraud, and illicit gambling, which are often accompanied by severe physical and mental abuse. The incorporation of the internet and social media into society has significantly influenced organized crime, including human trafficking, transforming the methods employed by traffickers and their victims. Emigration has been a major problem, especially for Indonesian migrant workers who work in many Asian nations. According to its online information system, the Ministry of Women's Empowerment and Child Protection (PPPA, 2023) has seen a significant increase in the number of workers going to Malaysia, Saudi Arabia, Taiwan, Hong Kong, the UAE, and Qatar following the pandemic.¹²

Despite Indonesia's implementation of selective immigration policies, these measures remain inadequate to respond to the increasing scale of global human mobility, the expansion of cross-border criminal activity, and the political dynamics associated with both phenomena. During this period, Indonesia also recorded a substantial escalation in cases of human trafficking (TPPO). The growth of outward migration corresponded with a marked increase in trafficking in persons (TIP) incidents, particularly those involving Indonesian migrant

⁹ Padang Wicaksono and others, 'Skill Formation and Income: Insights from the Indonesian Migrant Workers', *Social Sciences & Humanities Open*, 10 (2024), 101086 <https://doi.org/10.1016/j.ssaho.2024.101086>

¹⁰ Tarimantan Sanberto Saragih and others, 'Innovative Models to Enhance User Experience in JMO Mobile: A Case Study of Migrant Workers in East Java, Indonesia', *Social Sciences & Humanities Open*, 12 (2025), 101916 <https://doi.org/10.1016/j.ssaho.2025.101916>

¹¹ Ali Maksum, 'Indonesian Post-Migrant Workers: A Challenging Problem for Human Security', *Social Sciences & Humanities Open*, 4.1 (2021), 100223 <https://doi.org/10.1016/j.ssaho.2021.100223>

¹² Joseph Trawicki Anderson, 'Managing Labour Migration in Malaysia: Foreign Workers and the Challenges of "Control" beyond Liberal Democracies', *Third World Quarterly*, 42.1 (2021), 86–104 <https://doi.org/10.1080/01436597.2020.1784003>

workers. Between 2019 and 2022, authorities documented 1,545 TIP cases involving 1,732 victims. Following the reopening of international borders and the gradual normalization of global mobility after the 2023 pandemic period, the number of reported incidents rose further. An additional 605 cases were identified, affecting 1,943 individuals. These figures demonstrate that the resurgence of international movement heightened the vulnerability of Indonesian workers to trafficking networks and underscored the limitations of current immigration and protection frameworks.¹³

The Southeast Asian region is currently facing numerous problems related to migration, immobility, and stricter border controls. These effects have led to community issues, economic instability, and inequality becoming a common part of the globe following the epidemic. Even while strong laws and government policies protect Indonesian migrant workers, practical problems with putting them into action have made it harder for them to encourage the use of legal migration channels to ensure safe movement.¹⁴ Indonesia's efforts to stop human trafficking have made headway, especially during the epidemic, with more judicial action and recompense for victims. However, the difficulties associated with implementing protection measures for migrant workers still hinder the achievement of completely safe migration practices. This scenario is made much worse by the fact that many migrant workers don't have a clear legal status, especially those who are undocumented. This highlights the disparities in the safeguards provided to migrant workers and the financial benefits they generate.¹⁵

International law and custom have long recognized clear and equal citizenship rights for all individuals. The Universal Declaration of Human Rights establishes a key concept of human rights law: the equality of peoples and governments. The United Nations has been advocating for international law as an effective alternative, and this concept has been incorporated into numerous accords since then.¹⁶ Additionally, the primary challenge that ASEAN is currently facing is that the nations that send and receive workers have differing interests. Sending countries usually put the rights of migrant workers first and demand strict rules. On the other hand, nations that receive workers are concerned that overly strict rules will make it more difficult for them to manage their labor markets. This

¹³ Arifin and others.

¹⁴ AKM Ahsan Ullah and others, 'Privileged Migrants and Their Sense of Belonging: Insider or Outsider?', *Asian Journal of Social Science*, 49.3 (2021), 161–69 <https://doi.org/10.1016/j.ajss.2021.03.004>

¹⁵ Karen Anne S. Liao, 'Operation "Bring Them Home": Learning from the Large-Scale Repatriation of Overseas Filipino Workers in Times of Crisis', *Asian Population Studies*, 16.3 (2020), 310–30 <https://doi.org/10.1080/17441730.2020.1811511>

¹⁶ A. K. M. Ahsan Ullah and Hannah Ming Yit Ho, 'Globalisation and Cultures in Southeast Asia: Demise, Fragmentation, Transformation', *Global Society*, 35.2 (2021), 191–206 <https://doi.org/10.1080/13600826.2020.1747992>

difference in perspective has led to a standoff, resulting in the development of binding regional policies.¹⁷

The "ASEAN Way" which prioritizes the ideals of non-interference, consensus, and respect for the sovereignty of member nations, makes it much harder for ASEAN to establish a stricter and more enforceable framework. This idea helps maintain stable connections between countries, but it often makes it more challenging to create effective regional laws that protect migratory workers. In other words, people often give up their rights to safeguard their short-term political and economic interests.¹⁸ ASEAN is a regional group that has attempted to address this issue by issuing the Cebu Declaration on the Protection and Promotion of the Rights of Migrant Workers in 2007 and the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers in 2017. However, neither of these agreements is legally binding, and there are no effective means to enforce them. Therefore, protecting migrant workers at the regional level is more of a political issue than an actual action being taken. The primary issue that ASEAN is currently addressing is the diverse needs of the nations that both send and receive workers. Sending countries usually put the rights of migrant workers first and demand strict rules. On the other hand, countries that receive immigrants are concerned that overly strict rules may hinder their ability to manage the job market. This divergence in perspective has led to a standstill, necessitating the creation of binding regional policies.¹⁹

At the same time, the European Union has a fairly complex legal system in place to protect the rights of migrant workers in the area. The Treaty on the Functioning of the European Union (TFEU) protects the right of citizens of member states to work in other member states without being discriminated against due to their nationality, as required under the principle of the free movement of workers.²⁰ Secondary rules, such as Directive 2004/38/EC, which covers the right of residence and access to social services, and Regulation (EU) No. 492/2011, which addresses equal treatment in the labor market, bolster this protection. The European Court of Justice (ECJ) and other supranational bodies also play a significant role in protecting the rights of migrant workers, thereby

¹⁷ A.K.M. Ahsan Ullah and others, 'Xenophobia in the GCC Countries: Migrants' Desire and Distress', *Global Affairs*, 6.2 (2020), 203–23 <https://doi.org/10.1080/23340460.2020.1738951>

¹⁸ Andika Wahab, 'The Outbreak of Covid-19 in Malaysia: Pushing Migrant Workers at the Margin', *Social Sciences & Humanities Open*, 2.1 (2020), 100073 <https://doi.org/10.1016/j.ssaho.2020.100073>

¹⁹ Emmanuelle Auriol, Alice Mesnard, and Tiffanie Perrault, 'Temporary Foreign Work Permits: Honing the Tools to Defeat Human Smuggling', *European Economic Review*, 160 (2023), 104614 <https://doi.org/10.1016/j.eurocorev.2023.104614>

²⁰ Cevat Giray Aksoy and Panu Poutvaara, 'Refugees' and Irregular Migrants' Self-Selection into Europe', *Journal of Development Economics*, 152 (2021), 102681 <https://doi.org/10.1016/j.jdeveco.2021.102681>

making EU laws enforceable across all member states. On the other hand, ASEAN lags significantly behind in protecting migrant workers at the regional level.

The Cebu Declaration on the Protection and Promotion of the Rights of Migrant Workers adopted in 2007 and the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers adopted in 2017 do not carry legal force and do not establish any mechanisms for enforcement. Their continued presence reflects the core characteristics of the ASEAN Way, which prioritizes consensus and noninterference and therefore produces instruments that are largely declarative rather than prescriptive. This approach stands in contrast to the model used in the European Union, where binding commitments and supranational authority have enabled the incorporation of migrant worker protection into a deeper process of regional integration. ASEAN, by comparison, faces persistent political tensions between labor sending and labor receiving states, and these tensions contribute to ongoing policy stagnation and prevent the development of a more effective regional framework for protecting migrant workers.²¹

Supang Chantavanich et al. have previously researched and found that Thailand's protection regime has limited the design and distribution options available to migrant fishers, who are a migratory community. This system must be adjusted to be more flexible, allowing fishermen to receive protection. To fill this vacuum, Thailand is working on a new law about enforced disappearances that will follow the International Convention for the Protection of All Persons from Enforced Disappearance.²² Ali Maksum's research also shows that governments make money from remittances made by "remittance heroes." However, migrant workers are still in danger, especially when their contracts end and they go back to their home countries. The end result is that physically able post-migrant workers in Indonesia are motivated to move again so they can support their families or avoid becoming unemployed. To fix the problem, positive policies are needed, such as: (i) creating more jobs; (ii) improving the education level of migrant workers, including vocational courses; (iii) making it easier for small businesses to get loans; and (iv) using the power of cooperative institutions to help small businesses sell their products.²³ Research by Laura G. Babbitt et al. also shows that recruiters can take advantage of migrant workers, especially if they are in debt from recruitment, lack control over their official documents, and are misled about their living and working conditions before they move. The study catalogues

²¹ Jakob-Moritz Eberl and others, 'The European Media Discourse on Immigration and Its Effects: A Literature Review', *Annals of the International Communication Association*, 42.3 (2018), 207–23 <https://doi.org/10.1080/23808985.2018.1497452>

²² Supang Chantavanich and Waranya Jitpong, 'Precarity and Social Protection of Migrant Fishers in Thailand: Case Studies of Death and Disappearance at Sea', *Marine Policy*, 155 (2023), 105743 <https://doi.org/10.1016/j.marpol.2023.105743>

²³ Maksum.

recruiting challenges (costs, intermediaries, contract traceability) and proposes equitable recruitment methods throughout the process, utilizing a cross-country thematic policy framework. Nonetheless, the institutional framework of ASEAN remains unassessed.²⁴

This research differs from earlier studies by examining the protection of migrant workers within the broader ASEAN regional framework rather than restricting the analysis to individual country contexts or specific industry related issues. The study advances existing scholarship by situating migrant worker protection within the larger policy dilemmas and institutional deadlocks that occur at the ASEAN level. It demonstrates that the ASEAN Way, which relies on nonbinding commitments, consensus based decision making, and strict noninterference, operates as a structural constraint that limits the development of effective regional mechanisms for safeguarding migrant workers. By emphasizing these regional level obstacles, the research provides a more comprehensive understanding of why migrant worker protection in ASEAN remains weak despite increasing economic interdependence and the growing scale of labor mobility within the region.²⁵ The research is novel in its thorough analysis of the conflicting interests of migrant worker-sending and -receiving countries in the regional policy formulation process, as well as its role in clarifying the reasons for the stagnation of migrant worker protection policies in ASEAN relative to other regions.

Given these conditions, a central question arises regarding why ASEAN continues to experience persistent policy challenges and repeated impasses in protecting migrant workers, despite the extensive number of declarations and commitments it has issued. This research seeks to examine the underlying causes of these dilemmas by analyzing the political and economic factors that shape policy formation, the limitations inherent in ASEAN's institutional structure, and the tensions that emerge between the interests of labor sending and labor receiving states. The objective of this study is to provide a comprehensive assessment of the prospects for strengthening migrant worker protection within the ASEAN region and to propose practical solutions capable of addressing the current policy deadlock. By identifying the structural and political constraints that hinder progress, the research aims to contribute to a deeper understanding of the challenges facing regional labor governance and to outline pathways that may support more effective and sustainable protection mechanisms.

²⁴ Laura G. Babbitt and others, 'Improving Migration Experiences for Workers: Recruitment Practices along the Bangladesh-Qatar Corridor', *World Development Perspectives*, 30 (2023), 100506 <https://doi.org/10.1016/j.wdp.2023.100506>

²⁵ Tual Sawm Khai, 'Socio-Ecological Barriers to Access COVID-19 Vaccination among Burmese Irregular Migrant Workers in Thailand', *Journal of Migration and Health*, 8 (2023), 100194 <https://doi.org/10.1016/j.jmh.2023.100194>

2. Research Method

This research employs a normative juridical methodology, which is a type of legal research that focuses on the systematic analysis of legal norms, principles, doctrines, and regulatory frameworks through an extensive review of literature. This method is appropriate for examining the policy challenges that ASEAN encounters in protecting the rights of migrant workers, as well as understanding the factors that contribute to the continued impasse in the development of regional protection instruments.²⁶ The research seeks to interpret existing legal provisions, assess their coherence, and identify the gaps that hinder effective regional cooperation. To support this objective, the study adopts a conceptual approach aimed at clarifying and analyzing foundational concepts that shape regional labor governance. These concepts include human rights, legal regionalism, state obligations toward migrant workers, and the broader understanding of labor migration within Southeast Asia. Through this approach, the study evaluates how these concepts are articulated in international and regional legal instruments and how they influence policy development within ASEAN.²⁷

The primary data for this research consist of authoritative legal materials. These include international instruments such as the conventions of the International Labour Organization, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and other relevant United Nations treaties.²⁸ The study also examines regional legal sources, including the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers adopted in 2007 and the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers adopted in 2017. Secondary data, such as scholarly publications, institutional reports, and policy analyses, are used to support the interpretation of these instruments. The research applies a comparative approach to analyze differences between the European Union's migrant worker protection framework and that of ASEAN. This comparative analysis enables the identification of structural weaknesses, institutional constraints, and potential policy models that ASEAN may adapt to enhance its regional protection mechanisms.²⁹

²⁶ Arpangi Arpangi and Tajudeen Sanni, 'Redesigning the Principle of Justice in Labor Disputes', *Journal of Sustainable Development and Regulatory Issues (JSDERI)*, 3.2 (2025), 247–85 <https://doi.org/10.53955/jsderi.v3i2.95>

²⁷ Arpangi Arpangi and Tajudeen Sanni, 'The State's Injustice: Failing to Protect Fixed-Term Workers' Rights', *Journal of Human Rights, Culture and Legal System*, 5.1 (2025), 158–86 <https://doi.org/10.53955/jhcls.v5i1.531>

²⁸ Asianto Nugroho and others, 'Implementation of Worker Rights Protection for Government Employees with Employment Agreements', 2021 <https://doi.org/10.2991/assehr.k.211014.023>

²⁹ Abdul Kadir Jaelani, Reza Octavia Kusumaningtyas, and Willy Naresta Hanum, 'The Impact of Constitutionalism and Social Justice on Protection Employment: A Lesson from Asean Country', *Konferensi Nasional Asosiasi Pengajar Hukum Tata Negara Dan Hukum Administrasi Negara*, 2.1 (2024), 73–100 <https://doi.org/10.55292/wx4a0h35>

3. Results and Discussion

Policy Dilemma and Deadlock in ASEAN's Migrant Rights Protection

The ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (Cebu Declaration) is a set of guidelines that protects the rights of migrant workers and facilitates cooperation among ASEAN countries to address problems related to migrant workers.³⁰ The declaration didn't have to be followed by law, but it did help the sending and receiving countries of migrant workers talk to each other more and set the stage for the creation of more complicated legal tools, like the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers, which was adopted in 2017.³¹

On January 13, 2007, ASEAN member states signed the Cebu Declaration in Cebu, Philippines. The proclamation is a significant step forward for ASEAN, as it demonstrates the region's commitment to protecting the rights of migrant workers. In 2017, the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers was set up as a follow-up to the Cebu Declaration, which had been in effect for ten years (2007–2017). The goal was to develop a more comprehensive and detailed framework for protecting the rights of migrant workers in the ASEAN region. It is not easy to reach a consensus in ASEAN, as it is a complex process that requires considering different perspectives from both sending and receiving countries.³² For example, Malaysia, a receiving country, and Indonesia, a sending country, view consensus as a tool. Indonesia views it as binding because it can provide good protection within the ASEAN rule-based community, whereas Malaysia does not. Another difference is that sending nations expect that the consensus will help them control both documented and undocumented workers in order to protect them. On the other hand, receiving countries prioritize protecting documented migrant workers. ASEAN itself acknowledges that the ASEAN Consensus is a living and evolving document, even though it lacks formal legal authority.³³

One of the responsibilities for sending and receiving nations in the ASEAN Consensus involves placement expenses. This is included in sub-sections a and b

³⁰ Manndy Nget, Manyat Ruchiwit, and Eileen Collins, 'Factors Predicting the Holistic Health Status of Cambodian Migrant Workers in Thailand', *The Open Public Health Journal*, 15.1 (2022) <https://doi.org/10.2174/18749445-v15-e221026-2022-68>

³¹ Riyanti Djalante and others, 'COVID-19 and ASEAN Responses: Comparative Policy Analysis', *Progress in Disaster Science*, 8 (2020), 100129 <https://doi.org/10.1016/j.pdisas.2020.100129>

³² Elfrida Ratnawati and others, 'Is the Master Civil Liable Based on Sea Freight Arrangements in Indonesia?', *Journal of Human Rights, Culture and Legal System*, 4.1 (2024), 209–36 <https://doi.org/10.53955/jhcls.v4i1.194>

³³ Nuchanad Hounnaklang, Chawapon Sarnkhaowkhom, and Rattana Bannatham, 'The Beliefs and Practices on Sexual Health and Sexual Transmitted Infection Prevention of Myanmar Migrant Workers in Thailand', *The Open Public Health Journal*, 14.1 (2021), 294–99 <https://doi.org/10.2174/1874944502114010294>

of number 23 in Chapter 5. Article 23(a) states that sending countries must set fees that are fair, clear, and uniform for all parties. This is especially important for getting passports and other associated documents. Article 23(b) also makes it clear that exporting nations must take the necessary steps to prevent migrant workers from having to pay excessive placement and recruitment fees in those countries.³⁴ The issue of unclear and excessively high placement fees has made things difficult for both companies and employees. Employers are stuck with exorbitant fees that make formal procedures undesirable and non-procedural channels difficult to eliminate. Workers, on the other hand, are stuck in debt.³⁵

Corruption and extortion continue to undermine the recruitment of migrant workers, occurring within private recruitment agencies and immigration offices through practices such as the imposition of excessive recruitment charges, bribery of immigration officials to expedite visa or work permit issuance, and the misuse of migrant labor quotas to hire foreign workers without complying with formal procedures. In response to these systemic abuses, the Government of Indonesia has formally prohibited the collection of placement fees from Indonesian migrant workers, as mandated by Article 30 of Law No. 18 of 2017, which requires the issuance of implementing regulations to govern the financing of migrant worker placement while explicitly affirming that workers must not bear these costs. To operationalize this provision, the Head of BP2MI issued Regulation No. 09 of 2020, which establishes a comprehensive exemption for Indonesian migrant workers from all placement-related expenses, including transportation for departure and return, work visas, authentication of employment contracts, pre-departure training, competency certification, recruitment service fees, passport renewal, police clearance certificates, social security contributions, medical examinations, and psychological assessments conducted domestically. Through this regulatory framework, the state aims to eradicate financial exploitation in the recruitment process, reinforce institutional accountability, and strengthen the overall protection of migrant workers during the pre-departure phase.³⁶

The BP2MI Regulation on Exemption of Placement Fees for Indonesian Migrant Workers (PMI) states that placement fees are not required for ten types of jobs considered informal and unsafe. There are ten jobs open right now: domestic assistant, childminder, elderly caregiver, cook, family driver, garden nurse,

³⁴ Ahmad Dwi Nuryanto, Reza Octavia Kusumaningtyas, and Bukhadyrov Habibullo, 'The Imperative of Social Justice on the Insolvency and Workers' Wage', *Journal of Sustainable Development and Regulatory Issues (JSDERI)*, 2.3 (2024), 209–32 <https://doi.org/10.53955/jsderi.v2i3.48>

³⁵ Naeli Fitria, 'A Critical Review of the ASEAN Convention on the Protection of Women Migrant Workers: Gaps, Challenges, and Recommendations', *JCIC : Jurnal CIC Lembaga Riset Dan Konsultan Sosial*, 7.1 (2025), 51–62 <https://doi.org/10.51486/jbo.v7i1.235>

³⁶ Herdi Sahrasad, 'Commentary on "Marginalisation and Human Rights in Southeast Asia" by Routledge', *Journal of Southeast Asian Human Rights*, 7.2 (2023), 299 <https://doi.org/10.19184/jseahr.v7i2.42969>

cleaning staff, field/plantation worker, and migrant fishing boat crew. According to the Indonesian Migrant Worker Protection Agency (BP2MI), the Indonesian and Malaysian governments have established and regulated the placement fee structure for Malaysia in the manufacturing, plantation, and construction sectors through the Company-to-Company (P2P) scheme. The goal is to protect workers' rights and make sure everything is clear. The fee structure established by BP2MI applies to individual employers, as outlined in the Decree of the Head of the Indonesian Migrant Workers Protection Agency Number 255 of 2023 and the Decree of the Head of the Indonesian Migrant Workers Protection Agency of the Republic of Indonesia Number 493 of 2024. These decrees concern placement fees for Indonesian migrant workers who are placed by Indonesian migrant worker placement companies with individual employers in Malaysia and legal entity employers in Malaysia.³⁷

The BP2MI's policy of not charging placement fees aligns with ILO Convention No. 181, which stipulates that private employment agencies can't charge migrant workers fees. Article 7 of ILO Convention No. 181, which deals with the Distribution of Labour, says that private employment agencies can't charge workers fees, either directly or indirectly, in whole or in part. The competent authority may provide exceptions to this article for certain categories of workers and specific types of services offered by private employment agencies, following consultations with employers' and workers' groups and in the benefit of prospective workers. If a Member State has made an exception, the report must provide information about it and the reasons for making it, as required by Article 22 of the Statutes of the International Labour Organization.³⁸

The BP2MI has helped Indonesia align its internal policies more closely with international norms. However, the policy tools developed within the ASEAN framework are not very strong, which makes things more challenging. ASEAN has issued numerous policy papers to protect migrant workers. Some of these are the Cebu Declaration (2007) and the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers (2017). However, these texts are not legally binding, which means that member nations are not obligated to follow these rules. ASEAN's rule against interfering in the internal affairs of its member states is still strong. This makes it harder for ASEAN to enforce its rules or punish countries that fail to protect migrant workers. The problem of unauthorized

³⁷ Wahab.

³⁸ Padot Agustinus Naibaho, Eman Suparman, and Muhammad Amirulloh, 'Corporate Acquisitions and Labor Rights: Who Protects the Workers?', *Lex Scientia Law Review*, 8.2 (2024), 1117–42 <https://doi.org/10.15294/lslr.v8i2.3415>

workers still exists because there is no stronger regional system in place to ensure that migration and worker protection regulations are followed.³⁹

The issue of unauthorized workers highlights the inadequacy of policy implementation at the national level. This problem is not only because ASEAN isn't committed enough; it's also because member states don't work together effectively enough to deal with cross-border issues like illegal immigration, and their interests differ. The idea of sovereignty that ASEAN member states embrace makes it more challenging for the group to implement stronger policies. As a result, these problems have gotten worse because of the failure to deal with people trafficking and corruption, as well as the problems with implementation and enforcement at the national level, even though ASEAN has official rules in place.⁴⁰

ASEAN must undertake more concrete measures to address the growing problem of undocumented labor migration. Strengthening cross-border law enforcement cooperation and improving the transparency and accessibility of labor recruitment procedures constitute essential steps toward achieving this objective. As a regional organization that prioritizes voluntary cooperation and respect for state sovereignty, ASEAN operates without coercive authority and therefore lacks the institutional capacity to compel member states to adopt or implement specific measures. This institutional characteristic is consistent with established theories of international organizations, which highlight non-intervention and consensual cooperation as defining features of intergovernmental arrangements. Consequently, ASEAN functions primarily as a forum for dialogue, coordination, and policy harmonization rather than as a supranational body capable of imposing legally binding obligations on its member states.⁴¹

The power of an international organization depends on how much member states are willing to give up some of their independence. In this sense, ASEAN is a loose grouping that prioritizes the full sovereignty of each member state. As a result, ASEAN's ability to force people to do things is very limited. The European Union and other powerful groups can compel their member states to adhere to the rules by entering into agreements that are more legally binding.⁴² ASEAN was

³⁹ Edithea Steff Lopian, Ismi Dwi Astuti Nurhaeni, and Mahendra Wijaya, 'Hegemonic Project and the Protection of Migrant Workers in ASEAN', *International Journal of Multicultural and Multireligious Understanding*, 8.8 (2021), 30 <https://doi.org/10.18415/ijmmu.v8i8.2842>

⁴⁰ Amarjit Kaur, 'Managing Labour Migration in Malaysia: Guest Worker Programs and the Regularisation of Irregular Labour Migrants as a Policy Instrument', *Asian Studies Review*, 38.3 (2014), 345–66 <https://doi.org/10.1080/10357823.2014.934659>

⁴¹ Achmad Yassin Zidan Akram Aslam, 'Indonesia's Implementation in Migrant Workers Protection from Involvement Of Terrorism as ASEAN Member States', *Journal of Law and Policy Transformation*, 9.2 (2024), 278–91 <https://doi.org/10.37253/jlpt.v9i2.10079>

⁴² Emilia Fitriana Dewi and others, 'Indonesian and Malaysian Labor Law Comparative Study In Enhancing The Competitiveness of Workers In The Framework of The Asean Economic Community', *Journal Research of Social Science, Economics, and Management*, 2.5 (2022) <https://doi.org/10.59141/jrssem.v2i05.345>

founded on the principles of non-intervention and consensus, which structurally limit its ability to compel member states to adopt or implement specific policies. Although ASEAN has developed mechanisms to address the challenges experienced by migrant workers, including the ASEAN Consensus on Migrant Workers, these instruments remain non-binding and rely entirely on the voluntary commitment of member states. This institutional reality aligns with Realist Theory in international relations and international law, which posits that states consistently prioritize their national interests when engaging in cooperative arrangements. Within the ASEAN context, economically stronger member states such as Malaysia, Singapore, and Thailand frequently preserve broad discretion over their domestic regulatory frameworks, including those governing migrant labor. Consequently, these states may disregard or selectively implement regional policy instruments when they perceive such measures as inconsistent with their national economic or political priorities.⁴³

ASEAN's strong reliance on consensus-based decision making requires unanimous agreement among all member states, which creates substantial obstacles for advancing migrant worker protection. This requirement becomes particularly problematic because the policy priorities of labor-sending and labor-receiving countries diverge significantly. Labor-sending states such as Indonesia and the Philippines consistently advocate for stronger rights and safeguards for their nationals working abroad. In contrast, labor-receiving states, including Malaysia and Singapore, often express concern that the adoption of more stringent regional regulations may reduce labor market flexibility and increase administrative or economic burdens. This structural divergence in interests routinely impedes collective decision-making and limits ASEAN's ability to formulate robust and enforceable regional standards for migrant worker protection.⁴⁴

The ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (2007) and the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers (2017) show this. Both documents have solid rules, such as not discriminating and respecting human rights. However, they are not legally obligatory. There are no ways to keep an eye on, evaluate, or punish member nations that don't meet their responsibilities. These papers are more like emblems of political unity than useful legal tools. Due to this trend toward non-binding policies, the political will of each country significantly impacts the effectiveness of migrant worker protection. Countries that receive refugees often overlook the protective requirements outlined in the ASEAN Declaration, prioritizing their own security and economic concerns. This puts

⁴³ Dewi and others.

⁴⁴ Arini Azka Muthia, 'Legal Protection for Illegal Migrant Domestic Workers under the ASEAN Regulations and Its Implication for Indonesia', *Indonesian Journal of International Law*, 17.3 (2020) <https://doi.org/10.17304/ijil.vol17.3.788>

migrant workers at risk of human rights abuses, discrimination, and exploitation, even though ASEAN has set up rules to protect them.⁴⁵

The absence of a supranational body in ASEAN, such as the European Court of Justice in the EU, that can legally enforce agreements exacerbates the situation. The ASEAN Intergovernmental Commission on Human Rights (AICHR) is not even permitted to investigate individual instances or hold member states accountable. Within this institutional framework, each policy is a moral suggestion that lacks the power to compel people to follow it.⁴⁶ Because this strategy is based on agreement and is not legally binding, it has led to policy paralysis or even gridlock. ASEAN continues to make declarative statements, but it isn't getting any closer to a binding agreement.⁴⁷

This situation demonstrates that the short-term priorities of member states, particularly the protection of national sovereignty and domestic labor market interests, consistently outweigh longer-term regional objectives such as advancing regional integration and ensuring the protection of migrant workers. The persistent deadlock in migrant worker protection within ASEAN reveals the structural limitations of the regional legal framework, which continues to privilege political consensus over the development of binding and enforceable legal instruments. Although existing normative documents represent progress in acknowledging the challenges faced by migrant workers, these instruments risk losing their practical relevance in the absence of implementation procedures, monitoring mechanisms, and enforcement provisions. Overcoming this policy stalemate requires ASEAN institutions to undergo substantive institutional adaptation by moving beyond the traditional norm of non-intervention and establishing a more comprehensive, binding, and enforceable regional framework for the protection of migrant workers.⁴⁸

International Human Rights Instruments and the Protection of Migrant Workers in Europe

A considerable proportion of international migrant workers reside in Europe, having relocated from their countries of origin to pursue employment opportunities abroad. According to the latest estimates issued by the International

⁴⁵ Aktieva Tri Tjitrawati and Mochamad Kevin Romadhona, 'Living beyond Borders: The International Legal Framework to Protecting Rights to Health of Indonesian Illegal Migrant Workers in Malaysia', *International Journal of Migration, Health and Social Care*, 20.2 (2024), 227–45 <https://doi.org/10.1108/IJMHSC-04-2023-0038>

⁴⁶ Ilham Prisgunanto and Iswahyu Pranawukir, 'Meaning of Pluralism for Indonesian Imigrant Workers in Malaysia', *Jurnal Komunikasi*, 15.1 (2023), 57–73 <https://doi.org/10.24912/jk.v15i1.20602>

⁴⁷ Ruji Auethavornpipat and Wayne Palmer, 'Indonesia's Promotion of UN Migrant Protection Norms in ASEAN', *Pacific Affairs*, 95.1 (2022), 75–97 <https://doi.org/10.5509/202295175>

⁴⁸ Mochamad Kevin Romadhona, Sri Endah Kinasih, and Rachmat Dimas Oktafenanda, 'Labor Migration Policy in ASEAN States', *International Law Discourse in Southeast Asia*, 4.1 (2025), 81–128 <https://doi.org/10.15294/ildisea.v4i1.23485>

Labour Organization (ILO), the regions of Northern, Southern, and Western Europe collectively accommodate nearly one-fourth of the world's 169 million international migrant workers. These figures indicate that international migrants constitute approximately five percent of the global labor force.⁴⁹ In Northern, Southern, and Western Europe, however, they make up about 18% of the workforce. To put it another way, approximately one-fifth of the people working in Northern, Southern, and Western Europe are international migrants. It is essential to recognize the significant contribution and value that migrant workers bring to the European labor market, particularly as the working population in Europe is aging and shrinking. The European Commission estimates that the working-age population will decrease from approximately 65% of the total EU population in 2019 to around 55% by 2070. It is expected that this will lead to significant shortages of workers and skills in several European fields, including healthcare, IT, hospitality, and tourism.⁵⁰

It is well-known that migrant workers are very likely to be abused and taken advantage of, even if many of them have good experiences with moving and working. This applies to migrant workers with irregular migration status, as well as intra-EU migrants (especially those from Eastern Europe), non-EU migrants with legal residence status, refugees, asylum seekers, and international students. Exploitation of migrant laborers often occurs in plain sight and is shaped by a variety of interconnected circumstances.⁵¹ In many cases, migrant workers lack sufficient knowledge about or access to clear, precise, and reliable information on the legal and social safeguards available in their home and host countries, as well as how to find employment overseas. This lack of understanding can make migrant workers more likely to be taken advantage of and abused by dishonest labor recruiters, employers, and/or employment agencies. For example, it could lead to migratory workers using illegal channels or accepting jobs with poor pay and working conditions, such as those in the informal economy. This is especially true for low-skilled migrant workers from outside the EU, who have limited options for relocating to the area on a regular basis.⁵²

Migrant workers who use labor recruiters to find work abroad are often more likely to be taken advantage of. This is because there are no rules or oversight for hiring

⁴⁹ Robert Kohn, 'The Current State of International Human Rights of Older Persons', *The American Journal of Geriatric Psychiatry*, 2025 <https://doi.org/10.1016/j.jagp.2025.08.004>

⁵⁰ Arisman Arisman and Ratnawati Kusuma Jaya, 'Labour Migration in ASEAN: Indonesian Migrant Workers in Johor Bahru, Malaysia', *Asian Education and Development Studies*, 10.1 (2020), 27–39 <https://doi.org/10.1108/AEDS-02-2019-0034>

⁵¹ Amy J. Stevens and others, 'Discriminatory, Racist and Xenophobic Policies and Practice against Child Refugees, Asylum Seekers and Undocumented Migrants in European Health Systems', *The Lancet Regional Health - Europe*, 41 (2024), 100834 <https://doi.org/10.1016/j.lanepe.2023.100834>

⁵² Kerrie Stevenson and others, 'Universal Health Coverage for Undocumented Migrants in the WHO European Region: A Long Way to Go', *The Lancet Regional Health - Europe*, 41 (2024), 100803 <https://doi.org/10.1016/j.lanepe.2023.100803>

procedures in Europe or anywhere else, which leads to more dishonest business practices and the growth of informal brokers and other middlemen. Migrant workers are also at risk of being harassed, discriminated against, and attacked. This includes the hiring process, when migrant workers may not be able to get jobs because of their gender, age, religion, sexual orientation, or other factors, and the employment process, when they may not be able to get social protection and may have worse working conditions than local workers.⁵³ Because they often work in more private settings, like the domestic and/or care industries, where they have to deal with cultural differences and power imbalances, female migrant workers are more likely to experience sexual violence and discrimination based on their gender.⁵⁴

Over the last 20 years, the European Union has introduced several rules to facilitate the entry and stay of people from other countries in Member States. The European Union has also put in place rules to stop the abuse of migrant workers. The Employer Sanctions Directive is one of these. It shows how important it is to punish firms that hire and take advantage of irregular migrant workers.⁵⁵ The EU Anti-Trafficking in Human Beings Directive has comprehensive rules to ensure that victims are better protected, assisted, and supported. The Victims' Rights Directive sets minimum criteria for the rights, support, and protection of crime victims. The EU has also implemented the Posted Workers Directive to prevent the exploitation of migrant workers from other EU countries who are temporarily working in other EU countries.⁵⁶

The EU Member States have granted the EU the authority to address migration. This has a direct effect on how national laws are made in Europe, even in countries that are not members of the EU. The European Parliament, the Council of the European Union, and the European Commission all approved the Charter of Fundamental Rights of the European Union (EU Charter) with only minor changes in December 2007. The Treaty of Lisbon came into force in December 2009.⁵⁷ Article 51 says that the Charter only applies to European Member States when they use Union law. Article 52.3 of the EU Charter relates the interpretation of the Charter to the relevant case law of the European Court of Human Rights (ECtHR). This balances out the Charter's vague nature and the fact that there is no precise way to check how well it is being followed in Member States' laws and practices. As a result, the ECtHR has developed a body of law regarding the rights of migrant workers, which will aid in the interpretation of certain EU statutes. One instance is the

⁵³ Amy Stevens and others, 'Upholding the Right to Health of Forcibly Displaced Children in Europe', *Public Health in Practice*, 10 (2025), 100641 <https://doi.org/10.1016/j.puhip.2025.100641>

⁵⁴ Oleg M. Yaroshenko and others, 'Social Guarantees for Cross-Border and Seasonal Workers in Europe during COVID-19 and Other Global Crises', *Research in Globalization*, 7 (2023), 100166 <https://doi.org/10.1016/j.resglo.2023.100166>

⁵⁵ Daniela Castilho and José Alberto Fuinhas, 'How Do Tourism Investments Affect Each Pillar of Decent Work? Evidence from European Union Countries', *Safety Science*, 189 (2025), 106896 <https://doi.org/10.1016/j.ssci.2025.106896>

⁵⁶ Kuo-Wei Yen and Li-Chuan Liu Huang, 'A Review of Migrant Labour Rights Protection in Distant Water Fishing in Taiwan: From Laissez-Faire to Regulation and Challenges Behind', *Marine Policy*, 134 (2021), 104805 <https://doi.org/10.1016/j.marpol.2021.104805>

⁵⁷ Karl Heyer, 'Keeping Migrants at the Margins. Governing through Ambiguity and the Politics of Discretion in the Post-2015 European Migration and Border Regime', *Political Geography*, 97 (2022), 102643 <https://doi.org/10.1016/j.polgeo.2022.102643>

comprehensive jurisprudence established by the ECtHR on the detention of irregular migrant laborers, which can be contextualized within the implementation of the EU Return Directive at the national level. When comparing the EU Charter to the International Convention on the Protection of the Rights of All Migrant Workers and Their Families (ICRMW), it becomes apparent that both Charters encompass a comprehensive list of rights. Some of these rights are exclusive to regular migrant workers, while others apply to all migrant workers, including those in irregular situations. They all agree on what basic human rights are and that they apply to "everyone."⁵⁸

EU Member States have ratified most of the nine basic international human rights treaties. Some countries have already ratified the most recent human rights treaties, including the Convention on the Rights of Persons with Disabilities (CRPD) and the Convention for the Protection of All Persons from Enforced Disappearance (CPED). According to basic international treaties, states must protect the human rights of all people, including migrant workers and their families, who are in an irregular position.⁵⁹ This research illustrates that the national laws of most EU Member States afford a degree of protection to both regular and irregular migrant workers.⁶⁰ There are still many concerns concerning migrant workers' human rights in Europe, which shows how important it is to have a strong framework to protect their rights. Over the last twenty years, the EU has emerged as a new and increasingly important player in migration policy, working in conjunction with the policies of its Member States. The EU has increased its cooperation in some sectors relating to migration, such as border control (under the Third Pillar, or the intergovernmental dimension), since the Treaty of Maastricht. During that time, the EU Member States' primary goal was to reduce irregular migration, as this emphasis demonstrated. As a result, the Justice and Home Affairs Council remains responsible for migration policy. As of 2010, this responsibility falls under the Justice, Liberty and Security Directorate General (formerly the Home Affairs Directorate General) of the European Commission.⁶¹

The EU has emerged as a new and increasingly important player in the area of migration policies, complementing the policies of the Member States. Following the Treaty of Maastricht, the EU developed increasing cooperation in some areas which are related to migration, such as border control (under the so-called Third Pillar, i.e., the inter-governmental dimension). This emphasis reflected the general orientation of the EU Member States in that period which were mainly focused on reducing irregular

⁵⁸ Shailendra Kumar and Sanghamitra Choudhury, 'Migrant Workers and Human Rights: A Critical Study on India's COVID-19 Lockdown Policy', *Social Sciences & Humanities Open*, 3.1 (2021), 100130 <https://doi.org/10.1016/j.ssaho.2021.100130>

⁵⁹ Min Zhang and Rokho Kim, 'Occupational Health in Agriculture: A Re-Emerging Frontier in Worker Protection', *Global Health Journal*, 9.2 (2025), 65–71 <https://doi.org/10.1016/j.glohj.2025.06.001>

⁶⁰ Stephen A. Matlin and others, 'Digital Solutions for Migrant and Refugee Health: A Framework for Analysis and Action', *The Lancet Regional Health - Europe*, 50 (2025), 101190 <https://doi.org/10.1016/j.lanepe.2024.101190>

⁶¹ Andrea Carolina Jaramillo Contreras and others, 'Borders and Liminality in the Right to Health of Migrants in Transit: The Case of Colchane in Chile and Necoclí in Colombia', *Journal of Migration and Health*, 9 (2024), 100230 <https://doi.org/10.1016/j.jmh.2024.100230>

migration.⁶² Consequently, the policy area of migration has remained located within the Justice, Liberty and Security Directorate General (from 2010 Home Affairs Directorate General) of the European Commission and dealt with by the Justice and Home Affairs Council to this day. The explicit mandate of the EU in the field of migration – as a shared responsibility with Member States – was inaugurated in 1997 in the Treaty of Amsterdam. It was further developed in a number of documents and programs adopted by the European Commission and Council.⁶³

EU Member States have signed the most important international and regional human rights treaties. These accords are at least indirectly linked to EU law. The International Charter of Human Rights, comprising the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights, is an example of a document that all EU Member States are required to follow.⁶⁴ The ICRMW is based on these instruments and builds on them to protect migrant workers and their families. The EU's Acquis also says that certain human rights treaties must be ratified. These include the ECHR and Protocols Nos. 4 and 6, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Rights of the Child. The EU is also thinking about signing the ECHR as an institution with legal personality. As a result, the legal effects of these later Conventions on EU law and activity are a new step forward.⁶⁵

The primary advantage of the European Union over ASEAN is that its rules are legally binding. There are now fairly uniform norms for protecting migrant workers across the European Union, as all member states are required to follow directives, regulations, and the Charter of Fundamental Rights. ASEAN, on the other hand, still relies on soft legislation, including the non-binding ASEAN Consensus on Migrant Workers. Therefore, the preservation of migrant workers' rights largely depends on what each country promises to do. The European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) protect the rights of migrant workers by ensuring that they can access independent courts to do so. ASEAN, on the other hand, does not have a regional court that can force its member nations to protect the rights of migrant workers. This is why normative documents often just declare rights. The European Union is also good at combining migration policies with international human rights laws. All EU member states have accepted most of the main UN human rights treaties, and many of these rights have been added to EU law. Even if the ICRMW has not been ratified, other legal tools nonetheless provide protection for migrant workers. ASEAN has been unable

⁶² Silvia Aru and Milena Belloni, 'Deserving or Undeserving?', *Cities*, 153 (2024), 105199 <https://doi.org/10.1016/j.cities.2024.105199>

⁶³ Meltem Ineli-Ciger, 'Resettlement by Algorithm: Can Artificial Intelligence Uphold Human Rights?', *Computer Law & Security Review*, 55 (2024), 106051 <https://doi.org/10.1016/j.clsr.2024.106051>

⁶⁴ Lucía Jiménez and others, 'Mapping Key Actors in Family Support. A European Perspective', *Children and Youth Services Review*, 161 (2024), 107618 <https://doi.org/10.1016/j.childyouth.2024.107618>

⁶⁵ L. Lécuyer and others, 'Empowering European Farmers: Insights from Decolonial Theory and Indigenous People in Latin America', *Journal of Rural Studies*, 117 (2025), 103651 <https://doi.org/10.1016/j.jrurstud.2025.103651>

to establish a binding collective mechanism at the regional level, despite many nations having ratified the ICRMW.⁶⁶

The European Union has a clear mandate to manage migration policy as a shared responsibility with member states from an institutional point of view, for the time being. Since the Treaties of Amsterdam and Lisbon, migration difficulties have changed from being a problem in one country to being part of the European integration framework.⁶⁷ ASEAN does not have a similar mandate; state sovereignty is seen as absolute, which leads to regional migration accords that are based on weak consensus and lack the capacity to enforce compliance. Europe has another advantage in that it has particular tools to stop the exploitation of migrant workers.⁶⁸

The Employer Sanctions Directive, the Anti-Trafficking Directive, and the Posted Workers Directive are all examples of rules that could be circumvented to exploit migrant workers. ASEAN lacks such mechanisms; the governance of migrant worker safety is confined to broad stipulations and is devoid of a thorough legal framework to combat human trafficking and exploitation at the regional scale. Europe has done a better job of protecting migrant workers than ASEAN.⁶⁹ This is largely due to Europe having a binding legislative framework, judicial oversight procedures, and close ties to international human rights instruments.⁷⁰ The European Union has put in place a rather complete set of rules to lower these dangers and make sure that everyone in the region has at least some protection, even if there are still problems like being open to exploitation, discrimination, and human trafficking. Europe, on the other hand, includes migratory issues in a stronger regional integration framework with real legal enforcement. ASEAN, on the other hand, still relies on a non-binding and consensual approach. So, Europe can be a great example for ASEAN to follow in order to improve its policies for protecting migrant workers by making more binding laws and institutional mechanisms that can ensure these policies are followed. This will protect the rights and dignity of migrant workers in Southeast Asia.⁷¹

⁶⁶ Francesco Rouhana and others, 'Ensuring a Just Transition: The Electric Vehicle Revolution from a Human Rights Perspective', *Journal of Cleaner Production*, 462 (2024), 142667 <https://doi.org/10.1016/j.jclepro.2024.142667>

⁶⁷ Mireille Evagora-Campbell and others, 'Promoting Labour Migrant Health Equity through Action on the Structural Determinants: A Systematic Review', *Journal of Migration and Health*, 5 (2022), 100082 <https://doi.org/10.1016/j.jmh.2022.100082>

⁶⁸ Chris Whomersley, 'UNCLOS at 40: What about Human Rights?', *Marine Policy*, 148 (2023), 105424 <https://doi.org/10.1016/j.marpol.2022.105424>

⁶⁹ Susanna Corona Maioli and others, 'International Migration of Unaccompanied Minors: Trends, Health Risks, and Legal Protection', *The Lancet Child & Adolescent Health*, 5.12 (2021), 882–95 [https://doi.org/10.1016/S2352-4642\(21\)00194-2](https://doi.org/10.1016/S2352-4642(21)00194-2)

⁷⁰ Konstantinos Floros and Martin Bak Jørgensen, 'Tracing the Future of Migrants' Labour Relations. Experiences of Institutionalised Migrant Precarity in Denmark and Greece', *Political Geography*, 77 (2020), 102120 <https://doi.org/10.1016/j.polgeo.2019.102120>

⁷¹ Muhammad Nur and others, 'A Comparative Assessment of Digital Platform Worker Protection in the EU and ASEAN', *Legality: Jurnal Ilmiah Hukum*, 31.2 (2023), 367–91 <https://doi.org/10.22219/ljih.v31i2.29823>

ASEAN Migrant Worker Protection Prospects Examined Through European Integration Comparative Framework

The continuous presence of unlawful labor serves as an example of the deficiencies in national-level policy implementation.⁷² This problem is also caused by ASEAN's lack of commitment and the fact that member states don't work together effectively enough and have differing interests when it comes to cross-border issues, such as illegal migration. The principle of sovereignty that ASEAN's member states embrace makes it more challenging for the organization to implement stronger policies. Because of this, the problem keeps getting worse because of people trafficking and corruption, as well as the fact that national rules aren't being followed or enforced well enough, even if there are formal ASEAN policies in place.⁷³

ASEAN must adopt more concrete measures to address the problem of illicit labor migration, including strengthening cross border cooperation in law enforcement and ensuring that labor recruitment processes become more transparent, accessible, and affordable for migrant workers. The institutional design of ASEAN is grounded in voluntary cooperation and respect for the sovereignty of its member states, which limits its capacity to impose binding obligations or compel state action. This characteristic is consistent with international organizational theory, which underscores the principle of non intervention and promotes cooperation among states through consensus rather than coercion.⁷⁴ ASEAN is more of a platform for its members to communicate and collaborate than an organization that can directly enforce its members to follow the law. The power of an international organization depends on how much of their sovereignty member states are willing to give up. ASEAN's ability to compel its members to take action is limited due to its loose organization and respect for the independence of each member state. The European Union and other organizations with greater authority can compel their member states to adhere to the rules by entering into agreements that are more legally binding. However, ASEAN was deliberately founded on the principles of non-intervention and consensus, leading to a minimal degree of coercion.⁷⁵

⁷² Caijing Zhang, Yaoyu Zhang, and Bo Wang, 'Does Affordable Housing Alleviate Migrant Workers' Overwork in Chinese Cities?', *Cities*, 142 (2023), 104532 <https://doi.org/10.1016/j.cities.2023.104532>

⁷³ Choo Chin Low, 'Migtech, Fintech and Fair Migration in Malaysia: Addressing the Protection Gap between Migrant Rights and Labour Policies', *Third World Quarterly*, 44.5 (2023), 872–91 <https://doi.org/10.1080/01436597.2022.2162380>

⁷⁴ Saidatul Nadia Abdul Aziz and Salawati Mat Basir, 'Protection of Migrant Workers under the ICMW: Incompatibility with Malaysian Laws and Position in ASEAN', *Hasanuddin Law Review*, 7.3 (2021), 150 <https://doi.org/10.20956/halrev.v7i3.3066>

⁷⁵ Siwarut Laikram and Shubham Pathak, 'Ratification of ICRMW toward the ILO Conventions amid COVID-19 in Thailand', *Emerging Science Journal*, 6 (2022), 193–211 <https://doi.org/10.28991/esj-2022-SPER-014>

ASEAN has established mechanisms to address the challenges faced by migrant workers, including the ASEAN Consensus on Migrant Workers. However, these methods are not mandatory and rely on member nations to fulfill their commitments. Realist Theory in international relations and law says that governments act in their own best interests. This aligns with that idea. In the context of ASEAN, member states, particularly the economically stronger ones such as Malaysia, Singapore, and Thailand, often retain authority over their internal policies, including those related to migrant laborers. As a result, they could choose to ignore ASEAN policies or only partially follow them if they think they don't fit with their own country's goals.⁷⁶

Over the past twenty years, global events have placed considerable strain on the way Southeast Asia protects migrant workers. The International Labour Organization (ILO) and international legal instruments, notably the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), have advocated for ASEAN nations to improve their standards for protecting migrant workers. This means moving from a declaratory approach, which is just a political statement, to a normative framework that is more legally binding. As a result, the global governance of the labor sector has become a significant external factor that influences ASEAN's policy agenda.⁷⁷

Article 7 of ILO Convention No. 181 on the Distribution of Labour says that private employment agencies can't charge workers fees, either directly or indirectly, in whole or in part. The competent authority may provide exceptions to this article for certain categories of workers and specific types of services offered by private employment agencies, following consultations with employers' and workers' groups and in the benefit of prospective workers.⁷⁸ Article 22 of the Statutes of the International Labour Organization says that if a Member State has made exceptions, the report shall provide information about them and why they were created. ASEAN faces complex internal issues despite strong support from international conventions. Countries like Singapore and Malaysia, which take in migrant workers, don't favor overly tight regional rules, as they can hinder their own labor markets' ability to adapt. In contrast, nations that send migrants, including the Philippines, Indonesia, and Myanmar, put more emphasis on creating legal systems that can protect their citizens' safety and well-being while they are

⁷⁶ Fitria.

⁷⁷ Emilia Fitriana DEWI and others, 'The Equal Migrant Labor Distribution through Indonesia Labor Law Policy in ASEAN Economic Community Framework', *Journal of Advanced Research in Law and Economics*, 11.2 (2020), 334 [https://doi.org/10.14505/jarle.v11.2\(48\).06](https://doi.org/10.14505/jarle.v11.2(48).06)

⁷⁸ Gloria Fernández-Pacheco Alises, Tatiana Avignone, and Mercedes Torres Jiménez, 'Predicting Migrant Children's Social Exclusion Risk through an Innovative Digital Tool: Application of Machine Learning Methods to Spanish Residential Centres', *Children and Youth Services Review*, 175 (2025), 108345 <https://doi.org/10.1016/j.childyouth.2025.108345>

abroad. These contrasting interests often make it hard for ASEAN to reach a consensus, since the group is based on the idea of forging consensus and not interfering.⁷⁹

These different interests are then reflected in the national policies of each country, such as Indonesia, which aims to establish standard fees for placing migrant workers through technical laws to provide a clearer and more measurable level of protection. For example, the Decree of the Head of the Indonesian Migrant Worker Protection Agency of the Republic of Indonesia, which includes Number 493 of 2024 about the Placement Costs for Indonesian Migrant Workers Placed by Indonesian Migrant Worker Placement Companies with Legal Entity Employers in Malaysia, and the CPMI placement cost structure in the manufacturing, plantation, and construction sectors, set standard costs for many overseas placements. These fees include a health check, a short psychological test report, a passport, membership in the employment social security system before, during, and after placement, a work visa, transportation within the country, departure tickets, and a company service charge of RM1,500.

Table 1. Cost Structure for PMI Placement with Legal Entity Employers in the Manufacturing, Plantation, and Construction Industry Sectors, Borne by the Employer

No	Cost Components	Total Cost	Information
1	Medical examination	Rp 819.000,00	
2	Psychological Examination	Rp 550.000,00	
3	Passport	Rp 0	Zero rupiah for Indonesian migrant workers applying for a passport for the first time. The fine for damage is Rp. 500,000.00, and for lost passports is Rp. 1,000,000.00.
4	Employment, social security participation	Rp 370.000,00	Before Work Rp. 37,000.00 During and After: Rp. 322,500
5	Work Visa	Rp 1.115.600,00	
6	Domestic Transportation:		
	From Java	Rp 500.000,00	Ticket prices fluctuate
	From Outside Java	Rp 2.000.000,00	Ticket prices fluctuate
7	Departure Ticket	Rp 2.500.000,00	Ticket prices fluctuate
8	Corporate Services	RM1.500	

Source: Attachment to the Decree of the Head of the Indonesian Migrant Workers Protection Agency of the Republic of Indonesia Number 493 of 2024 concerning the Placement Costs for Indonesian Migrant Workers Placed by Indonesian Migrant Worker Placement Companies to Legal Entity Employers

⁷⁹ Davy Tsz Kit Ng and others, 'The Use and Impact of Digital Interventions on Mental Health and Wellbeing of Forced Migrants: A Systematic Review of Empirical Studies', *Computers in Human Behavior*, 172 (2025), 108755 <https://doi.org/10.1016/j.chb.2025.108755>

The table shows the cost of placing Indonesian Migrant Workers (PMI). Real employers in the manufacturing, plantation, and construction industries pay this cost. Before leaving, you must pay for a medical exam (Rp819,000), a psychiatric evaluation (Rp550,000), a passport (Rp0 for the first application), and a social security payment (Rp370,000). Additionally, migrant workers can get work visas (Rp1,115,600), transportation throughout the country (Rp500,000 from Java and Rp2,000,000 from outside Java), tickets to leave the country (Rp2,500,000), and corporate services (Rp1,500). It is interesting that passports are simply checked for damage or loss, which suggests that there are safety measures in place for new employees. This cost structure indicates that there is a financing plan that is not only the worker's responsibility, but also the employer's, to maintain PMI in a socio-economic context.⁸⁰ This financial plan indicates a shift toward a more progressive approach to protecting migrant workers. In this new model, the costs of migration are more often borne by employers or exporting countries, rather than by the workers themselves. This aligns with the ASEAN dialogue on policy harmonization, which emphasizes the importance of minimal protection criteria, including healthcare, social security, and placement expenses.⁸¹

ASEAN may also adopt an incremental or phased approach to establishing a framework to protect migrant workers. Initially, harmonization should be employed in areas where workers are most vulnerable to exploitation, such as construction, plantations, or domestic work. ASEAN can demonstrate the effectiveness of collective policies by focusing on areas that require the most attention. This way, member nations won't be too opposed to them. This phased strategy also lets member nations gradually adjust.⁸² Legal protection encompasses multiple dimensions, including the safeguarding of fundamental human rights. In this context, the law is required to uphold and respect essential individual rights, such as the rights to life, liberty, and equitable treatment. The ASEAN Economic Community (AEC) Blueprint reinforces this obligation by outlining policies on labor mobility and cooperation that place heightened emphasis on the protection and respect of migrant workers' fundamental rights within the ASEAN region. The following table illustrates these policy commitments.⁸³

⁸⁰ Jie Zhou and Siyu Yang, 'Common Prosperity in the Era of Technological Transformation: Digital Inclusive Finance, Technological Progress, and the Income Distribution of Migrant Workers', *Finance Research Letters*, 81 (2025), 107486 <https://doi.org/10.1016/j.frl.2025.107486>

⁸¹ Musa Abdulraheem, 'Adopting a Holistic Approach: International Legal Perspectives on Safeguarding the Rights of Migrant Children in Africa', *International Journal of Research and Innovation in Applied Science*, IX.XI (2024), 84–112 <https://doi.org/10.51584/IJRIAS.2024.911008>

⁸² Sony Pellissery, Saloni Jain, and Geo Varghese, 'Access to Social Protection by Immigrants, Emigrants and Resident Nationals in India', 2020, pp. 147–61 https://doi.org/10.1007/978-3-030-51237-8_8

⁸³ Sadika Haque and others, 'Ethnographic Insights on the Livability of Migrant Ready-Made Garment Workers in Peri-Urban Bangladesh', *Cities*, 166 (2025), 106229 <https://doi.org/10.1016/j.cities.2025.106229>

Table 2. Cooperation and Labor Mobility in the AEC

MEA Community	Labor activities according to the ASEAN Blueprint
Security politics	Strengthening the role of criminal justice in human trafficking matters to protect victims of human trafficking
Economy	Facilitating movement through the issuance of visas and work permits for businesses and skilled workers. Recognition of professionalism and qualifications. Implementation and development of the New MRA. Human resource development in the service sector. Core competencies and qualifications in priority services. Strengthening the support of labor market schemes.
Socio-cultural	Increasing the volume of decent work. Protecting and enhancing the rights of migrant workers.

Source: processed by the author

The ASEAN Economic Community (AEC) Blueprint outlines a comprehensive framework for people to move freely and operate together within the region. ASEAN stresses the importance of strengthening the role of criminal justice in the political-security area to fight human trafficking, which includes protecting victims. This indicates that problems with labor mobility aren't just viewed as economic issues; they are also directly linked to human rights and legal protection.⁸⁴ In the economic sphere, the AEC explicitly encourages labor mobility by facilitating the issuance of visas and work permits, particularly for skilled workers and cross-border enterprises.⁸⁵ The creation of Mutual Recognition Arrangements (MRAs) is a crucial step in enabling professional competency certifications to be recognized across borders. This shows that workers are professional and qualified. Additionally, enhancing labor market support and

⁸⁴ Guohua Peng and Xiaoling Zhao, 'Effects of Export Growth on the Location Choices of Migrant Workers: Evidence from China', *China Economic Review*, 92 (2025), 102409 <https://doi.org/10.1016/j.chieco.2025.102409>

⁸⁵ Yiran Lin and Huiguang Chen, 'Urbanization and Migrant Workers: Assessing Social Risks and Crafting Preventive Strategies in Eastern China for Sustainable Development', *Physics and Chemistry of the Earth, Parts A/B/C*, 139 (2025), 103932 <https://doi.org/10.1016/j.pce.2025.103932>

human resource development in the service sector aims to elevate the region's overall competitiveness.⁸⁶

The AEC emphasizes the importance of protecting and respecting the rights of migrant workers while also creating more quality jobs in the socio-cultural sector. This component encompasses not only practical economic factors but also important humanitarian considerations, such as ensuring that workers have safe, fair, and respectful working conditions. The AEC Blueprint's protection of migrant workers is therefore multi-faceted, involving political-security, economic, and socio-cultural factors that all work together to create a more inclusive regional integration.⁸⁷ The AEC Blueprint demonstrates that safeguarding migrant laborers requires a more holistic strategy, given the interrelation of political-security, economic, and socio-cultural aspects. Future efforts must go beyond just making promises and instead focus on developing policies that operate more effectively, as protecting migrant workers in ASEAN involves multiple areas. You can utilize the European Union's experience as a guide without copying its structure.⁸⁸

ASEAN could choose to assume the primary tasks necessary for EU protection to be effective, rather than establishing supranational bodies like the EU. These functions encompass (i) the formulation of explicit minimum criteria, (ii) the enhancement of accessible complaint procedures, (iii) cross-border coordination for enforcement, and (iv) the mobility of social rights. These four tasks can be accomplished without violating sovereignty by utilizing stronger soft law tools (consensus and technical commitments), sectoral agreements, and peer review. Start by setting measurable and limited regional minimum standards in areas that are at risk, such as domestic labor, plantations, construction, and fisheries.⁸⁹ These rules should stipulate that workers can't pay for their jobs (fair recruitment), that contracts must be in two languages, that workers have access to legal assistance, and that they are entitled to employment insurance. They should also mention hours of employment and living wages. Change the way the EU works by using "Mutual Recognition" like MRA to certify pre-departure training and occupational

⁸⁶ Irma Olofsson, 'The Absence of Labour in Sustainable Transitions: Migrant Workers and the Just Transitions in the Swedish Forestry Sector', *Forest Policy and Economics*, 178 (2025), 103569 <https://doi.org/10.1016/j.forpol.2025.103569>

⁸⁷ Lilian Li, Mingwang Cheng, and Chunyan Chen, 'Gender Wage Gap of Migrant Workers and Its Root Causes: Gender Discrimination or Labor Endowment?', *Journal of Asian Economics*, 100 (2025), 101988 <https://doi.org/10.1016/j.asieco.2025.101988>

⁸⁸ Tetiana Syroid and Lina Fomina, 'Approaches To Understanding the Concept of Vulnerability: International Legal Aspect', *Journal of International Legal Communication*, 9.2 (2023), 7–15 <https://doi.org/10.32612/uw.27201643.2023.9.pp.7-15>

⁸⁹ Shiping Shao and Caisheng Dong, 'Can Migrant Workers Return Home to Start Businesses Enhance the Vitality of County Economy?', *International Review of Economics & Finance*, 98 (2025), 103950 <https://doi.org/10.1016/j.iref.2025.103950>

safety skills. This certification is not intended to enable people to move freely; rather, it aims to establish a minimal level of equality between countries.⁹⁰

ASEAN may also establish an ASEAN Labor Rights Helpdesk and Mediation Facility under the Secretariat, rather than a regional court. This facility would have channels in several languages, a system for sorting complaints, cross-border mediation, quick referrals to national authorities, and standard operating procedures (SOPs) for response times. Additionally, a Thematic Migrant Ombudsman may be appointed to provide quarterly country response notes and "name and explain" (rather than "name and shame"). This would be like the EU's access to justice system (ombudsman, similar power), but it would still follow the ASEAN Way (non-confrontational). The next idea is the portability of social rights, which ensures that migrant workers retain their social security rights even when they move to other countries in the ASEAN region.⁹¹ The EU's practice of integrating social security systems could lead to a flexible model. ASEAN might start with a trial project between two or three key sending countries (such as Indonesia and the Philippines) and two or three key receiving countries (like Malaysia or Singapore). If this initiative is successful, it may be developed into an ASEAN Social Security Framework. This portability is crucial for building public trust in ASEAN's commitment to protecting its citizens and providing migrant workers with a sense of security. This methodology enables ASEAN to move beyond declaratory measures to tangible policy options that effectively protect migrant workers.⁹²

4. Conclusion

This study concludes that ASEAN continues to face major challenges in protecting migrant workers despite their substantial economic contributions to households and national development. First, the research shows that ASEAN's main instruments, including the Cebu Declaration adopted in 2007 and the ASEAN Consensus adopted in 2017, are not legally binding and lack effective mechanisms for implementation and enforcement. This limitation contributes to ongoing policy stagnation, especially because labor sending countries seek stronger protection while labor receiving countries prioritize flexibility in their labor markets. Second, the comparative assessment demonstrates that the European Union presents a more effective model of migrant worker protection

⁹⁰ Dorin Vaculovschi and Raisa Dogaru, 'Analysis of the Situation Regarding Returned Migrants. Challenges and Solutions', *Eastern European Journal of Regional Studies*, 9.1 (2023), 86–99 <https://doi.org/10.53486/2537-6179.9-1.08>

⁹¹ Karen Lau and others, 'Workplace Mortality Risk and Social Determinants among Migrant Workers: A Systematic Review and Meta-Analysis', *The Lancet Public Health*, 9.11 (2024), e935–49 [https://doi.org/10.1016/S2468-2667\(24\)00226-3](https://doi.org/10.1016/S2468-2667(24)00226-3)

⁹² Yordan Gunawan and others, 'Are There International Labour Standards? Case of Migrant Workers' Exploitation in Italy', *Mulawarman Law Review*, 2022, 146–57 <https://doi.org/10.30872/mulrev.v7i2.905>

through its binding legal framework, strong regional institutions, and clear principles on equality and non discrimination. This example illustrates that regional integration can successfully incorporate enforceable standards for migrant rights. Third, the study finds that ASEAN can address its current policy deadlock by applying a strategy of functional adaptation, in which it selectively adopts practical elements from the European Union framework without attempting to replicate its institutional structure. Approaches such as the establishment of minimum protection standards, the portability of social rights, and the creation of a regional complaints mechanism provide realistic and workable pathways for reform. The ability of ASEAN to strengthen the protection of migrant workers depends on its willingness to move from broad declaratory statements to a more operational and enforceable regional framework that responds to the realities of contemporary labor mobility.

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