

**Strengthening and Harmonizing
Labour Standards in ASEAN:
A Framework for Union Advocacy**

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Strengthening and Harmonizing Labour Standards in ASEAN:

A Framework for Union Advocacy

**ATUC engaged the services of
Consultant Benedicto Ernesto R. Bitonio, Jr.*
for the completion of this study.**

FOREWORD

ASEAN integration requires social dialogue. The ASEAN Economic Community (AEC) aims to transform the ASEAN ten member states into a single market and production base. The AEC hopes to facilitate the movement of labour, capital, goods and services and allow the freer flow of skilled workers across the region. This will have implications on economies and workers, and could intensify competition among countries. Appreciation and practice of labour standards and rights vary in different ASEAN member states.

Decent Work for all workers in an integrated ASEAN requires a common set of rules and standards. A set of ASEAN minimum labour standards, based on the instruments adopted by the International Labour Organization (ILO), can help reduce the exploitation of workers, including migrant workers, as the standards apply to all workers without distinction, in-country or overseas. Minimum standards provide a benchmark for ASEAN countries to aspire for, thus improving compliance with workers' rights. Assessing how key international labour standards have been incorporated into national laws and practices of ASEAN Member States provides a benchmark for taming global supply chains.

This study, **Strengthening and Harmonizing Labour Standards in ASEAN: A Framework for Union Advocacy**, covers international labour standards on wages; working time; social protection, including occupational safety and health, social security and maternity protection; equality of opportunity and treatment and non-discrimination at work; freedom of association and right to organize, collective bargaining, social dialogue and tripartism; and labour inspection.

The framework for advocacy could help the ASEAN Trade Union Council (ATUC), its affiliates and other unions in pushing for country-specific labour law and institutional reforms, improve existing institutions, or support certain categories under the identified key labour standards. Coordinated action on issues within national borders requiring cross-border response strengthens unions' engagement with ASEAN governments and employers' organizations. ATUC affiliates will broaden exchange of information, research, and sharing of good practices in strengthening and harmonizing labour standards in their advocacies and national tripartite systems.

The study will be the basis for the development of an ASEAN decent work index, to gauge ASEAN accomplishments on decent work. An ASEAN decent work index would contain a running series of a set of "indicators" of the four strategic pillars of the Decent Work Agenda: full and productive employment, rights at work, social protection and the promotion of social dialogue. An index would help in a more complete analysis of the various elements of decent work at the ASEAN level and give indications of progress (or the lack of it) of decent work in the sub-region. The ASEAN decent work index will include indicators for decent work for migrant workers.

The initiative to strengthen and harmonize ASEAN labour standards is timely. The ASEAN Member States, as a regional block, committed to conclude negotiations for a Regional Comprehensive Economic Partnership (RCEP). RCEP will group ASEAN, China, Japan, South Korea, India, Australia and New Zealand into the world's largest free trade group upon its completion. The harmonized ASEAN minimum standards could be the labour component in the proposed agreement, as well as other free trade agreements, to ensure inclusive growth in the region.

This study will help in promoting the rights of workers, including migrant workers, and will strengthen engagement with allies and other organizations on labour standards. The practical framework of action complements the efforts and commitment of union activists in applying the identified key ILO standards.

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EXECUTIVE SUMMARY

Growth in ASEAN, in spite of its rapid pace, has yet to become truly inclusive. In the field of labour, a broader policy and regulatory framework is needed to help ensure that the benefits of growth are shared by all, including workers and their families. Even with accelerating integration, Member States still rely on their disparate national labour laws with no concrete initiative to evolve a collective, regional and rights-based labour governance system to harmonize and make these laws congruent over time. With the vision of One ASEAN Community, such system is necessary to support inclusiveness across Member States. The basis of harmonization will be UN human rights instruments affecting labour and international labour standards (ILS) embodied in ILO conventions and other instruments.

Member States have their own laws on the key policy areas of wage, working time, occupational safety and health (OSH), social security and maternity protection, equality of opportunity and non-discrimination, and freedom of association (FoA) and collective bargaining (CB). While these laws have distinctive characteristics and contexts, they also have substantive similarities. It can generally be said that they incorporate ILS principles from ratified as well as unratified ILO conventions. Evolving a regional framework can start with strengthening and harmonization of these laws.

On wages, typical features of national wage laws include payment in legal tender, regularity of payment, and protection of the employee's freedom to dispose his or her wage. Some include specific measures such as protection against garnishment of wages and workers' priority in the distribution of assets in case of an employer's insolvency. State intervention in wage fixing is common. It may take the form of a mandatory minimum wage (MW) or non-mandatory wage guidelines, either of which are adjusted periodically with tripartite participation. The common criteria for wage fixing include needs of workers and their families, cost of living, requirements of economic development, inflation and consumer price index, and capacity of employers to pay. Mandatory wage rates are typically enforced through inspection; in some countries, failure to comply can give rise to penal or other sanctions. While wage laws have general application, their efficacy is in many cases diminished by the small coverage of wage employment in most Member States and by the exclusion of certain workers especially in vulnerable sectors and occupations.

National laws on working time generally follow universal standards such as the eight-hour workday, normal workweek, night work, rest periods, paid leaves and holidays, and premium for overtime, rest day and holiday work. However, problems often arise with respect to work beyond normal working hours or on rest days or holidays as well as country-specific qualifying conditions, limitations and exclusions from coverage. Further, special or non-standard working time arrangements such as part-time work, flexi-time, shift work, night work, and work for pregnant women are generally not covered by national laws.

On occupational safety and health (OSH), the range of national OSH institutions, laws, systems and programs across countries generally follow the principles in relevant ILO conventions such as provision of basic safety and health facilities, special requirements in relation to hazardous work including use of machinery, equipment and hazardous substances or processes, requirement for safety officers or committees, reporting requirements and research on occupational injuries and accidents. However, across the region, significant numbers of workers have no OSH protection, and administrative capacity to enforce OSH laws is weak.

On social security and protection, the most common and most developed social security provisions pertain to maternity protection, sickness, old age, disability or death, work injury, and survivorship or adaptation benefits. Unemployment insurance is also provided in two countries. Design and financing of social security programs vary from contributory social insurance managed by the State, contributory provident funds, and employer-financed liability programs. No area illustrates the wide development disparities among countries in the region more clearly

than social security and protection. For the less developed Member States, programs generally tend to be scattered and fragmented, benefits are inadequate and not at par with ILS, and universal coverage is far from being realized.

The fundamental ILO conventions against non-discrimination and UN instruments like CRC and CEDAW enjoy strong support in ASEAN. But outcomes remain uneven. Low quality of employment and labor productivity affecting large segments of the labour force, high youth unemployment, and barriers in accessing to training, education and employment opportunities create conditions for inequality of opportunity and income. The Committee of Experts on the Application of Conventions and Recommendations (CEACR) have also raised country-specific concerns such as over-representation of women in low-skilled and low income jobs, gender segregation in occupation and vocational training, the existence of a gender pay gap, exclusionary effects of certain policies particularly on women, low-skilled workers, workers in agriculture, domestic workers and migrants, and limited access to social protection. With respect to remuneration, wage is sometimes defined too narrowly with the consequence of limiting wage protection, the principle of equal pay for work of equal value is not explicitly written in the law, and certain groups such as domestic workers and migrant workers are excluded. Differences in treatment based on religion and ethnic origin have also been noted.

On freedom of association (FoA) and collective bargaining (CB), a common characteristic is an active State role in terms of control, regulation, guidance and coordination of trade union (TU) and CB activities. In some countries, centralized organizing and guided or coordinated enterprise CB with single, peak level unions is practiced, while in others there is decentralized enterprise level CB with multiple or fragmented unions. Overall, there is absence or inadequacy of laws protecting workers or prescribing sanctions against acts of anti-union discrimination or interference. Legal institutions for enforcement of FoA and CB rights are also weak. The CEACR has also made country-specific observations of exclusion of specific groups from the right to organize, serious threats against the lives, safety, civil liberties and organizational rights of trade unionists, constraints on the right to establish organizations such as stringent membership, registration, eligibility, residency and citizenship requirements, inadequate protection against acts of interference such as dismissal of union officers, regulation of foreign assistance, among others. Overall, the outcome across the region is similar – there is low trade union density and even lower collective bargaining coverage rate. This limits the efficacy of TU and CB as a vehicle for inclusive growth.

A strengthened and harmonized regional system should always be premised on an affirmation of ILS concepts and principles. It must inquire at gaps and inconsistencies between national laws and practices and ILS and strive to assimilate conditions unique to each country. An identification of ILS priority principles between and among Members can immediately promote within their countries and collectively can help start this process. Law reforms and strengthening of administrative capacities to implement and enforce laws will be key elements. Substantive issues must be addressed:

- On wages, countries must aim to eliminate exclusionary and discriminatory characteristics of wage laws and promote effective tripartite participation in the wage-fixing process.
- On working time, the issue of long, excessive and unpaid hours must be addressed. Special attention should also be given in addressing special concerns, such as part-time work, flexi-time, shift work, night work and work of pregnant women.
- On OSH, Member States should continue national programmes and at the same time start developing a regional policy on safety and health, using the relevant ILO conventions as benchmarks.
- Equality and non-discrimination principles should be continuously embedded in laws and practices on wages, hours of work and social protection; at the same time, legislation should explicitly recognize protected characteristics and prescribe sanctions against all acts of discrimination.

- On FoA and CB, there is a need to affirm and protect the free and independent exercise of TU and CB rights within and across borders, remove undue distinctions and restrictions in their exercise, provide protection against interference, anti-union discrimination and unfair labour practices, and facilitate recognition and representation of unions to enable them to exercise full CB rights. Further, there must be coordinated regional action calling on concerned ASEAN governments to resolve all issues on killings, disappearances, acts of violence and threats against trade unionists.

Finally, harmonization initiatives should be underpinned by a strong commitment to social dialogue and tripartism at the highest national and regional policy-making bodies on labour matters.

INTRODUCTION

1. International labour standards (ILS) are the rules of the game in the world of work. As embodied in ILO conventions, recommendations and other instruments, ILS represent the universal aspirations of the community of nations for methods and principles in regulating labour conditions to improve the physical, moral and intellectual well-being of wage earners¹ and workers in general.
2. In the last decade, ASEAN has been one of the world's fastest growing regions. But considerable challenges remain on how to make growth fair and inclusive for all ASEAN peoples. A harmonized rights-based regulatory and governance system can guide ASEAN Member States in meaningfully translating economic growth to shared prosperity, sustained progress, lasting peace, equality and social justice, especially for workers and their families. This system must incorporate, as core values, the body of ILS set through the ILO standards-setting mechanism.
3. This paper seeks to assess how ASEAN Member States have assimilated ILS into their national laws and practices. It covers ILS on wages; working time; social protection including occupational safety and health, social security and maternity protection; equality of opportunity and treatment and non-discrimination at work; freedom of association and right to organize, collective bargaining, social dialogue and tripartism; and labour inspection.
4. ASEAN governments, particularly through their labour ministries, often acknowledge the importance of ILS in their joint declarations and statements of cooperation. But will they undertake collective initiatives to evolve a rights-based system of regional labour governance founded on ILS? Will they lead in collectively strengthening and harmonizing their disparate national laws and make these congruent over time?²
5. With their strong tradition of respecting each other's sovereignty and not interfering in each other's internal affairs, ASEAN Member States are not expected to pursue aggressive and specific regional initiatives to harmonize national labour standards. To advance regional harmonization more forcefully, it is important for non-governmental organizations like unions to have their own platform of collective advocacy.
6. The ASEAN Social Charter³ is the seminal platform for unions toward regional strengthening and harmonization of labour standards. The document capsulizes how ASEAN unions envision their role in actively influencing and complementing collective

¹ Treaty of Versailles (1919), Section II (General Principles), Article 427. These methods and principles are: 1) the guiding principle that labour should not be regarded merely as a commodity or article of commerce; 2) the right of association for all lawful purposes by the employed as well as by the employers; 3) the payment to the employed of a wage adequate to maintain a reasonable standard of life as this is understood in their time and country; 4) the adoption of an eight hours day or a forty-eight hours week; 5) the adoption of a weekly rest of at least twenty-four hours; 6) the abolition of child labour and the imposition of such limitations on the labour of young persons as shall permit the continuation of their education and assure their proper physical development; 7) the principle that men and women should receive equal remuneration for work of equal value; 8) the standard set by law in each country with respect to the conditions of labour should have due regard to the equitable economic treatment of all workers lawfully resident therein; and 9) each State should make provision for a system of inspection in which women should take part, in order to ensure the enforcement of the laws and regulations for the protection of the employed.

² See Stone, K. 1996. "Labour in the Global Economy: Four Approaches to Transnational Labour Regulation." *International Regulatory Competition and Coordination*. W. Bratton, J. McCahery, S. Picciotto and C. Scott, eds. Oxford: Clarendon Press; cited in George Tsogas, "International Labour Regulation: What Have We Learnt So Far?" *Relations Industrielles/Industrial Relations*, Vol. 64, No. 1 (2009 Winter), Univesiate Laval, pp. 75-94. As early as in the 1990s, four emerging models of international labor regulation were identified: 1) pre-emptive legislation applicable to persons, business entities and states within a transnational bloc; 2) harmonization of domestic legislation, i. e., harmonization of domestic legislations within one bloc; 3) cross-border monitoring and enforcement; and 4) extra-territorial application of domestic law. The first two are European Union approaches meant to make disparate regulatory systems congruent and consistent over time. The last two are North American approaches employing an interpenetrative approach, the temporary incursion of one legal system into the affairs of another.

³ Signed in 2003 with ATUC among the original parties and signatories.

regional actions of ASEAN governments toward aligning laws, institutions and practices with ILS. The regional approach is intended to affirm ILS and does not call for a set of regional labour standards that is distinct from or in derogation of ILS.

7. Part I of the paper is a survey of relevant ILS on the identified areas and their ratification by each Member State. Part II is an overview of the extent to which Member States have incorporated or assimilated ILS principles in these selected areas into their national laws and institutions. It also takes a brief look at commonalities and variances in national standards and practices. Part III concludes with a proposed regional framework in strengthening and harmonizing labour standards among the Member States.

PART I. SURVEY OF RELEVANT INTERNATIONAL STANDARDS

A. UN instruments and ratifications in ASEAN

8. ILS and the 1948 Universal Declaration of Human Rights of the United Nations (UN) are linked by a fundamental principle: that all human beings are to be treated equally and with respect. The Declaration gave rise to a body of international human rights law, consisting of 18 specific treaties and protocols, that have a significant impact in promoting basic workers' rights as defined by ILS. These include the International Covenant on Economic, Social and Cultural Rights (**CESR**: 1966)⁴ and the Optional Protocol to the Covenant on Economic, Social and Cultural Rights (**CESR Protocol**: 2008); the Convention on the Rights of the Child (**CRC**: 1989); the International Convention on the Elimination of All Forms of Racial Discrimination (**CEARD**: 1965); and the Convention on the Elimination of All Forms of Discrimination against Women (**CEDAW**: 1965) and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (**CEDAW Protocol**: 1999). In relation to the areas of ILS inquired into in this paper, all ASEAN Member States were original parties to the **CRC**. Further, they either signed, ratified, or acceded to **CEDAW**. Most of them also signed or acceded to the **CEDAW Protocol**. Support to these instruments by the ASEAN Member States, including Timor Leste which has become involved in ASEAN affairs in recent years, is summarized below.

⁴ Part III of the CESR specifies the following labour rights: right to work including technical and vocational training (Article 6); right to just and favourable conditions of work including fair remuneration and equal pay for work of equal value, safe and healthy working conditions, equality of opportunity, and rest days and holidays (Article 7); right to form unions and to strike (Article 8); social security and social insurance (Article 9); and right of working children young children to employment not harmful to their health and morals and which do not interfere with their education.

TABLE 1. Selected UN instruments signed (s), ratified (r), or acceded to (a) by ASEAN Member States, including Timor Leste.⁵

COUNTRY	UN CONVENTION OR INSTRUMENT		
	CESR	CEDAW	CEDAW Protocol
Brunei	X	2006 a	X
Cambodia	1990 s 1992 a	1980 s 1992 a	2001 s 2010 r
Indonesia	2006 r	1980 s 1984 r	2000 s
Lao PDR	2000 s 2007 r	1980 s 1981 r	X
Malaysia	X	1995 a	X
Myanmar	2015 s	1997 a	X
Philippines	1966 s 1974 r	1980 s 1981 r	2000 s 2003 r
Singapore	X	1995 a	X
Thailand	1999 r	1985 a	2000 s 2000 r
Vietnam	1982 a	1980 s 1982 r	X
Timor Leste	2003 r	X	2003 a

B. ILO conventions and instruments: ratifications in ASEAN

B.1. Fundamental conventions

9. The eight fundamental ILO conventions, four of which are covered in this paper, are the following: **Convention 29** (Forced Labor Convention: 1930); **Convention 105** (Abolition of Forced Labor Convention: 1957); **Convention 138** (Minimum Age Convention: 1973); **Convention 182** (Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor: 1999); **Convention 100** (Equal Remuneration Convention: 1951); **Convention 111** (Anti-Discrimination in Employment and Occupation: 1958); **Convention 87** (Freedom of Association and Protection of the Right to Organise Convention: 1948); and **Convention 98** (Right to Organise and Collective Bargaining Convention: 1949). ASEAN's ratification record of these conventions is shown below.

⁵ Not included in the Table are the Optional Protocol to the Covenant on Economic, Social and Cultural Rights since no ASEAN country ratified it.

TABLE 2. Fundamental conventions ratified by ASEAN Member States, including Timor Leste.

COUNTRY	FoA and CB		Forced Labour		Discrimination		Child Labor	
	C 87	C 98	C 29	C 105	C 100	C 111	C 138	C 182
Brunei							2011	2008
Cambodia	1999	1999	1969	1999	1999	1999	1999	2006
Indonesia	1998	1957	1950	1999	1958	1999	1999	2000
Lao PDR			1964		2008	2008	2005	2005
Malaysia		1961	1957	1958; Den. 1990	1997		1997	2000
Myanmar	1955		1955					2013
Philippines	1953	1953	2005	1960	1953	1960	1998	2000
Singapore		1965	1965	1965; Den. 1979	2002		2005	2001
Thailand			1969	1969	1999		2004	2001
Vietnam			2007		1997	1997	2003	2001
Timor Leste	2009	2009	2009					2009

B.2. Technical and governance conventions

10. Technical conventions cover specific or specialised subjects, sectors, areas of activity or conditions of work. Their common aim is to promote equality of opportunity and treatment in employment and occupation through standardized baseline rules, again supportive of the fundamental human rights principle that all human beings should be treated equally. Governance conventions provide for the specific manner by which the standards can be more effectively formulated, administered and enforced.

B.2.1. On wages

11. **Convention 100**, ratified by eight ASEAN Member States, is the fundamental convention on wages. Several technical conventions cover the areas and approaches of wage regulation. **Convention 94** (Labour Clauses, Public Contracts: 1949) provides for minimum labour standards in the execution of public contracts. **Convention 99** (Minimum Wage Fixing Machinery [Agriculture]: 1951) and **Convention 131** (Minimum Wage Fixing: 1970) establishes a minimum wage fixing machinery capable of determining and periodically reviewing and adjusting minimum wage rates with the force of law. **Convention 95** (Protection of Wages: 1949) seeks to ensure payment of wages in legal tender at regular intervals, free disposition of wages, and priority in the distribution of liquidated assets in case the employer becomes insolvent. A related instrument is **Convention 173** (Protection of Workers Claims, Employer's Insolvency: 1992), which provides for the protection of wage claims in insolvency and bankruptcy by means of a privilege or through a guarantee institution.

12. Of these four technical conventions, two Member States⁶ ratified **Convention 95**. One ratification each was registered for **Convention 99**⁷ and **Convention 131**.⁸

B.2.2. On working time

13. **Convention 1** (Hours of Work, Industry: 1919) and **Convention 30** (Hours of Work, Commerce and Offices: 1921) set the general standard at 48 regular hours of work per week, with a maximum of eight hours per day. **Convention 14** (Weekly Rest, Industry: 1921) and **Convention 106** (Weekly Rest, Commerce and Offices: 1957) set the general standard that workers shall enjoy a rest period of at least 24 consecutive hours every seven days. **Convention 47** (Forty-Hour Workweek Convention: 1935) supplemented by **Recommendation 116** (1962) set the standard of a 40-hour workweek. **Convention 132** (Holidays with Pay, Revised: 1970) provides for at least three working weeks of annual paid holiday for one year of service. **Convention 171** (Night Work: 1990) calls for measures required by the nature of night work for the protection of night workers,⁹ with special provisions for pregnant women. **Convention 175** (Part Time Work: 1994) requires that part-time workers receive the same protection, basic wage and social security, as well as employment conditions equivalent to those accorded to comparable full-time workers.
14. Of these conventions, ASEAN Member States registered a total of seven ratifications. One ratified **Convention 1**;¹⁰ four ratified **Convention 4**;¹¹ one ratified **Convention 106**;¹² and one ratified **Convention 171**.¹³

B.2.3. On Occupational Safety and Health (OSH)

15. **Convention 155** (Occupational Safety and Health: 1981) and **Protocol to Convention 155** (2002) call for the adoption of a coherent national occupational safety and health policy, action by governments and within enterprises to promote occupational safety and health and to improve working conditions, and establishment and periodic review of requirements and procedures for the recording and notification of occupational accidents and diseases, and for the publication of related annual statistics. **Convention 161** (Occupational Health Services: 1985) calls for the establishment of enterprise-level occupational health services entrusted with essentially preventive functions and with maintaining a safe and healthy working environment. **Convention 187** (Promotional Framework for Occupational Safety and Health: 2006) and **Recommendation No. 197** (Promotional Framework for Occupational Safety and Health Recommendation 2006) aim to promote a preventive safety and health culture and to progressively achieve a safe and healthy working environment, as well as to require States and the social partners to develop a national policy, national system,¹⁴ and national programme¹⁵ on OSH.

⁶ Philippines ratified in 1953 and Malaysia in 1961.

⁷ Philippines in 1953.

⁸ Malaysia in June 2016. The ratification will enter into force on June 2017.

⁹ Night work is defined as work performed during a period of not less than seven consecutive hours, including the interval from midnight to 5 a.m.

¹⁰ Myanmar in 1921.

¹¹ Myanmar in 1923; Malaysia – Sarawak in 1964; Thailand in 1968; and Vietnam in 1994.

¹² Indonesia in 1972.

¹³ Lao PDR in 2014.

¹⁴ National systems shall provide the infrastructure for implementing national policy and programmes on occupational safety and health, such as laws and regulations, authorities or bodies, compliance mechanisms including systems of inspection, and arrangements at the level of the undertaking.

¹⁵ National programmes shall include time-bound measures to promote occupational safety and health, enabling a measuring of progress.

16. Of these conventions, ASEAN Member States registered a total of five ratifications, one for **Convention 155**¹⁶ and four for **Convention 187**.¹⁷
17. There are also OSH conventions for particular areas of economic activity, all of which require the preservation of hygiene, health, safety and welfare of workers in their specific workplaces, through preventive, protective and corrective measures that take into account the particular circumstances of the activity in which they are engaged. These include **Convention 120** (Hygiene [Commerce and Offices]: 1964); **Convention 152** (Occupational Safety and Health [Dock Work]: 1979); **Convention 167** (Safety and Health in Construction: 1988); **Convention 176** (Safety and Health in the Mines: 1995); and **Convention 184** (Safety and Health in Agriculture: 2001).
18. Of these conventions, ASEAN Member States registered a total of three ratifications, two for **Convention 120**¹⁸ and one for **Convention 176**.¹⁹

B.2.4. On social security and protection

19. A major part of the entire body of ILS is devoted to social security and protection. Between 1919 and 2010, the ILO adopted 31 conventions and 23 recommendations in this area. About 11.5% of the total number of ratifications is on social security.²⁰ Some of the key instruments are mentioned here.
20. **Convention 102** (Social Security [Minimum Standards]: 1952)²¹ lays down the minimum standard for the level of social security benefits and the conditions under which these may be granted. The nine principal branches of social security are identified, namely medical care, sickness, unemployment, old age, employment injury, family, maternity, invalidity and survivors' benefits.²² The level of minimum benefits can be determined with reference to the level of wages in the country concerned.

¹⁶ Vietnam in 1994.

¹⁷ Malaysia and Singapore in 2012; ratification of the same convention by Indonesia takes effect in August 2016 and by Thailand in March 2017.

¹⁸ Indonesia in 1969 and Vietnam in 1994.

¹⁹ Philippines in 1998. There are four other conventions providing for specific risks - *Convention 115* (Radiation Protection: 1960); *Convention 148* (Working Environment [Air Pollution, Noise and Vibration]: 1977); *Convention 162* (Asbestos: 1986); and *Convention 170* (Chemicals: 1990). However, no Member State ratified any of these conventions.

²⁰ Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution): Report III (Part 1B) General Survey concerning social security instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization, International Labour Conference, 100th Session, 2011, International Labour Office, Geneva (2011), p. 8.

²¹ *Idem*. Historically and conceptually, social security standards comprise three generations based on evolving approaches. In the first generation, the standards were inspired principally by the concept of social insurance. The second generation standards reflected a more general concept of social security codified in the Social Security (Minimum Standards) Convention, 1952 (No. 102). The instruments adopted subsequently, in the third generation, while drawing upon the model of Convention No. 102, took social security two steps further: first, by raising the level of protection offered; and, second, by broadening the concept of social security to include additional forms of social benefits, support and services.

²² The specific benefits under Convention 102 are: *medical care benefits for preventive care, general practitioner care*, including home visits, specialist care, essential pharmaceutical supplies as prescribed, prenatal, confinement and postnatal care by medical practitioners or qualified midwives, *and hospitalization* where necessary; *sickness benefits* with periodical payments, corresponding to at least 45% of the reference wage; *unemployment benefits* with periodical payments, corresponding to at least 45% of the reference wage; *old age benefits* with periodical payments, corresponding to at least 40% of the reference wage. The rates of relevant benefits must be revised following substantial changes in the general level of earnings and / or the cost of living; *medical care benefits with periodical payments* corresponding to at least 50% of the reference wage in cases of incapacity for work or invalidity; *benefits for widow and dependent children* in case of death of breadwinner with periodical payments corresponding to at least 40% of the reference wage, including the possibility of converting periodical payments into lump sums under certain conditions and, except in the case of incapacity for work, obligation to revise the rates of periodical payments following substantial changes in the cost of living; *family benefit* with either periodical payments or the provision of food, clothing, housing, holidays or domestic help, or a combination of these; *maternity benefit* for medical care including at least prenatal, confinement and postnatal care either by medical practitioners or by qualified midwives and hospitalization where necessary; periodical payments, corresponding to at least 45% of the reference wage; *invalidity benefits* with periodical payments, corresponding to at least 40% of the reference wage; the rates of relevant benefits must be revised following substantial changes in the general level of earnings and/or in the cost of living; *survivors' benefits* with periodical payments, corresponding to at least 40% of the reference wage; the rates of relevant benefits must be revised following substantial changes in the general level of earnings and/or in the cost of living.

21. A later generation of conventions expands the scope of protection provided by **Convention No. 102** and offers a higher level of protection in terms of scope and level of benefits to be guaranteed. At the same time, these instruments also authorize certain exceptions to ensure flexibility within countries. **Convention 121** (Employment Injury Benefits: 1964) provides for periodical payments corresponding to at least 60% of the reference wage in cases of incapacity for work or invalidity, benefits for widow, the disabled and dependent widower, and dependent children in case of death of breadwinner, with periodical payments corresponding to at least 50% of the reference wage, as well as the obligation to prescribe minimum amount for these payments, possibility of converting payments into a lump sum under certain conditions, and supplementary benefits for disabled persons requiring the constant help of a third person. **Convention 128** (Invalidity, Old Age and Survivors' Benefits: 1967) provides periodical payments, corresponding to at least 45% of the reference wage and provides for invalidity benefits with periodical payments corresponding to at least 50% of the reference wage, and for survivors' benefits periodical payments corresponding to at least 45% of the reference wage. **Convention 130** (Medical and Sickness Benefits: 1969) provides the same preventive and general care benefits as **Convention No. 102**, plus dental care and medical rehabilitation as well as periodical payments corresponding to at least 60% of the reference wage. It also provides for funeral expenses in case of death of the beneficiary. **Convention 168** (Employment Promotion and Protection against Unemployment: 1988) provides for periodical payments corresponding to at least 50% of the reference wage, with the requirement that the total benefits to which the unemployed may be entitled must guarantee them healthy and reasonable living conditions in accordance with national standards. **Convention 183** (Maternity Protection: 2000)²³ provides for medical benefits including prenatal, childbirth and postnatal care, as well as hospitalization care when necessary, and maternity benefits in the form of cash benefits for 14 weeks to ensure that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living.²⁴ It also provides for protection of the pregnant woman or nursing mother from performing work harmful to her health or that of her child, for the right of the nursing mother to one or more daily breaks or a daily reduction of hours of work to breastfeed her child, and for protection of the woman from discrimination based on maternity including protection against termination on account of pregnancy.²⁵
22. Specific to migrant workers are **Convention 118** (Equality of Treatment [Social Security]: 1962) and **Convention 157** (Maintenance of Social Security Rights: 1982), which provide for certain social security rights and benefits for migrant workers who face the problem of losing entitlements to the social security benefits which they enjoyed in their country of origin. Further, following the trend to expand the scope of protection to include other social benefits, **Recommendation 202** (Social Protection Floors: 2012) gives guidance on introducing, implementing or maintaining social security and protection floors as part of strategies to extend higher levels of social security to as many people as possible, in accordance with the guidelines set out in ILO standards relating to social security.
23. Social security and protection are major concerns within and among the Member States, as reflected in various declarations of ASEAN governments as well as in the ASEAN Social Charter. However, of the instruments mentioned above, Member States registered a total of two ratifications only – **Convention 118** and **Convention 157** – both of which deal with migrant workers.²⁶

²³ Updates *Convention 3* (1919) and *Convention 103* (1952).

²⁴ Women who are absent from work on maternity leave shall be entitled to a cash benefit which ensures that they can maintain themselves and their child in proper conditions of health and with a suitable standard of living and which shall be no less than two-thirds of her previous earnings or a comparable amount.

²⁵ The standard also prohibits employers to terminate the employment of a woman during pregnancy or absence on maternity leave, or during a period following her return to work, except on grounds unrelated to pregnancy, childbirth and its consequences, or nursing. Women returning to work must be returned to the same position or an equivalent position paid at the same rate.

²⁶ Both ratifications were by the Philippines in 1994.

B.2.5. On governance

24. There are four governance instruments, two of which concern labour inspection. **Convention 81** (Labour Inspection Convention: 1947) provides for the establishment and maintenance of labour inspection system for workplaces in industry and commerce. **Protocol 81** (Protocol to the Labour Inspection Convention: 1995) extends labour inspection to non-commercial workplaces and public services. **Convention 129** (Labour Inspection [Agriculture]: 1969) provides for the establishment and maintenance of labour inspection in agriculture.
25. The two other governance conventions are on employment policy and tripartite consultation. **Convention 122** (Employment Policy: 1964) seeks to stimulate economic growth and development, raise levels of living, meet manpower requirements and overcome unemployment and underemployment through an active policy designed to promote full, productive, and freely chosen employment that gives the fullest possible opportunity for each worker to qualify for, and to use his skills and endowments in, a job for which he is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin. **Convention 144** (Tripartite Consultation [International Labour Standards: 1976) provides for a tripartite process in the ratification of ILS and compliance with reports and replies as may be required by the ILO and its supervisory mechanisms.
26. Of these conventions, four Member States ratified **Convention 81**²⁷ while no ratifications have been registered for **Protocol 81** and **Convention 129**. On the other hand, four ratified **Convention 122**²⁸ while six ratified **Convention 144**.²⁹

PART II. NATIONAL LAWS AND INSTITUTIONS

27. From a regional perspective, the policy and regulatory environment in ASEAN can be described as having four layers of legal instruments. These are i) national labour and employment laws and institutions; ii) executive agreements, declarations and memoranda of cooperation or understanding at bilateral, or sub-regional or regional level; iii) international instruments adopted through the multilateral system, such as ILO Recommendations and other framework agreements, which provide guidelines with persuasive or recommendatory effects on individual States; and iv) international instruments such as UN or ILO treaties, conventions, standards and protocols adopted through the multilateral system that become binding and obligatory on State parties and on ratifying States.
28. Member States have their own national standards on wages, working time, OSH, social security and maternity protection, non-discrimination, and freedom of association (FoA) and collective bargaining (CB), regardless of whether or not they ratified the relevant ILO convention. These are laid down in their respective labour codes, employment acts, trade union acts and other labor-related legislations, and supplemented by executive or administrative rules and regulations. Most of these standards are patterned after the relevant ILS, although there are practical issues and concerns especially in relation to their consistency with ILS, coverage, scope and adequacy as well as to their administration, implementation and enforcement.

²⁷ Malaysia in 1963, Singapore in 1965, Vietnam in 1994, and Indonesia in 2004.

²⁸ Cambodia in 1971, Philippines in 1976, Thailand in 1969, and Vietnam in 2012.

²⁹ Indonesia in 1990, Philippines in 1991, Malaysia in 2002, Vietnam in 2008, and Lao PDR and Singapore in 2010.

29. Across the region, the application of the labour standards covered in this paper is premised on the existence of a formal employment relationship, particularly on employment in the wage and salary sector. In evaluating the scope and coverage of these standards, it is always important to bear in mind the large share of the informal sector in the economies of Cambodia, Indonesia, Lao PDR, Myanmar, the Philippines, Thailand and Vietnam whose combined population account for more than 94% of ASEAN's total population of 626 million. Shown below are the proportions of formal (wage and salary) employment and informal or self-employment to total employment.

TABLE 3. Share of wage and salary employment and the self-employed to total employment in ASEAN including Timor Leste, various years.³⁰

COUNTRY	Share of wage and salary employment	Share of the self-employed
Brunei	94.9 (1991)	5.1 (1991)
Male	94.4	5.6
Female	96.1	5.9
Cambodia	15.2 (2000) ³¹	84.7 (2000) ³²
Male	41.2	58.8
Female	30.3	69.7
Indonesia	36.5 (2013)	53.5 (1997)
Male	38.5	49.5
Female	33.0	60.3
Lao PDR	15.6 (2010)	84.4 (2010)
Male	20.4	84.4
Female	10.9	79.6
Malaysia	75.1 (2014)	24.9 (2014)
Male	No data	No data
Female	No data	No data
Myanmar	No data	No data
Philippines	58.2 (2013)	41.8 (2013)
Male	59.7	41.8
Female	55.9	40.3
Singapore	85.1 (2013)	14.9 (2013)
Male	81.5	18.5
Female	89.5	10.5
Thailand	41.4 (2013)	58.6 (2013)
Male	42.0	58
Female	40.7	59.3

³⁰ Key Indicators of the Labour Market (KILM) 2015, Status in Employment Database.

³¹ As reflected in the KILM database. Male and female percentages do not add up.

³² As reflected in the KILM database. Male and female percentages do not add up.

COUNTRY	Share of wage and salary employment	Share of the self-employed
Vietnam	34.8 (2013)	65.1 (2013)
Male	39.9	60.0
Female	29.4	70.5
Timor Leste	28.3 (2010)	No data
Male	32.2	No data
Female	19.9	No data

A. Wages

30. Under **Convention 95**, wage includes remuneration or earnings, however designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by national laws or regulations, which are payable in virtue of a written or unwritten contract of employment by an employer to an employed person for work done or to be done or for services rendered or to be rendered. Some Member States have a narrow definition of wage, tending to exclude some groups from laws and institutions protecting wages.
31. Some Member States have a statutory or mandatory minimum wage. Under **Convention 131**, a minimum wage ought to cover all groups of wage earners as determined by the competent national authority after full consultation with the representative organisations of employers and workers concerned. Conceptually, minimum wage has the force of law and is not subject to abatement. Failure to apply it shall make the person or persons concerned liable for appropriate penal or other sanctions. A labour inspectorate is the standard mechanism to enforce minimum wages. There are common exclusions from coverage, such as the public servants and the military (usually covered by civil service and other laws), workers in micro and small enterprises, and workers in specific sectors and occupations (such as domestic workers and plantation workers, who may or may not be covered by more specific laws). Other grounds for exclusion are when an employee does not meet a minimum service requirement, or is receiving higher than a determined ceiling, or when the employer is financially distressed.
32. On the other hand, State interventions on fixing or determining wage is not limited to setting of a minimum wage. Some Member States set wage guidelines and wage ranges that are non-mandatory (such as Singapore). Others have a statutory or mandatory minimum wage, but subject to exclusions or exemptions (such as the Philippines). Still in others, minimum wage exists only in specific industries (such as Vietnam and Cambodia in relation to the garment and apparel industry). In some countries, there is reference to individual or collective agreements as the mode of wage fixing. In the Philippines, collective bargaining is encouraged as a preferred mode, but in no event should individual or collective agreements fix a wage that is lower than the minimum wage.
33. Different State mechanisms and approaches are used in adjusting wages. In some Member States, government decides directly and unilaterally, through legislation or executive decree. In others, a tripartite body constituted by law, which includes a government representative, is empowered to make the determination. Still in others, government makes the decision after consultation with or recommendation of a tripartite council created by the State.

TABLE 4. Minimum wage laws and mechanisms in ASEAN.³³

COUNTRY	MW-fixing mechanism	MW-fixing level	Excluded workers
Brunei	No data	No data	No data
Cambodia	Government on recommendation from tripartite body	National by industry (to date, only textiles)	Domestic workers
Indonesia	Provincial governments on recommendation of a tripartite body	Regional and regional by sector	Domestic workers, seafarers
Lao PDR	Government	National	None
Malaysia	Government based on recommendation of a tripartite body	National by sector and occupation	None
Myanmar	President-appointed wage councils	National by occupation	Casual workers ³⁴
Philippines	Government on recommendation of tripartite body ³⁵	Regional by sector and enterprise size	Domestic workers ³⁶
Singapore³⁷	No data	No data	No data
Thailand	Government on recommendation of tripartite body	National by region	Work not related to employer's business, domestic workers, workers in private schools
Vietnam	Government on recommendation of tripartite body	National by region and type of enterprise (local, state, foreign-invested)	Cooperatives; ³⁸ workers in social and political enterprises

34. State interventions in wage adjustments generally aim for those at the bottom of the wage scale. National legislations use similar criteria for wage fixing. This includes needs of workers and their families, cost of living, requirements of economic development, inflation and consumer price index, and capacity of employers to pay. Productivity is not a common criterion, except in Singapore and in the Philippines. Spatial and sectoral dimensions, through various approaches, are also incorporated into the wage fixing process, i.e., the process may be centralized through a single national minimum wage; decentralized and spatial through regional, provincial or other geographical considerations; or decentralized and sectoral through industry or sector-specific wage action, among others.

³³ See ILO, ANNEX TO CHAPTER III: MINIMUM WAGE (MW) LAWS, 2011, pp. 68-69.

³⁴ Defined as workers not employed for the purpose of the employer's business.

³⁵ As stated in the referenced text. Under Philippine law, wage-fixing is done through the regional tripartite wage and productivity boards, which is a government body constituted by statute.

³⁶ Covered by separate legislation.

³⁷ No data is supplied in the referenced text. However, Singapore has a tripartite wage council which periodically sets guidelines on wage adjustments.

35. In terms of frequency, the principle of periodic review and adjustment is generally recognized in national legislations and practices. Within this principle, approaches in application vary. The law may prescribe a period within which existing wage rates shall be reviewed, or a period within which no new wage order shall be issued, or expressly recognize the principle of periodic review but without prescribing the period within which the review will be carried out.
36. Most national legislations have guarantees on payment in legal tender or exceptionally in kind, periodic and regular manner and time of payment, and worker's freedom to dispose of her wage as well as non-interference with its disposition. Some national labour and employment laws have specific protections, such as protection against garnishment in the case of Thailand, workers' priority in distribution of assets in case of employer's insolvency in the Philippines, and whistleblower protection for those who report a violation of wage laws also in the Philippines.³⁸
37. Implementation and enforcement of minimum wage is generally through labour inspection. In the Philippines, a worker already separated from his employment may also bring a wage claim to a compulsory labour arbitration tribunal. Depending on the country, consequences of violations range from fines and damages, administrative sanctions including closure of the enterprise, and criminal action with imprisonment ranging from one month to five years.
38. From the foregoing, it can be stated that the Member States have assimilated many elements of ILS on wages in their national laws and regulations. It has also been observed that from 2000 to 2013, sizeable gains in wage employment were seen in South-East Asia and the Pacific, from 31.9 per cent in 2000 to 38.3 per cent in 2013.³⁹ But the more problematic questions lie beneath national legislations. One is the adequacy of wage levels, where only Singapore among the Member States is classified as a high-income economy. Another is the high level of informality in most of the Member States (see TABLE 3), which is inversely proportional to the inclusiveness and efficacy of national legislations protecting wages. Thus, an area of further inquiry is the extent to which national wage laws, combined with other measures, are achieving the socially desirable outcome of approximating a "living wage" that would lift the wage earner and her family out of poverty and allow her to live with decency and security. A third problematic area is an apparent gender wage gap, defined as women's shortfall in wages expressed as per cent of men's average wage, in some countries. Available data in five of six countries show that the average pay of female workers is lower by as much as 26% compared to male workers. This is further aggravated by the fact that to begin with, women already participate less in wage and salary employment than men (see TABLE 3).

³⁸ These protections may actually exist in other countries but might be contained in laws other than labor and employment laws.
³⁹ Extracted from *Global Wage Report 2014-2015: Asia-Pacific Supplement*, p. 4.

TABLE 5. Wage levels in ASEAN and gender wage gap, various years.

COUNTRY	2011 Minimum Wage ⁴¹		2015 Daily Minimum Wage, US\$ ⁴²	Ave. Monthly Wage ⁴³	Gender Wage Gap ⁴⁴
	MW, local currency	Monthly MW, US \$ (rounded)			
Brunei	No minimum wage		No data	No data	No data
Cambodia	247569 riels per month	\$ 61	4.14	121 (2012)	-23.3
Indonesia	1290000 rupees per month	\$ 147 (in Jakarta region)	2.64 – 6.48	183 (2013)	No data
Lao PDR	348000 kip per month	\$ 42	3.58	No data	No data
Malaysia	N.A.		6.30-7.09	651 (2013)	-4.5
Myanmar	N.A.		2.77	No data	No data
Philippines	426 pesos per day 11067 pesos per month	\$256 (rate for National Capital Region)	9.41-10.19	215 (2013)	+6.1
Singapore	No statutorily prescribed MW		No data	3694 (2013)	-26.1
Thailand	203 baht per day 5274 per month	\$173 (in Bangkok)	8.38	391 (2013)	-1.4
Vietnam	830000 dong per month	\$40 (for employees of Vietnamese companies, cooperatives etc.)	3.14 – 4.52	197 (2013)	-9.4

B. Working time

39. Member States follow the universal concept of working time, that is, time placed by the employee at the disposal or control of the employer, or time during which the employee is required, permitted or suffered to work or be at a particular workplace. National legislations may exclude or make special provisions from coverage of working time rules in respect to public servants, who are typically governed by civil service rules; size of the establishment; and nature of functions of the employee such as managerial functions,

⁴⁰ Extracted from *Global Wage Report 2014-2015: Asia-Pacific Supplement*, p. 4.

⁴¹ National Wage and Productivity Commission, Philippines.

⁴² Extracted from *Global Wage Report 2014-2015: Asia-Pacific Supplement*, p. 2.

⁴³ *Idem*, p. 4. Note: The figures give the unadjusted gender wage gap, which is defined as women's shortfall in wages, expressed as per cent of men's average wage (Source: ILO: Global Wage Database 2014/15, based on national statistics).

work in the field, emergency work, shift workers, personal services to another. There are also some exceptional rules on working time in relation to specific sectors such as women, the youth, agriculture workers and domestic work.

40. Normal or regular weekly working hours are understood as the hours of work fixed as such by national laws and regulations. They are taken as indicating the number of hours per day, week or month in excess of which any time worked is remunerated at overtime or premium rates.⁴⁴ Generally, national legislations follow ILS principles on the normal workday and work hours. The universal standard of the eight-hour work day is observed in all Member States.
41. Generally, maximum weekly limits on normal work hours are provided by statute. Indonesia provides for 40 hours; Singapore and Brunei from 42 to 45 hours; Cambodia, Lao PDR, Malaysia, Philippines, Thailand and Vietnam for 48. Only Myanmar does not have a statutory limit.⁴⁵
42. There are variations with respect to night work, maximum hours worked per week, rest periods, paid leaves and holidays. While premium pay for night work, overtime, rest day and holiday work is also generally recognized, not all Member States specify grounds for compulsory overtime and rest day or holiday work. Premium rates also vary by country.
43. Member States also vary on the maximum daily or weekly hours employees may be allowed to work in excess of their normal work hours. There are no universal limits in Myanmar and the Philippines. On the other hand, Brunei, Cambodia, Malaysia, Singapore and Thailand have maximum limits of 60 hours; Indonesia, Lao PDR and Vietnam have maximum limits between 49 to 59 hours.⁴⁶
44. With respect to premium rates for work in excess of the daily or weekly normal working hours, the ILS rate for additional compensation is not less than 25% of the regular rate.⁴⁷ The Philippines has a statutory rate of 25%. Cambodia, Indonesia, Lao PDR, Malaysia, Singapore, Thailand and Vietnam are at 50%. Brunei is at 20%. Myanmar has no mandatory increase for overtime.⁴⁸
45. Some national legislations also prescribe qualifying conditions and limitations in statutory entitlements. For instance, overtime, rest day and holiday work is paid a premium only if performed by employees classified as rank-and-file but not those classified as managers, supervisors or field personnel.⁴⁹ Or premium for overtime work is paid only if work is at the direction of the employer while overtime work at the employee's request is paid the normal rate.⁵⁰
46. With respect to paid annual leaves, the ILS for this is **Convention 132**, which establishes the right of every person to whom it applies to an annual paid leave of at least three working weeks for every one year of service. None of the Member States ratified the convention. Currently, national laws on annual leaves provide less than the standard. Brunei, Malaysia, Myanmar, the Philippines, Singapore and Thailand have minimum annual leaves of less than 10 days. Indonesia and Lao PDR have between 10 to 14 days. Cambodia has between 15 to 19 days.⁵¹ Entitlement to the leaves is dependent on a minimum length of service, a qualifying condition allowed under **Convention 132**.

⁴⁴ ILO. Working Conditions Laws Report 2012: A global review, Geneva, 2013, p. 3.

⁴⁵ *Idem*, p. 7.

⁴⁶ *Idem*, p. 12.

⁴⁷ Under Article 6(2) of ILO Convention No. 1 and Article 7(4) of ILO Convention No. 30, the rate of pay for the additional hours of work permitted under paragraph 2(b), (c), and (d) shall not be less than one and one-quarter times the regular rate.

⁴⁸ ILO. Working Conditions Laws Report 2012, *idem*, 2013, p. 15.

⁴⁹ For instance, the Philippines.

⁵⁰ For instance, Thailand.

⁵¹ ILO. Working Conditions Laws Report 2012, *idem*, p. 18. No information is included for Vietnam.

These paid annual leaves do not include the legal holidays which individual countries declare, and which may either be paid even if unworked or subject to the principle of no work, no pay.

TABLE 6. Summary of normal weekly hours, and rates and limits for overtime or work in excess of normal hours in ASEAN.⁵²

COUNTRY	Normal weekly hours limit weekly	Overtime (OT) limit	Maximum weekly hours limit ⁵⁴	Minimum mandatory OT rate/time off in lieu of OT wages	Minimum annual leave in working days on a 5-day workweek
Brunei	44 hours	12 hours per day and 72 hours per month	61 hours	12 x the employee's monthly basic rate of salary divided by 52 x 44 hours	7 days
Cambodia	48 hours	10 hours per day (including overtime)	60 hours	50 % increase; no universal national entitlement to compensatory time off	15 days
Indonesia	40 hours	3 hours per day and 14 hours per week	54 hours	50 % increase (first overtime hour) and 100 % (subsequent hours) plus sufficient rest, and meals and drinks of at least 1400 calories, if the overtime work is executed for 3 hours or more.	12 days
Lao PDR	48 hours	45 hours per month or 3 hours per day	59 hours	50% increase; no universal national entitlement to compensatory time off	13 days
Malaysia	48 hours	Overtime is to be limited to 64 hours per month	62 hours	50% increase; no universal national entitlement to compensatory time off	8 days

⁵² *Idem*, pp. 29-30.

⁵³ Maximum weekly hours limits are those limits either directly stipulated as such by law or indirectly by stipulating an overtime limit. If the law mandates overtime limits for different periods (e.g. per week and year), the longer period has been chosen and the overtime hours averaged and rounded to a week. (ILO. Working Conditions Laws Report, *idem*, p. 18)

COUNTRY	Normal weekly hours limit weekly	Overtime (OT) limit	Maximum weekly hours limit ⁵⁴	Minimum mandatory OT rate/time off in lieu of OT wages	Minimum annual leave in working days on a 5-day workweek
Myanmar	No universal legislation	No universal legislation	No universal legislation	No universal legislation	7 days
Philippines	48 hours	No universal limit	No universal limit	25% increase; time off granted shall not exempt the employer from paying the additional compensation.	No universal legislation (see average working hours per week)
Singapore	44 hours	12 hours daily maximum (including overtime), 72 hours overtime per month	61 hours	50 % increase; no universal legislation on compensatory time off	7 days
Thailand	48 hours	36 hours per week	84 hours	50 % increase; no universal national entitlement to compensatory time off	6 days
Vietnam	48 hours	4 hours per day and 200 hours per year	52 hours	50 % increase or compensatory time off, paid at 50% of the normal wage rate	10 days

47. A field generally not covered by national legislations or standards is working time flexibility. This includes special or non-standard working time arrangements, such as part-time work, flexi-time, shift work, and night work. Specific legislation on night work for pregnant women, covered in **Convention 171**, is present only in one Member State.⁵⁴

C. Occupational Safety and Health Standards (OSHS)

48. Member States ratified only a few ILS on OSH. However, within the last five years, four Member States⁵⁵ ratified the latest and most comprehensive OSH convention, **Convention 187** (Promotional Framework for Occupational Safety and Health: 2006). National laws on OSH are generally patterned after the subject matters covered by ILS

⁵⁴ Philippines.

⁵⁵ Malaysia and Singapore in 2012; ratification of the same convention by Indonesia takes effect in August 2016 and by Thailand in March 2017

on OSH. The design of national laws essentially incorporate standards for companies to set up basic safety and health facilities, special requirements in relation to hazardous work, including use of machinery, equipment and hazardous substances or processes, requirement for safety officers or committees, and reporting requirements and research on occupational injuries, accidents.

49. There is also a collective sense of moving forward, not through common legislation but through promotional programs such as the initiative of ASEAN Labour Ministers to establish the ASEAN-OSHNET, resulting in the publication of ASEAN-OSHNET Good Occupational Safety and Practices 2008/2009. All Member States have national programmes or master plans to promote OSH, except Brunei. Nevertheless, the latter issued the Workplace Safety and Health Order in 2009 and started implementing it in 2013.
50. The national programmes as well as the ASEAN-OSHNET initiatives appear to incorporate the strategic elements of **Convention 187** and **Recommendation No. 197** and mostly aim to promote a preventive safety and health culture and progressively achieve a safe and healthy working environment, as well as to require States and the social partners to develop a national policy, national system, National systems shall provide the infrastructure for implementing national policy and programmes on occupational safety and health, such as laws and regulations, authorities or bodies, compliance mechanisms including systems of inspection, and arrangements at the level of the undertaking. Member States have the advantage of access to technical and funding assistance from multilateral institutions, including the ILO, in support of these national programmes. It will do well for unions to actively participate in tapping these sources of technical assistance and helping monitor and implement national programmes.

D. Social security and protection

D.1. General social security laws

51. While only two social security conventions were ratified in ASEAN,⁵⁶ social security legislations exist across the region. Although scattered and fragmented, they nevertheless embody some elements of the relevant ILS.
52. As to coverage, national laws cover the conventional areas of social security and protection such as maternity, old age/pension, sickness, injury and disability, death, and survivorship including adaptation benefits. Unemployment insurance is present in two countries⁵⁷ while a housing program exists in one.⁵⁸ The idea of a social protection floor has been mentioned in regional declarations of governments. How this has become part of the policy agenda of individual governments is not readily apparent, although at least some elements of a social protection floor may be part of national social and welfare policies. One Member State's law institutionalizing a State-funded "staircase model" appears to deliberately integrate features of a social protection floor. The law mandates the extension of social security coverage to the whole population in the categories of health, work injury, old age, and death of the breadwinner. The law follows a staircase approach with non-contributory schemes for the poor, contributory schemes for the self-employed, and statutory social security schemes for formal sector workers.⁵⁹

⁵⁶ *Convention 118* and *Convention 157*, both ratified by the Philippines in 1994.

⁵⁷ Thailand, which is voluntary and self-funded; and Vietnam, which is contributory. Philippines.

⁵⁹ Thailand, through the National Social Security Law (Law No. 40/4004).

53. The common types of social security programs are social insurance, provident fund, employer liability programs, employees' compensation which is typically a distinct program, and maternity protection which may or may not be a part of the general social security program. The most common and most developed social security provisions pertain to old age, disability or death, work injury and maternity protection.
54. As to the financing and design of programs, there are several variations. One is employer liability directly financed by employers. Another is social insurance managed by the State and typically contributory except for voluntary members or self-employed where workers solely contribute. A third are contributory provident fund programs managed by a Board consisting of representatives of Fund members. A fourth is an employees' compensation program paid for solely by the employer and managed by the State.
55. The ultimate aim of social security and protection is universal coverage. However, while legislations in some Member States include universal coverage as a policy declaration, eligibility requirements and qualifying conditions are still present in all programs. Thus, programs may exclude certain workers, or require as a condition for receiving benefits a minimum length of service with a particular employer or minimum number of contributions from both employer and employee, or a ceiling or maximum amount of benefits that can be availed of, or behavior clauses on the part of the covered worker. Rules of eligibility, inclusion and exclusion are not altogether prohibited, and are in fact recognized, by ILS. Where these could pose practical problems are in the limited amount of benefits which is tied to wage levels, and if these rules have the tendency of excluding large portions of the population given the high level of informality in most of ASEAN's economies.

D.2. Maternity protection

56. Maternity protection is a key issue in the region. As a general observation, national legislations generally extend maternity protection to all women under an employee-employer relationship, regardless of marital status. In some Member States, paternity leave complements maternity leave, but subject to the requirement that the male employee must be legally married to the woman employee.
57. The types of maternity benefits common across Member States are maternity leave with possible extension of leave for medical reasons, cash benefits and special working time arrangements. Medical benefits are generally not expressly provided under specific maternity protection laws. But these may be covered under general social security legislations. Qualifying conditions are generally not imposed, except for one Member State⁶⁰ that requires a minimum of three months' service with the same employer as a condition for enjoying the leave.
58. Cash benefits are financed in three ways – i) directly by the employer; ii) through contributions of workers and employers to a social security, trust or insurance fund administered by the State; or iii) through contributions of workers and employers with State subsidy to a fund administered by the State.
59. The standard for the duration of maternity leave is provided in **Convention 183**, which no Member State ratified. For comparison, the ILS is at least 2/3 pay for at least 12 weeks. Brunei, Cambodia, Malaysia and the Philippines provide for less than 2/3 pay for less than 12 weeks. Indonesia, Lao PDR, Myanmar and Thailand provide for at least 2/3 pay for 12 to 13 weeks. Singapore and Vietnam provide for at least full pay for 14 weeks.⁶¹

⁶⁰ Lao PDR.

⁶¹ ILO, *Maternity at work. A review of national legislation*, Second Edition, Geneva, 2010, Chapter II, p. 40.

TABLE 7. Duration of maternity leave, amount and source of benefits in ASEAN.⁶²

COUNTRY	Duration of maternity leave (as expressed in national law)	Duration of maternity leave, converted into weeks	Amount of maternity leave benefits ⁶⁴	Source of maternity leave benefits
Brunei	9 weeks	9 weeks	100%	Employer
Cambodia	90 days	13 weeks	50%	Employer
Indonesia	3 months	13 weeks	100%	Employer
Lao PDR	90 days	13 weeks	100%	Social insurance (employer for non-covered women)
Malaysia	60 consecutive days	9 weeks	100%	Employer
Myanmar	12 weeks	12 weeks	66%	Social insurance
Philippines	60 days	9 weeks	100% (of monthly salary credit)	Social insurance
Singapore	16 weeks	16 weeks	100%	Employer; may claim reimbursement up to a ceiling from the Government for the last eight weeks (1st and 2nd child), 16 weeks for 3rd and subsequent child
Thailand	90 days	13 weeks	100% for first 45 days; 50% for the remaining 45 days	Employer (100% for first 45 days); social insurance (50% for remaining 45 days)
Vietnam	4 to 6 months depending on the working conditions and nature of the work	17 weeks (up to 26 weeks, depending on the working conditions and nature of the work)	100%	Social insurance

⁶² *Idem*, p. 46.⁶³ The amount of maternity leave benefits is expressed in this report as a percentage of workers' earnings immediately prior to the leave period. In conjunction with this, the classification takes into account the amount of time available for maternity leave.

60. There are progressive attributes of maternity protection systems in some Member States, such as recognition of special work and working time arrangements pertaining to night work, overtime and rest day work, transfer to light work, time-off for medical examination. There are also provisions against discrimination, under which the employer is prohibited from dismissing or discharging an employee by reason of pregnancy. But in one Member State, there are benefits that are applicable only to its own citizens.

E. Equality and non-discrimination

61. As shown in TABLES 1 and 2, there is a relatively high number of ratifications with respect to the two fundamental ILO instruments on equality and non-discrimination - **Convention 100** and **Convention 111**. In addition, all Member States support the Universal Declaration of Human Rights, the **CRC** and **CEDAW**; seven ratified the **CESR**; and four either signed or ratified the **CEDAW Protocol**.
62. Generally, laws and programs on equality of opportunity and non-discrimination exist in all Member States. As discussed elsewhere, laws on wages, working conditions, OSH, and social security legislations all contribute to creating an environment that promotes equality of opportunity and treatment and prohibit discrimination. From a legal standpoint, the challenge is to align equality and non-discrimination concepts and principles as implemented in national jurisdictions with ILS concepts and principles. There is also a need for more explicit recognition and protection of rights through national legislation, especially on equality of treatment issues arising from the protected characteristics of sex, religion and ethnic origin. With reference to **Convention 111**, and also in relation to the discussion on wages above, the Committee of Experts and Application of Conventions and Recommendations (CEACR) has a standing observation on one Member State⁶⁴ that wage is defined too narrowly, tending to exclude other forms of remuneration. On another Member State,⁶⁵ the principle of equal pay for work of equal value has not been adequately incorporated in law. On the other hand, across Member States, inadequacy if not absence of protection is observable with respect to specific groups like domestic workers and migrant workers. Inadequacy of enforcement mechanisms is also a major problem. All these tend to exclude certain groups and restrict the role of national laws in promoting equal and inclusive protection.
63. Apart from the need to improve national legal frameworks is the equally pressing need to address structural factors that have the effect of impairing equality of opportunity and treatment. While in the region as a whole there has been impressive economic growth, low unemployment and increased incomes, benefits have not been evenly and equitably distributed. Income inequality persists. Quality of employment and labor productivity are major concerns. Youth unemployment remains generally high. Access to training, education and employment opportunities is uneven. In most Member States there is observable sex-based segregation in occupation and training, a gender wage gap (as discussed above), exclusionary effects of policies, particularly on women, lower skilled workers, specific groups of workers (i.e., workers in agriculture, domestic workers, and migrants), and limited access to social protection. In relation to one Member State, the CEACR has observed the over-representation of women in low-skilled and low income jobs, gender segregation in occupation and vocational training.⁶⁶

⁶⁴ Observation in relation to Brunei.

⁶⁵ Observation in relation to the Philippines.

⁶⁶ Observation in relation to Cambodia, but also holds true with other countries.

F. Freedom of association and the right to collective bargaining

F.1. General observations

64. The fundamental conventions on freedom of association (FoA) and collective bargaining (CB) are **Convention 87** and **Convention 98**. Of the Member States, four ratified **Convention 87** and five ratified **Convention 98**. Three of the ratifying States ratified both conventions. A related governance convention is **Convention 144** (Tripartite Consultation: 1990), which was ratified by six Member States. Other FoA and CB conventions, particularly **Convention 151** (Labour Relations in the Public Service), **Convention 154** (Promoting Collective Bargaining) and **Convention 141** (Rural Workers Organizations) had no ratifications.
65. FoA and CB laws in ASEAN are at different levels of development, although most Member States have their own trade union laws. Three of the original ASEAN 5 – Malaysia, Philippines and Singapore - developed labour laws relatively early and have more mature FoA and CB institutions. The common element across the region is an active State role in the exercise of these rights in the form of regulation, guidance and coordination, with varied approaches and outcomes.
66. In terms of trade union structure, Member States recognize enterprise or grassroots level unions as well as peak or apex organizations in the form of federations, national unions, and confederations or trade union centers. But actual practices vary. Malaysia and Singapore, for instance, lean toward centralized, single peak organization structures. The peak organizations guide and coordinate enterprise unionism. Their top officers can be members of the parliament, thus enabling the dominant union to become part of the political party. A similar structure is followed in the CMLV countries. The difference is that in the latter, the State as well as employers still largely control the exercise of FoA. Thus, union sovereignty, autonomy and the right to choose in full freedom without previous authorization from government authority is a key issue. In the Philippines, union competition is the norm at both the national and enterprise levels. Under this variant, fragmentation and multiplicity of unions,⁶⁷ and the possibility of inter-union rivalries, is a regular occurrence. In Myanmar, there is institutionalized State control and restriction over the exercise of FoA and other labour rights.⁶⁸
67. Following their respective trade union structures, the CB models of Malaysia and Singapore recognize the important role of peak national organizations in guiding or coordinated enterprise CB. On the other hand, the Philippines follows a decentralized CB model. Enterprise level unions can engage in CB on their own, or they may be assisted by the federation, national union or trade union center to which they are attached.
68. The scope, depth and quality of CB vary across countries. Malaysia, the Philippines and Singapore have relatively mature CB traditions, in which unions and employers can bargain on a wide range of terms, conditions and benefits of employment. Wage bargaining plays a central role in these countries. Security of employment and productivity can also be included among the issues for bargaining. Indonesia, on the other hand, has yet to evolve a strong tradition of wage bargaining. There are trade union activities and a nascent collective bargaining framework in Vietnam and Cambodia; actual CB has been reported in some enterprises but these experiences need to be further documented. There are trade union organizing activities in Lao PDR and Thailand but so far there is no visible CB. A general observation that can be made in the Member States where CB is still in the development stages is the tendency of CBs, where these exist, to simply replicate the minimum standards set by statutes.

⁶⁷ A similar structure exists in Indonesia and Thailand.

⁶⁸ This is expected to be progressively addressed in the context of that country's re-democratization process.

69. In terms of adequacy of protection of FoA and CB rights, there is a general absence or inadequacy of laws protecting workers against acts of anti-union discrimination or interference with the exercise of FoA and CB rights. Correspondingly, there is also inadequacy of dissuasive sanctions against acts of interference with or violations of these rights. Legal institutions for enforcement of FoA and CB rights are also generally weak.⁶⁹
70. The overall FoA and CB picture that emerges in the region, historically and up to the present, is characterized by a low trade union density and CB coverage. The low numbers necessarily limit the efficacy of trade union and CB laws, even in areas where CB traditions are relatively mature, as instruments of protection and equality.

TABLE 8. Trade union density and collective bargaining coverage in ASEAN, various years.

COUNTRY	TU DENSITY	CB COVERAGE
Brunei	-	-
Cambodia	-	-
Indonesia	-	-
Lao	15.5% (2012)	-
Malaysia	9.2% (2014)	1.4% (2014)
Myanmar	-	-
Philippines	9.9% (2012)	10.3% (2012)
Singapore	25% (2014)	19.6% (2014)
Thailand	3.6% (2010)	-
Vietnam	14.6% (2011)	-

71. Mechanisms for social dialogue, tripartism and other venues for workers' participation in policy and decision making are evolving but remain limited. Except for Malaysia, the Philippines and Singapore, most Member States have not incorporated tripartism and social dialogue in their labour laws. A recent development is that of Cambodia, where a tripartite wage setting mechanism has been set up in the garment industry through a memorandum of agreement. Among Member States where social dialogue and tripartite mechanisms exist, breadth, depth and effectiveness of workers' representation cannot be determined. Capacity of workers' representatives to participate in discussions on general labour laws, FoA and CB laws, and policy and decision-making affecting their rights and welfare also needs continuous upgrading.

F.2. Specific observations

72. The CEACR has standing observations on some Member States regarding the implementation of *Convention 87* and *Convention 98*. These observations help shed more light on the state of FoA and CB rights on the Member States concerned, and indirectly across the region.

⁶⁹ Exceptions are the Philippines and Singapore which has prohibitions and sanctions, administrative and criminal, against unfair labour practices.

73. On **Convention 87**, the CEACR has observed serious threats against trade unionists in exercising their freedom to join organization of their own choice (Art. 2) and to organize (Art. 11) in some Member States. These include allegations of killings, disappearances and other acts of violence against trade unionists;⁷⁰ allegations of infringement of civil liberties on the occasion of legitimate union actions (arrests, and detentions);⁷¹ and exclusion of specific groups from the right to organize.⁷² The CEACR has also observed some inadequacies in existing legal frameworks in ensuring or protecting the right to establish organizations. These include the imposition of stringent registration requirements⁷³ or overly high minimum membership requirements;⁷⁴ restrictive eligibility and residency requirements to become a member or run for union office;⁷⁵ inadequate protection against acts of interference (e.g., dismissals for engagement in legitimate union activities and black-listing of union members);⁷⁶ and regulation of foreign assistance.⁷⁷
74. On the implementation of **Convention 98**, the CEACR has observed the need to strengthen national legal frameworks for CB. Among these observations are: the scope of CB in the public service is limited and excludes terms and conditions of employment;⁷⁸ absence of protection against acts of anti-union discrimination and employer interference including dismissals and non-recognition of unions,⁷⁹ some with particular reference to export processing zones;⁸⁰ and unions without majority support should be allowed to bargain for their own members.⁸¹ In addition, the CEACR also observes that there are no collective agreements at the federation or national level;⁸² there is a time limit (of 30 days) to complete CB, thus undermining the process;⁸³ use of compulsory arbitration that inhibits voluntary collective bargaining;⁸⁴ and requirement for foreign workers to obtain a permit from the government before engaging in collective bargaining.⁸⁵

⁷⁰ Cambodia, Indonesia, Philippines.

⁷¹ Cambodia, Indonesia, Myanmar, Philippines.

⁷² In Cambodia, public servants and teachers; in Indonesia, public servants; in the Philippines, public servants and managerial employees.

⁷³ Myanmar.

⁷⁴ Myanmar, Philippines. This includes the number of unions required to establish a federation or national union. In Myanmar, there is no existing national federation.

⁷⁵ Myanmar, Cambodia (educational qualifications), Philippines (aliens)

⁷⁶ Indonesia, Philippines

⁷⁷ Philippines.

⁷⁸ For example, in the Philippines and Malaysia, the Committee noted that the areas that may be subject to collective negotiation do not include such important aspects of conditions of work as wages, benefits and allowances, and working time, and requested the Government to expand the subjects covered by collective bargaining, in order to ensure that public sector employees not engaged in the administration of the State fully enjoy the right to negotiate and bargain collectively their terms and the conditions of employment.

⁷⁹ CEACR observation is in reference to Indonesia and Malaysia, but the same observation also applies to other countries.

⁸⁰ For example, Indonesia.

⁸¹ CEACR observation relates to Indonesia, but the same observation may apply to other countries. In Indonesia, the Committee previously commented on section 119(1) and (2) of the Manpower Act, according to which, in order to negotiate a collective agreement, a union must have membership equal to more than 50 per cent of the total workforce in the enterprise or receive more than 50 per cent support in a vote of all the workers in the enterprise. The Committee also notes that, if the relevant union does not obtain 50 per cent support in such a vote, it may once again put forward its request to engage in collective bargaining after a period of six months. In the absence of relevant information from the Government, the Committee recalls that, while it is acceptable that the union which represents the majority or a high percentage of workers in a bargaining unit should enjoy preferential or exclusive bargaining rights, the Committee considers that in cases where no union meets these conditions, the minority trade union or unions should at least be able to conclude a collective agreement on behalf of its/their own members.

⁸² CEACR observation relates to Indonesia, but it may also apply to other countries.

⁸³ For example, Indonesia.

⁸⁴ Concerns Indonesia, Malaysia and the Philippines. In Indonesia, the CEACR observed that the ability of one of the parties, as per sections 5, 14 and 24 of Act No. 2 of 2004, to refer the dispute to the Court if settlement cannot be achieved through conciliation or mediation, constitutes compulsory arbitration. The Committee emphasizes that compulsory arbitration at the initiative of one party to the dispute cannot be considered to promote voluntary collective bargaining. In Malaysia, the Committee had noted that section 26(2) of the IRA allows compulsory arbitration by the Minister of Labour of his own motion in case of failure of collective bargaining. The Committee had requested the Government to take measures to ensure that the legislation only authorizes compulsory arbitration in essential services in the strict sense of the term, for public servants engaged in the administration of the State or in cases of acute national crisis. The Committee notes that the Government reiterates that, although the provision accords discretionary powers to the Minister to refer a trade dispute to the Industrial Court for arbitration, in practice the Minister only makes the referral when conciliation has failed to resolve the dispute amicably, and when the dispute is referred to the DGIR. The Government also indicates that the matter will be addressed in the holistic review of labour laws under way. The Committee recalls that the imposition of compulsory arbitration procedure if the parties do not reach agreement on a draft collective agreement raises problems in relation to the application of the Convention.

⁸⁵ Observation in reference to Malaysia, but similar restrictions are also observed in other countries.

PART III. FRAMEWORK FOR STRENGTHENING AND HARMONIZATION OF LABOUR STANDARDS IN ASEAN

A. Number of ratifications and context

75. Countries choose the conventions they ratify on the basis of their social, economic, political and cultural circumstances, and on how ratification can advance their national interests. Below is the total number of ILO conventions ratified by each Member State, including those not discussed in this paper.
- Brunei ratified two fundamental conventions, with its first ratification coming in 2008.
 - Cambodia ratified 13, including all eight fundamental conventions. Its first ratifications came in 1969 and 1971.⁸⁶ Its next ratification did not come until almost three decades later in 1999.
 - Indonesia ratified 18, including all eight fundamental conventions. Its first wave of ratifications was between 1950 and 1972. Its next ratification came two decades later in 1992.
 - Lao PDR ratified 9, including five fundamental conventions. Its first ratifications were made in 1964. Its next ratification came more than four decades later in 2005.
 - Malaysia ratified 17, including five fundamental conventions. Its first wave of ratifications was between 1957 and 1974. Between 1974 and 1997, a span of over two decades, it did not register any ratification.
 - Myanmar ratified 20 conventions, including three fundamental conventions. Eighteen of its ratifications were done between 1921 and 1961. It was not until 2013, or more than five decades later, that it ratified the other two conventions.
 - The Philippines ratified 36,⁸⁷ including all eight fundamental conventions. It had 17 ratifications from 1953 to 1960, but only three between 1960 and 1980.
 - Singapore ratified 20, including five fundamental conventions. Eighteen of these⁸⁸ were registered in its founding year in 1965. Its next ratification came more than three decades later in 2001.
 - Thailand ratified 14, including five of the fundamental conventions. Its first ten ratifications of conventions of a technical nature came between 1964 and 1969.⁸⁹ Its next ratification came more than three decades later in 2001.
 - Vietnam ratified 20, including five fundamental conventions. It ratified its first 11⁹⁰ conventions in 1994.
 - Timor-Leste ratified its first four fundamental conventions in 2009. Two more ratifications were registered in May 2016.⁹¹
76. Some patterns are discernible from the timing of ratifications. First, Member States tend to make a cluster of ratifications not long after their membership with the ILO. Thereafter comes a long slowdown (as in the Philippines) or a lull (as in Indonesia, Malaysia, Myanmar, Singapore and Thailand) that can span two or more decades.
77. Second, internal economic and political factors obviously play a role. All Member States except Singapore and Brunei started out as dominantly agricultural economies; in this

⁸⁶ *Convention 29* and *Convention 122* (Employment Policy: 1964), respectively.

⁸⁷ Including six which were later automatically denounced by reason of its subsequent ratification of updated conventions.

⁸⁸ Including six which were later automatically denounced by reason of its subsequent ratification of updated conventions.

⁸⁹ Excluding *Convention 80* and *Convention 116*, or the Final Articles Revision Convention on revision of reporting procedures.

⁹⁰ One became subject to automatic denunciation.

⁹¹ *Convention 100* and *Convention 111*.

stage they could not be expected to embrace conventions and instruments that are more directly relevant to industrialised economies.

78. Third, the slowdown or lulls in ratifications should, on one hand, be appreciated more closely as periods of assimilation. After their first wave of ratifications, Member States shifted their focus to the enactment of enabling national legislations and appropriate programmes that would put into effect the ratified conventions, in law and in practice. For example, the labour, trade union, and industrial relations codes or laws as well as other labour and employment laws in Malaysia, the Philippines and Singapore were developed during these lulls. It was also during these lulls that the original ASEAN 5 pursued a development path of state guidance and coordination, under which economic and industrial policies administered by authoritarian political regimes were combined with policies of containment of labour rights. For Malaysia, the Philippines and Singapore, labour laws were partly instruments of social control. To the extent of according workers certain basic labour rights, they stabilized employment relations and ensured workers' support to the political regime. But to the extent that they allowed an active State role in the exercise of FoA and CB rights, they limited industrial actions and attracted the foreign investments needed to drive economic growth. In sum, it is during lulls in ratification that Member States concerned, working through the lens of their national politics and economy, make an actual determination or interpretation of the extent to which they institutionalize ILS principles through their national laws and institutions.
79. On the other hand, lulls could also mean periods of suppression or stagnation, or that there is simply nothing going on in terms of advancement of labour rights in the Member State concerned. This is true in the CMLV countries, where the lulls coincided with the period that they were closed economies and were naturally averse to any form of internationalization and regionalization. In the case of Myanmar, which ironically was the region's first mover in ratifying ILO conventions, the change of political regime in 1961 isolated it from the rest of the region and the world. As a result, the development of labour laws and institutions was totally arrested. On the other hand, Cambodia, Lao PDR and Vietnam were in a state of war and internal strife. Under these conditions, ILS and labour rights were not priorities.
80. Fourth, what can be described as a second, slower wave of ratifications started toward the mid-1990s and continues up to the present. This is set under a confluence of circumstances. For one, globalization and regionalization started gaining ground in the region particularly after the collapse of the Soviet Union in 1989. The CMLV countries, transitioning from closed to market economies, joined ASEAN and became part of the ASEAN Free Trade Area. The transition made the political environments in these countries more receptive to ILS. In 1995, the WTO regime came into effect, necessitating national economies to restructure toward the industries and economic activities where they can be most competitive. Then came the shocks from the 1997 Asian financial crisis, particularly hard on Indonesia, Malaysia and Thailand. The stark lesson from this crisis was that a more integrated and interdependent world meant not only a sharing of benefits but also of consequences, and therefore underscored the need for the social aspects of globalization and regionalization to be addressed in an equally interdependent and collective way. It is in this context that in 1998, the ILO adopted the decent work agenda with opportunities for freely chosen and remunerative work, fundamental rights at work, social protection and social dialogue and tripartism underpinned by FoA and CB rights as basic pillars.
81. The confluence of circumstances above, the characteristics of which were replicated in subsequent regional and global crises, also demonstrated the reality that the world of work has changed in a major way particularly in terms of work organization, employment arrangements and social insecurity. The need for updated, new and fairer rules of the game once again trained the spotlight on ILS. Yet, within ASEAN Member States, it has also been the case that concerns on their ability to comply with ILS if they ratified some

of them, as well as on whether a particular ILS would fit into their national development models and cultures or actually help solve their more immediate problems, also engendered a cautious approach that continues to inhibit them from openly committing to specific areas of ILS. This cautious approach makes it imperative for unions to step up their efforts toward ILS advocacy and harmonization.

B. Framework of action toward strengthening and harmonization of standards

82. The basic difference between the first and the second wave of ratifications is that in the former, individual countries were acting for themselves. In the latter, globalization and regional considerations captured in the vision of one ASEAN Community are now part of the regional decision-making as well as national law-making processes of Member States. This vision of one community opens an opportunity, not seen in earlier periods, for regional efforts at strengthening and harmonization of national labour standards and institutions. As a stakeholder to the vision and the champion of workers' rights and welfare, it is ATUC's inherent responsibility to take the lead in the effort.
83. Evolving a framework for regional strengthening and harmonization must start with an affirmation of ILS and should incorporate the following basic principles:
 - a. Concepts, principles and terminology shall not be different from those used in ILS.
 - b. Evaluation of national laws and practices of Member States should be in reference to the relevant ILS, whether or not this ILS was ratified by the concerned Member State.
 - c. ILS-compliant laws and practices of Member States should be promoted for migration and adaptation in other Member States.
 - d. Harmonization initiatives shall not detract from obligations arising from ratified conventions or from ATUC's continuing ratification campaigns.
84. Regional strengthening and harmonization must start with appropriate union initiatives on specific standards, principles and areas of regulation. Working within the policy and regulatory environment in ASEAN described in Paragraph 27 above, the most realistic way to start will be at the national level through strategic reforms in labour and employment laws and institutions that are based on ILS principles, complemented by appropriate government programs in which unions can actively participate. Based on the prevailing conditions and legal infrastructures of the ASEAN Member States, the table below presents what might be the priority areas of coordination and collective action that unions can support toward regional harmonization of labour standards. The listing can serve as a union road map for promoting specific ILS principles in the short to the medium term, while at the same time supporting a continuing and sustained campaign for ratification of relevant ILO conventions in the long term. It includes areas social dialogue and tripartism, as well as labour administration, enforcement and dispute settlement, these being essential institutions in putting into effect the substantive standards covered in this paper.

TABLE 9. Framework on priority subjects and areas of coordination and collective action toward harmonization of labour standards based on ILS principles.

SUBJECT MATTER	AREAS OF COORDINATION AND COLLECTIVE ACTION
1. Wages	<ul style="list-style-type: none"> a. Advocacy for living wage as an explicit ultimate goal, consistent with ILS on wages. Development of measures on living wage that allow comparisons and benchmarking across the region. b. Common definition of wage, in accordance with the broad ILS definition. This will place more people working for remuneration under the coverage of laws protecting wages. c. Strengthening or adoption of laws against wage discrimination, with particular attention on how to address the gender pay gap in some Member States. d. Promotion and strengthening of collective bargaining, particularly wage and productivity bargaining, at the enterprise level. e. Effective tripartite process in minimum wage determination, giving due respect to each Member State's choice of approach, whether legislated, decreed or delegated, mandatory or through a guideline, or centralized or decentralized.
2. Working hours	<ul style="list-style-type: none"> a. Unpaid or excessive working hours in reference to normal working hours. b. Common definition of the concepts of voluntary and compulsory work beyond the normal work hours or during rest days. c. Adoption and implementation of the principle that all work beyond normal work hours or during rest days shall be paid a premium, regardless of whether it is voluntary or compulsory. d. Adoption and implementation of the concept of night work, especially taking into account the situation of pregnant women and workers with health concerns. e. Research on and sharing of experiences and good practices in addressing concerns arising from part-time work and other flexible working time arrangements.
3. Occupational safety and health	<ul style="list-style-type: none"> a. Continuation and strengthening of national programmes on OSH using as benchmarks <i>Convention 155</i>, <i>Protocol to Convention 155</i>, and <i>Convention 187</i>. b. Assessment of the effectiveness and efficiency of existing national health programmes with a view toward addressing concerns arising from weak enforcement of occupational safety and health regulations, particularly on the use of personal protective equipment, safety facilities, safe and healthful work environment, and under-reporting of work-related accidents and injuries. c. Development or enhancement of statistical data on OSH.

SUBJECT MATTER	AREAS OF COORDINATION AND COLLECTIVE ACTION
<p>4. Social protection</p>	<ul style="list-style-type: none"> a. Continuing advocacy for the overall goals of universal coverage and universal access, for both the formal and informal sectors, as well as adequacy of benefits. b. Adoption and implementation of an adequate and sustainable maternity protection and benefits program based on applicable ILS. c. Adoption and implementation of an adequate and sustainable workers' compensation program based on applicable ILS. d. Portability of social security coverage, particularly for migrant workers. e. Continuing advocacy for a sustainable active labor market policy in dealing with unexpected episodes of unemployment and with work-to-work transitions, which include unemployment/employment insurance, skills upgrading and labor market information.
<p>5. Equality and non-discrimination</p>	<ul style="list-style-type: none"> a. Continuing advocacy for equality and non-discrimination principles to be embedded in laws and practices on wages, hours of work, OSH and social protection. b. Continuing advocacy for fair recruitment practices, including regulation of recruitment agencies toward the elimination of discriminatory recruitment practices. c. Active participation in the development and updating of labor market information systems. d. Explicit legal recognition of protected characteristics (e.g., race, creed, sex, national origin, etc); sanctions against acts tending to impair protected characteristics; protection of the rights of migrants and other workers in special circumstances; protection of workers with disabilities; effective enforcement mechanisms; and all other adjustments based on CEACR observations. e. Formulation or continuous improvement and implementation of programmes that address deeper structural problems, such as gender-based inequality in treatment and opportunity for education, training and employment that is especially adverse to women, occupational segregation that tend to stream women to the lower-skilled and lower-paid jobs, and gender-based pay gap. f. Adoption and implementation of the national treatment standard as the common standard of treatment to migrant workers across the region. g. Research and advocacy on identifying and preventing practices that overtly or covertly create or tend to create discriminatory treatment.

SUBJECT MATTER	AREAS OF COORDINATION AND COLLECTIVE ACTION
<p>6. Freedom of association and the right to collective bargaining</p>	<ul style="list-style-type: none"> a. Affirmation of the independent exercise of FoA and CB rights, in law and in practice. b. Removal of distinctions in the exercise of FoA and CB rights (including workers in the public service, migrant workers and foreigners). c. Removal of undue restrictions on union formation and organization (i.e., minimum membership requirements, State-run registration system with overt and covert discretionary powers). d. Definition of acts of interference, anti-union discrimination, and other unfair labor practices. e. Provision of sufficiently dissuasive sanctions against acts of interference and anti-union discrimination, including administrative and criminal sanctions; f. Provision of efficient and effective mechanism to administer regulations and to enforce sanctions. g. Simplification of union recognition processes, including enabling unions to exercise CB rights for their members if majority support is not obtained. h. Enabling CB to take place at all levels (i.e., enterprise, industry, national). i. Removal of restrictions on matters that may be subject of CB. j. Removal of unreasonable time limits to complete CB. k. Limiting compulsory arbitration to essential services. l. Promoting the effective exercise of FoA and CB rights of migrants through union membership and representation that is portable across borders, and formulation, with union participation, of standard employment contracts for specific groups.
<p>6. Social dialogue and tripartism</p>	<ul style="list-style-type: none"> a. Continuous capacity building of representatives toward more effective participation in countries with existing mechanisms. b. Progressive institutionalization of tripartism and social dialogue where there are no mechanisms or mechanisms are not functioning. c. Expanded representation (tripartite-plus) to include matters directly affecting the benefits and welfare not only of trade union members but also of workers in general, in both formal and informal sectors.

SUBJECT MATTER	AREAS OF COORDINATION AND COLLECTIVE ACTION
<p>8. Administration, enforcement and dispute settlement</p>	<ul style="list-style-type: none"> a. Strengthening of labour inspection and enforcement capacities of ministries of labour, including the possibility of investing unions with a role in inspection. b. Strengthening or setting up the appropriate mechanisms for accessible, inexpensive, efficient and effective mechanisms for dispute settlement with consensual modes of settlement such as conciliation and mediation as preferred approaches. These mechanisms should be equally accessible to migrant workers. c. Conduct of education campaigns by unions to i) raise awareness and knowledge of workers on labour standards and on their existing legal rights; ii) enable them to monitor the implementation of these standards and rights; iii) enhance their capacity to engage in effective collective bargaining within and outside the enterprise; iv) enhance their capacity to engage in meaningful social dialogue and tripartism. d. Setting up of accessible, properly-equipped and sustainable workers' resource centers as the delivery mechanisms for union programs such as provision of legal, counselling and other forms of assistance to union members and workers in general, including migrant workers.

85. To summarise, the framework of action should be implemented with country-specific proposals for labour law and institutional reforms, as well as programmes to improve existing institutions or to support target groups in the areas identified. Above the national level, there should be coordinated regional and sub-regional action on issues within national borders but requiring common response and cross-border issues. At both levels, ATUC affiliates should cultivate a robust exchange of information, research, and sharing of good practices. In addition, ATUC must continue to engage ASEAN governments and partner with representatives of employers in undertaking joint regional projects as measures of confidence building and of increasing public visibility and awareness. For this purpose, technical assistance from sources within and outside ASEAN should continue to be tapped.

REFERENCES

- ASEAN Secretariat. Various ASEAN Declarations, various years.
- ATUC. ASEAN Social Charter (2003).
- ILO. Declaration of Philadelphia (1944).
- ILO. Global Wage Report 2014-1015: Asia-Pacific Supplement.
- ILO. Global Wage Database 2014/15, based on national statistics.
- ILO. International Labour Standards Database.
- ILO. Key Indicators of the Labour Market (KILM), Status in Employment Database, 2015.
- ILO. *Maternity at work. A review of national legislation*, Second Edition, (Geneva), 2010.
- ILO NATLEX. Various national legislations.
- ILO. Report of the Committee of Experts on the Application of Conventions and Recommendations, various years.
- ILO. Report III (Part 1B) General Survey concerning social security instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization, International Labour Conference, 100th Session, 2011, International Labour Office, Geneva (2011), p. 8.
- ILO. Working Conditions Laws Report 2012: A global review, Geneva, 2013, p. 3.
- Stone, K. 1996. "Labour in the Global Economy: Four Approaches to Transnational Labour Regulation." *International Regulatory Competition and Coordination*. W. Bratton, J. McCahery, S. Picciotto and C. Scott, eds. Oxford: Clarendon Press; cited in George Tsogas, "International Labour Regulation: What Have We Learnt So Far?" *Relations Industrielles/Industrial Relations*, Vol. 64, No. 1 (2009 Winter), Univesiate Laval.
- Treaty of Versailles (1919).
- United Nations Secretariat. Various UN Human Rights Conventions.

About the ASEAN Trade Union Council

The ASEAN Trade Union Council (ATUC) is a regional organization of eighteen national trade union centres and confederations, representing thirteen million members, in nine ASEAN Member States and East Timor. It makes representations for the collective interest of workers in ASEAN countries in appropriate policy-formulating and decision-making forums and aims to be the social dialogue partner of the ASEAN on labour and other relevant matters.

The ATUC affiliates include the more representative trade union organizations in ASEAN. The national affiliates engage in policy-formulation and decision-making affecting workers within their national tripartite systems. Their engagement in tripartite consultations and other actions influence policies or programs concerning workers, including migrant workers.

ATUC activities have evolved from capacity-building, orientation/discussion on issues and planning on programmes to more focused interventions on issues and concerns of workers in ASEAN. Activities are conducted in collaboration with the International Labour Organization (ILO), International Trade Union Confederation-Asia Pacific (ITUC-AP), LO FTF Council, the Danish Trade Union Council for International Development Co-operation, and other fraternal organizations.

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Cambodia (Cambodian Labour Confederation (CLC), Cambodian Confederation of Trade Unions (CCTU), Cambodian Confederation of Unions (CCU)); **Indonesia** (Konfederasi Serikat Pekerja Indonesia/Confederation of Indonesian Trade Unions (KSPI/CITU), Konfederasi Serikat Pekerja Seluruh Indonesia/Confederation of All Indonesian Trade Unions (KSPSI), Konfederasi Serikat Buruh Sejahtera Indonesia/Confederation of Indonesia Prosperity Trade Unions (KSBSI)); **Lao PDR** (Lao Federation of Trade Unions (LFTU)); **Malaysia** (Malaysian Trades Union Congress (MTUC)); **Myanmar** (Confederation of Trade Unions – Myanmar (CTUM)); **Philippines** (Federation of Free Workers (FFW), Trade Union Congress of the Philippines (TUCP)); **Singapore** (National Trades Union Congress (NTUC)); **Thailand** (Labour Confederation of Thailand (LCT), National Congress of Private Industrial Employees (NCPE), State Enterprise Workers' Relation Confederation (SERC), Thai Trade Union Congress (TTUC)); **Timor Leste** (Konfederasaun Sindicatu Timor Leste /Timor Lorosa'e Trade Union Confederation (KSTL/TLTUC)); **Vietnam** (Vietnam General Confederation of Labour (VGCL))

About LO FTF Council

The LO/FTF Council is the Danish trade union council for international development co-operation. It was established by the two largest Danish confederations, the Danish Federation of Trade Unions (LO) and the Danish Confederation of Salaried Employees and Civil Servants (FTF). The LO/FTF Council supports trade union movements in Africa, Middle East, Asia and Latin America in the areas of democracy and social dialogue in the labour market; labour rights; poverty eradication, distribution policies and the informal economy; and occupational health and safety and HIV/AIDS.

ASEAN Trade Union Council

Strengthening and Harmonizing Labour Standards in ASEAN:

A Framework for Union Advocacy

Strong economic growth has made the Association of Southeast Asian Nations (ASEAN) one of the world's most dynamic regions. ASEAN also has one of the world's highest foreign investment inflows – attracted by its workforce of more than 300 million, growing consumer markets and expanding networks of infrastructure. Despite the rapid economic growth, limited commitments to international labour standards and social protection challenge faster gains for workers and their families.

The LO FTF Council, the Danish trade union council for international development co-operation, and the International Trade Union Confederation – Asia Pacific (ITUC-AP) are working to strengthen actions on Labour Law reforms and Decent Work in Asia. The LO FTF Council and ITUC-AP seek to address the impact of ASEAN regional integration on working conditions and labour rights by supporting the capacity building of unions to address and advocate for improved protection of workers' rights.

The ASEAN Trade Union Council (ATUC) is an apex organization of eighteen national trade union centres and confederations, representing thirteen million members, in nine ASEAN Member States and East Timor. Its affiliates include the more representative trade union organizations in ASEAN. ATUC conducts capacity building and advocacy actions on important labour issues. ATUC engages on **ASEAN Labour, Fair Globalization and Free Trade Agreements** as one of its nine priority actions and aligned with the LO FTF Council/ITUC-AP joint programme. It engages in social dialogue about labour standards in the region and undertakes initiatives to support its affiliates' activities for their members and workers in ASEAN.

The LO FTF Council and ITUC-AP have developed a four-year work plan with ATUC on labour standards and working conditions in ASEAN. The work plan includes doing research on minimum labour standards and using the results of the study as a guide in engaging social partners and other stakeholders on improving working conditions in ASEAN. ATUC implements the work plan in collaboration with the LO FTF Council and ITUC-AP.

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