



## Position of ICMW in ASEAN and A Glimpse Into The Philippine Practise on Migration

Saidatul Nadia Abd Aziz<sup>1</sup>, Salawati Mat Basir<sup>1\*</sup>

<sup>1</sup>Faculty Undang-Undang, UKM, Malaysia

\*Correspondence: [salawati@ukm.edu.my](mailto:salawati@ukm.edu.my)

### ARTICLE HISTORY

Received: 18.03.2022

Accepted: 04.06.2022

Published: 30.06.2022

### ARTICLE LICENCE

Copyright © 2022 The

Author(s): This is an

open-access article

distributed under the

terms of the Creative

Commons Attribution

ShareAlike 4.0

International (CC BY-SA

4.0)

### ABSTRACT

*In ASEAN, Philippines was among the first to ratify the International Convention on the Protection of the Rights of All Migrant Workers (ICMW) and have the best practice thus far. This article demonstrates that, despite the barriers and incompatibilities with national laws, the Convention, which is primarily a human rights instrument aimed at protecting the fundamental rights of all migrants, could assist ASEAN in ensuring a holistic and sustainable migration management that considers the needs of a whole approach and support from all parties involved, including but not limited to the government. Part I of the article will go through the history of the convention's adoption, followed by Part II on the position of ASEAN's migration policies and practice, Part III will discuss on the Philippines practices on ICMW and Migration management, and Part IV will provide recommendations.*

**Keywords:** Human Rights, ICMW, Migration, Migrant Workers, Philippines.

### 1. Introduction

ASEAN has achieved remarkable strides over the decades, both as a cohesive regional grouping and in terms of its ability to continuously improve the living standards of its citizens through peaceful development strategies. However, the region's treatment of migrant labour leaves much to be desired. Historically, Member States have dealt with and regulated migration through national legislation, administrative procedures, and bilateral agreements (Arisman & Ratnawati, 2018). ASEAN signed a Declaration on the Protection and Promotion of Migrant Workers' Rights in 2007 and established a Committee to Implement the Declaration. However, protection gaps continue to exist between international and regional human rights and labour law requirements and their actual enforcement at the local level (Martin & Abella, 2015).

Labor migration has been a common occurrence in ASEAN countries. Labor migration has always been critical to the economic and social life of the ASEAN region and its people. Migration notably contributes to improved livelihoods and labour market efficiency, owing to the inequalities in development across Member States and demographic shifts in destination countries. Due to the high costs, lengthy duration, and difficulties of traditional migration routes, many ASEAN migrants work in precarious employment in destination countries without a legal status. Migrants in the region, regardless of their legal status, frequently risk exploitation and abuse as a result of weak protection for their labour rights during recruitment and employment (International Labour Organization (ILO), 2011).

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) comes into force on July 1, 2003, after achieving the threshold of 20 ratifying States in March 2003. El Salvador and Guatemala approved it on March 14, 2003 (OHCHR, 2005), 13 years after it was initially opened for ratification in 1990. It has, however, garnered limited support from governments, with Fiji and Gambia joining the list of State Parties recently. (UHCHR, 2021). As of early 2020, just two nations had ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which specifies that migrant workers' rights must be maintained without jeopardising national laws (Kristina & Alice, 2013).

## 2. Methodology

This study employs a doctrinal analysis methodology. It is primarily bibliographical and internet-based and is performed using a qualitative doctrinal legal analysis process. This method is suggested to be the most appropriate since it is a problem framework that includes various stages such as contextual reading, finding primary documents, recognising current legal problems, collecting relevant information, scrutinising the void in the law, and reviewing all subject matter within the context (Mustika & Salam, 2021). The primary goal is to acquire new information and analyse ideas in order to propose improvement or change. This method was chosen for this article because it entails identifying relevant gaps within the framework as well as an examination of the issue of migrant workers in ASEAN and how ICMW might assist AMS to have better migration environment with reference to the Philippines's practice.

## 3. Result and Discussion

The UN General Assembly adopted the ICMW on 18 December 1990, and it entered into force on 1 July 2003 after thirteen years and twenty ratifications. The Convention seeks to improve effective protection, for example, by including many clauses ensuring migrants' access to legal remedies, thereby bridging the gap between legal provisions and actual enjoyment of rights. Additionally, the unique migrant focus of the relevant ICMW laws is emphasised. States have the option of inserting reservations to ICMW provisions that are incompatible with their national interests at the time of signature, ratification, or accession (IOM,2006).

ASEAN, as a regional integration organisation, has a strong interest in migration. Each ASEAN member state (AMS) functions as a sending country, a receiving country, or a combination of the two. Without a doubt, ASEAN has its own legal framework for dealing with migrant workers (Iredale & Piper, 2005), most notably the 2007 ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers and the 2017 ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers. This section will eventually go into detail about both legal instruments. With regards to the ICMW, it is fair to say that the majority of ASEAN Member States (AMS) are not signatories to the treaty. Nonetheless, three (3) member nations act as sending countries and are signatories to the ICMW. The following table summarises the status of AMS in the ICMW, indicating whether they are parties to the convention or not. As seen in Table 1, the Convention is only ratified by Indonesia and the Philippines, while Cambodia remains a signatory. The Philippines and Indonesia have a long history of transferring labour to nations outside of ASEAN. Details of the date of signatory and/or ratification are available in Table 1.

**Table 1.** Details of AMS in relation to ICMW

Asean Member State	Party To-The Convention	Note
Brunei	No	-
Cambodia	No	Signatory 27 Sept 2004
Indonesia	Yes	Signatory: 22 Sept 2004 Ratification : 31 May 2012
Laos	No	-
Malaysia	No	-
Myanmar	No	-
Philippines	Yes	Signatory : 15 Nov 1993 Ratification: 5 Jul 1995
Singapore	No	-
Thailand	No	-
Vietnam	No	-

### 3.1. ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers

The ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (hereinafter referred to as the Declaration) was adopted in 2007, and it is particularly significant because it calls on both origin and destination countries to promote migrant workers' full potential and dignity (Hall, 2002). The Declaration recognises the significant contributions of migrant workers to society and economies in both host (receiving) and sending states in ASEAN and recognises the importance of cooperation between states in resolving cases of migrant workers who have become undocumented due to no fault of their own. Additionally, it recognises the

importance of considering the fundamental rights of migrant workers and their families who are already residents in the destination country. The Declaration calls on member states to strengthen cooperation on issues affecting migrant workers, but cautions that "nothing in this declaration shall be construed as indicating the regularisation of the situation of undocumented migrant workers." (ASEAN,2007). Additionally, the Declaration calls for an "intensification of efforts to promote migrant workers' wellbeing" and for destination nations to "enable access to relevant social welfare services."

### **3.2. ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers**

Ten years after the ASEAN Declaration on the Promotion and Protection of Migrant Workers was adopted in February 2007 during the Philippines' chairmanship of ASEAN, the ASEAN heads of state/government signed the ASEAN Consensus on the Promotion and Protection of Migrant Workers 2017 – a document aimed at implementing the Declaration's commitments. The mere fact that ASEAN's labour-sending and labor-receiving countries have reached an agreement on a difficult issue after nearly eight years of negotiation is a relief. It was delivered in paragraph 22 of the 2007 Declaration, which called for the development of an ASEAN instrument to advance the Declaration's principles and tasked the ASEAN Secretary-General with submitting an annual report to the Summit via the ASEAN Foreign Ministers on the status of implementing the Declaration's commitments.

While negotiations for a regional instrument began in 2009 with the goal of developing a legally binding instrument, the ASEAN Consensus lacks legal force and will not need member nations to adopt the instrument on a national level before it can be implemented. Rather than that, it carries a moral obligation on national governments to implement steps that address the document's commitments. This may not satisfy both the sending and receiving governments, as well as the civil society and stakeholder organisations involved in the negotiations. The paper reflects the nature of agreement-making in an ASEAN context and hence represents the negotiated compromise that ASEAN states are willing to accept at this point in time. Chapter 7 of the treaty emphasises that ASEAN member states' pledges shall be "consistent with national laws, regulations, and policies.

The ASEAN Consensus establishes who qualifies as a migrant worker and who is considered undocumented in ASEAN. This distinction is deemed critical because ASEAN member states are obligated to give social protection and other benefits to migrant workers. The inclusion of undocumented workers and their families in the scope of access to shelter, medical, and legal services was one of the negotiation's sticking points. However, the document's negotiating process exemplifies inclusive participation in regional policy discussions. The ASEAN Forum on Migrant Labour (AFML), established in 2008 as a broad-based platform for discussing migrant labour issues under the auspices of the ASEAN Senior Labour Officials, is the first of its kind for a regional organisation and should continue to serve as a forum for discussing national-level implementation progress as well as issues and concerns affecting migrant workers in ASEAN (Moe,2017).

Indonesia and the Philippines are the only ASEAN members to have ratified the Convention. Both countries are net labour exporters (Rebecca, 2007). There are several Conventions that directly address migrant workers' rights, including the Migration for Employment Convention (Revised), 1949 (No. 97); the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); and the United Nations' International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990, as well as several other key labour conventions that ensure equal treatment for all workers in social protection. Only the Philippines has ratified all six; ratification remains particularly weak in the primary countries of destination (Arisman and Ratnawati,2018).

The Philippines was one of the initial signatories and ratifiers of the ICMW. The Philippines is regarded as having sound labour practises, particularly in regard to migrant workers. Due to a lack of enforcement, labour laws frequently exclude domestic employees or fail to provide adequate protection. Except for the Philippines, no member state has particular domestic worker regulations (Martin & Abella,2015). To safeguard their migrant workers abroad, the Philippine government established the Office of the Undersecretary for Migrant Workers Affairs (OUMWA) inside the Department of Foreign Affairs. Where there is a high concentration of overseas foreign employees, the law requires the establishment of a Filipino Workers Resource Center. The Philippines maintains 67 embassies, 23 consulates, four permanent missions, one extension office, and 38 Philippine Labor Overseas Offices that provide assistance to Filipinos living and working abroad. The Philippine government has a number of policies in place to protect Overseas Filipino Workers (OFW) (DOFA, 2011).

According to Republic Act 10022, OFWs may be deployed only in nations that adhere to international human rights standards and meet the conditions specified in section 3 of the Act. Employers from outside the Philippines who wish to engage Filipino workers must also through an accreditation process sponsored by the Philippine Overseas Employment Administration (POEA). Additionally, recruitment agencies must get a licence from the POEA in accordance with the POEA Rules and Regulations. Agencies are obligated, among other things, to negotiate the finest employment terms and conditions on behalf of their employees. Additionally, they are required to disclose all terms and conditions to migrant workers. Notably, agencies are jointly and severally liable with the employer. To ensure compliance with the Rules, newly licenced agencies are required to pay a deposit of one million pesos (about USD 22,000). The Government of the Philippines has also signed memorandums of understanding with labour firms located abroad (DOFA,2011).

In the early 1980s, the Philippines participated in discussions over the ICMW's drafting. The Philippine delegation contributed ideas and actively urged the United Nations General Assembly to ratify the resolution. The Philippines ratified the Convention on 5 July 1995, making it the first Asian country to do so. The Migrant Workers' Act of 1995, also known as Republic Act 8042, is the country's most significant piece of law (hereinafter is referred to as RA 8042). It was introduced immediately after the ratification of the ICMW. Numerous institutional safeguards have been put in place to protect the rights of migrant and international workers. Filipinos living abroad now have the right to vote. A key purpose of RA 8042 is to regulate recruiting firms in order to ensure that migrant workers are not abused or exploited and that job placements are appropriate for their training and capabilities (Handerson, 2022).

It is worth mentioning in this regard that, while ICMW may be unknown to labour implementing agencies, the principles governing migrant worker protection under ICMW are defined in RA 8042. While RA 8042 is universally recognised as a beneficial piece of law, several proposals seeking to amend it have been submitted in recent years. (Migration for Development, 2008) The Welfare and Employment Office (WEO) of the Philippine Overseas Employment Administration (POEA) develops and implements policies and programmes that promote the interests and welfare of overseas Filipino workers and their families. The WEO is specifically responsible for maintaining a registry of available workers, developing and signing recruitment agreements with foreign government employers and their agents, providing comprehensive facilities for managing all phases of recruitment of Filipino workers hired through government-to-government arrangements, and developing and implementing pre-employment orientation programmes (Piper, 2005).

Additionally, RA 8042 aided in the formation of procedures for employer-employee mediation/conciliation, as well as the establishment of job placement and monitoring centres and a variety of other resource centres. At the national level, various perspectives exist regarding whether a country should and should exert influence over others-particularly receiving countries. While some believe the Philippines has successfully leveraged the ICMW's influence to advocate for better working conditions in other nations, others disagree. Indeed, there has been a considerable improvement in the skill level of Filipinos travelling overseas to work, a result of a government-sponsored initiative that indicates increased success in reaching foreign markets. Different destination patterns are motivated by the need to find and serve rising high-skilled demand, not by ratification of the ICMW. Additionally, the Philippines has increased its awareness of its commitments to labour migrants and is aggressively seeking out new markets and market-specific training (Iredele & Piper, 2005). The Philippine Government recognises the critical role of non-governmental organisations as partners of government agencies in implementing the Convention (UN, 2009).

Besides that, the Philippines has taken the following efforts to further the Convention's promotion and dissemination. The Philippine Overseas Employment Administration (POEA), an affiliated agency of the Department of Labor and Employment, has stepped up its public education and communication efforts as a critical component of its mission to protect workers. This is accomplished through the conduct of Pre-Employment Orientation Seminars (PEOS) and other anti-illegal recruiting seminars around the country, as well as Pre-Deployment Orientation Seminars (PDOS) for all employees hired through government-to-government arrangements and name hiring. The PEOS is a requirement for the issuance of passports to work abroad and educates prospective overseas Filipino employees on how to prevent illegal recruiting, labour and employment conditions in several countries of destination, and the reality of working abroad. By enlisting the cooperation of several national agencies, local government units, industrial groups, and professional organisations, the POEA is growing its network of partners in order to implement the PEOS program (Rene & Isabelo, 2005).

The PEOS programme is a component of the Government's policy to protect employees from exploitation and abuse by unethical recruiters and employers (PEOS, 2021). Its equivalent, the Pre-Departure Orientation Seminar (PDOS), sponsored by the Department of Labor and Employment's Overseas Workers Welfare Administration (OWWA), also requires OFWs to undergo pre-departure orientation on the culture of their host countries. By utilising these existing mechanisms, the Philippine Government has strengthened its position on the promotion of migrant workers' rights under the Convention. Additionally, the Philippine Foreign Ministry requires participation in the Pre-Departure Orientation Seminar (PDOS) for Filipino diplomats, consular officers, and embassy personnel departing for their first overseas posting. The PDOS contains a full briefing on Assistance to Nationals (ATN), one of the key foundations of the Philippine Foreign Service. This will educate Foreign Service corps members stationed abroad about the characteristics of their assigned Filipino migrant communities, the challenges they face, the assistance they require, as well as the legal/systemic remedies available to address these issues (PDOSPH, 2018).

ASEAN, as a regional organisation that deals with migration issues, must prioritise the issue of migrant protection. Assuring gains for the migrant worker and their families as well as the source and destination countries has become a major component of migration management. The overall issues associated with migration management are administrative and structural in nature. These include the difficulties inherent in providing systematic protection for both regular and irregular migrants, as well as the imperative to approach legal and policy reform from a multi-stakeholder and multi-sectoral perspective.

**a. Recommendation 1: ICMW as a benchmark and Philippines as Reference for Best Practice.**

The ICMW's State Parties are primarily from the Global South and are on the receiving end of the migratory process. The primary premise that underlies the Philippines' management of national migration is the constitutional requirement to safeguard all labour, domestic and foreign, organised and unorganised, and to promote full employment and equitable employment opportunities for all (Department of Foreign Affairs (DOFA), 211 C.E.).

To address migration-related costs, the State commits to maximising the benefits and minimising the costs of overseas employment through mechanisms for the orderly and systematic facilitation and documentation of workers, as well as the provision of adequate protection to prevent abuses and exploitation before, during, and after employment. These responses demonstrate that the Philippines favours circular or transient migration as a policy objective. Some of these mechanisms are the Migrant Workers and Overseas Filipinos Act of 1995; an anti-illegal recruitment programme; and, the Reform Package for Household Service Workers (Rebecca, 2007)

In the Philippines, the most notable piece of law is the Migrant Workers' Act of 1995, or Republic Act 8042, which was introduced around the time of the ICMW's ratification. Numerous institutional measures were established to safeguard the rights of migrant and abroad workers, including the establishment of voting rights for overseas Filipinos. A significant objective of RA 8042 is to regulate recruiting companies to guarantee that migrant workers are not abused or exploited and that job placement matches training and capabilities correctly.

The receiving country of the AMS may enact a legislation focusing specifically on migrant workers to ensure that migrant workers' rights are not neglected. A reference to the Migrant Workers' Act of 1995 or Republic Act 8042 as well as looking into the provisions of ICMW for reference could be made and adapted to the situation and needs of ASEAN's migrant workers. From there, a legal framework for protecting the rights of migrant workers can be constructed.

**b. Recommendation 2: Refer to ICMW as a reference point for AMS migration management activities, as well as a migrant management tool.**

Even though two AMS have ratified the ICMW, the standards and rules contained in these documents have been poorly applied. Indeed, there are no bilateral social security agreements between AMS, and the level of ratification of international norms varies, resulting in a continuing absence of proper instruments or enforcement mechanisms, jeopardising the ASEAN region's 'greater integration.'

Therefore, it is critical for ASEAN to collaborate on this issue. Although not all remaining AMS will express confidence in ratifying the ICMW, AMS can still collaborate on a solution to regulate migration in the region. After all, migration is a concern in the ASEAN community. Given that the ICMW applies to all sorts of migrants, it is necessary to refer to the convention in order to ensure comprehensive protection for all migrants.

AMS could begin by reviewing the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers and ascertaining that it is consistent with the ICMW, as the ICMW is undoubtedly a comprehensive package of protection for all migrants. This way, every AMS will be prepared and knowledgeable about the ICMW and will be able to apply it to their national legislation accordingly.

Consequently, it is crucial to underline that the ICMW is a significant legal mechanism that can be viewed as a referral for migration management mechanisms. The Philippines has a dependable legal system that could serve as a model for other ASEAN nations. It is common knowledge that ASEAN member states' immigration policies vary. ICMW can serve as a basis for a comparable management method.

#### **4. Conclusion**

The ICMW provides protection to all migrants in a package and/or bundle. Migrants have always been a sensitive topic around the world. For migrants, xenophobia and a lack of protection creates plenty of undesirable conditions. The low rate of ratification of ICMW is interpreted as a signal that the majority of states are unwilling to provide a clear protection for these groups of people. They are frequently referred to as a "vulnerable group of people." The fact that the majority of governments that have signed the ICMW are sending states demonstrates their concern for their nationals working overseas. In the matter of ASEAN, only two AMS were "ready" to ratify the convention, while others remain to reject. ASEAN should take the situation seriously and at the very least make a reference to ICMW, given that ASEAN is responsible for practically all of the region's migration. The AMS agreed on a declaration on protecting and promoting rights for migrants, but it is deemed insufficient to protect migrants. However, ASEAN is extremely fortunate to have the Philippines as a member state, given the Philippines has an exceptional track record in managing migration. It is about time for AMS to take a serious look at the Philippines' practises, regulations, and policies relating to migration management. Due to the Philippines' early ratification of the ICMW, its migration laws adhered to certain provisions of the convention. As a result, it provides an excellent opportunity for AMS to learn and revise their practise in the region in order to ensure the ASEAN Community's success.

#### **References**

- Arisman, & Ratnawati, K. . (2018). *Protection of Human Rights and Labour Migration for Employment Purpose across ASEAN*. Center for Southeast Asian Studies. Jakarta: CSEAS.
- Department of Foreign Affairs (DOFA). (211 C.E.). *Migrant Workers' Right to Social Protection in ASEAN: Case Study of Indonesia, Philippines, Singapore and Thailand*. Thailand: Mahidol Migration Centre, Institute for Population and Social Research.
- Hall, A. (2002). Migrant Workers and Social Protection in ASEAN: Moving Towards a Regional Standard? *Journal of Population and Social Studies*, 21(1).
- International Labour Organization (ILO). (2011). Public Attitudes towards Migrant Workers: A Four Country Study Retrieved. Retrieved from [http://www.ilo.org/asia/info/WCMS\\_159851/lang--en/index.htm](http://www.ilo.org/asia/info/WCMS_159851/lang--en/index.htm)
- Iredale, R., & Piper, N. (2005). *Impact of Ratifying the 1990 UN Convention on the Rights of All Migrant Workers and Members of Their Family: Case Studies of the Philippines and Sri Lanka*. UNESCO: Asia Pacific Migration Research Network.
- Kristina, T., & Alice, S. (2013). *Current Challenges In The Implementation Of The UN International Convention On The Protection Of The Rights Of All Migrant Workers And Members Of Their Families*. Paris: Directorate General For External Policies Of The Union, European Parliament.
- Martin, P., & Abella, M. (2015). *Background paper prepared for ASEAN Community 2015: Managing integration for better jobs and shared prosperity*. Bangkok: ILO.
- Mustika, R., & Salam, S. (2021). Implementation of State Administrative Court Decisions: Conception, and Barriers. *Musamus Law Review*, 3(2), 49–57.
- Rebecca, J. (2007). Labour Migration and Development Goals: The Philippines Experience. *International Dialogue on Migration*.