

# Guidance on Freedom of Association of Workers in ASEAN

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Published in August 2021

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# **Guidance on Freedom of Association of Workers in ASEAN**

## Guidance on Freedom of Association of Workers in ASEAN

### Preamble

- **Reaffirming** that the rights to freedom of association, peaceful assembly, opinion, expression and information and rights to privacy, political participation and work are protected under international human rights law, including through the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights and other instruments;
- **Recalling** also that the Vienna Declaration and Programme of Action reaffirms the promotion and protection of these human rights as a matter of priority and that the Declaration on Human Rights Defenders reaffirms the indispensable role played by human rights defenders in advancing human rights and the special protections States must afford them, including their right to form associations and non-governmental organizations;
- **Recalling** the purposes of principles of ASEAN as enshrined in the ASEAN Charter, including the respect for and promotion of human rights and fundamental freedoms, principles of democracy, the Rule of Law and good governance;
- **Recalling** that business enterprises have the responsibility to respect human rights, in accordance with the UN Guiding Principles on Business and Human Rights;
- **Acknowledging** the expansive diversity among people and communities in the ASEAN region in terms of political, economic, legal, social, cultural, historical and religious backgrounds;
- **Concerned** by the practice of undue restrictions on the rights to freedom of association, peaceful assembly, opinion, expression and information and rights to privacy, political participation and work by both State and non-State actors in physical and online spaces;
- **Concerned** by the specific challenges faced by persons from marginalized, disadvantaged and disenfranchised groups, including but not limited to women and children workers, domestic workers, migrant and refugee workers, LGBTI workers, workers with disabilities and workers in the informal sector, who may face greater obstacles and discrimination in the meaningful exercise of their rights to freedom of association, peaceful assembly and their interrelated rights;
- **Affirming** that the same rights that people have offline must also be protected online, including the right to freedom of association and other rights, and concerned by the use of new technologies, including artificial intelligence, to unduly restrict the right to freedom of association and associated rights; and
- **Conscious** of the need to provide guidance to States, businesses, the judiciary, lawyers and/or bar associations, trade unions and civil society on the measures necessary to ensure the respect, protection and fulfilment of human rights in a non-discriminatory manner;

The signatories solemnly adopt this Guidance on Freedom of Association of Workers in the Association of Southeast Asian Nations (ASEAN).

## Guiding Principles

- **Human dignity, democracy and universality of human rights:** The rights to freedom of association, assembly, opinion, expression and information and the rights to privacy, political participation and work are universal, indivisible, interdependent and interrelated. These rights are key to realizing democracy, the Rule of Law and dignity for everyone everywhere, as they are a means for people to voice and represent their interests and enable the realization of other human rights.
- **Rule of Law:** The Rule of Law is essential to protecting freedom of association and, conversely, political and civic participation are essential for the strengthening of the Rule of Law, which cannot be left to political parties and government representatives alone. To safeguard the Rule of Law, persons whose human rights have been limited or restricted shall have the right to independent, fair and effective judicial proceedings to challenge the legality of measures and/or their conformity with domestic and international law.
- **Obligations to respect, protect and fulfil:** States have the duty to respect, protect and fulfil the exercise of the rights to freedom of association, peaceful assembly, opinion, expression and information and the rights to privacy, political participation and work, which encompasses the rights of all workers to form and join trade unions and labour associations and to engage in collective bargaining and other collective action, including the right to protest and strike without fear of intimidation or reprisal.
- **Non-discrimination and equality:** The rights to freedom of association, peaceful assembly, opinion, expression and information and the rights to privacy, political participation and work should be enjoyed equally by all without discrimination on the basis of race, colour, descent, national, social or ethnic origin, language, religion, age, type of work, employment, workplace, enterprise or sector, citizenship, nationality or migration status, gender, sexual orientation or gender identity, political or other opinion, health conditions, pregnancy, marital status, family role, parenthood, health status, HIV status, property, socio-economic status, birth or other status.
- **Equal inclusion of all workers in all settings:** The human rights and principles articulated in this document applies to all workers in all settings, including workers in the informal sector, domestic workers, self-employed workers, agricultural workers, digital platform workers and unpaid workers. This applies to all territories and sectors of activity, including export processing zones, special economic zones, frontier zones and cross-border working zones.
- **Extraterritorial obligations and international cooperation:** The State's obligation to respect, protect and fulfil the exercise of these rights applies to situations both within its borders and extraterritorially, including through international cooperation, and particularly to situations where a State exercises effective control or is in a position to exercise decisive influence or to take measures to realize rights.
- **Legality, legitimacy, necessity and proportionality:** Any restrictions on the rights to freedom of association, peaceful assembly, opinion, expression and information and the rights to privacy, political participation and work must strictly comply with international human rights law and standards. No restrictions may be imposed unless they are imposed in a non-discriminatory manner and in conformity with the principle of legality, and are necessary and for purposes of national security, public health or morals, public order or to protect the rights and freedoms of others. Any restrictive measures must be proportionate to the aforementioned end.
- **Right to an effective remedy and reparation:** Any person who alleges a violation or abuse of their rights should have access to an effective remedy and reparation, including through the implementation of guarantees of non-recurrence, in accordance with international human rights law.
- **Corporate responsibility to respect human rights:** In accordance with international human rights standards, business enterprises have the responsibility to respect human rights, and to that effect adopt effective measures and processes, including human rights due diligence that covers actual and potential impacts of its operations on human rights, and reparation of abuses through legitimate and effective remediation mechanisms.

## Definitions

The right to **freedom of association** in the context of work means, *inter alia*, the right of any person to form and join organizations of their own choosing for the promotion and protection of their interests without previous authorization or limitations except those prescribed under international law. This is a core part of the right to work itself, protected under international law. Associations are entitled to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programs in order to further and defend the interests of workers. The right to collective bargaining, protest and strike without fear of intimidation or reprisal is an aspect of and protected by the right to freedom of association.

The right to **freedom of peaceful assembly** enables individuals and associations to express themselves collectively. Restrictions on the right to freedom of assembly, as an individual right that can be exercised collectively, often affect the right to association, which protects collective action. The right of peaceful assembly protects non-violent gatherings, and may be peacefully exercised in both private and public spaces, through various means both offline and online, including demonstrations, protests, meetings, sit-ins, or in any other chosen way in compliance with international human rights law.

The right to **freedom of opinion, expression and information** is a necessary and integral component of the rights to freedom of association and assembly when people join together for an expressive purpose. The right to freedom of expression includes the right to seek, receive and impart information and ideas of all kinds regardless of frontiers. Associations have the right to freedom of expression and opinion through their objectives and activities, in addition to the right of individual members of associations to express their views and opinions.

The right to **political participation** is the right for everyone to take part in the conduct of public or political affairs, directly or through freely chosen representatives. It is fundamental in empowering individuals and groups and essential in eliminating marginalization and discrimination, including in the workplace.

The right to **work** includes the right of everyone to the opportunity to gain their living by work which they freely choose or accept. This right is both an individual and a collective right. Its collective dimensions include the right of everyone to form and join associations, including trade unions of their choice as well as the right of trade unions to function freely. An important component of the right to work is the right to just and favourable conditions of work, which the right to freedom of association is crucial in introducing, maintaining and defending.

## **I. Guidance for the ASEAN Member States**

### **Ratification or Accession**

- Ratify or accede to all relevant international human rights treaties that guarantee the rights to freedom of peaceful assembly and of association, freedom of expression and the right to work, and basic labour rights, including the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Rights of the Child; the Convention on the Elimination of All Forms of Discrimination against Women; and the International Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families; as well as other rights for workers, including International Labour Organization's Conventions 87, 98 and 190. These are all already recognized and referred to in the ASEAN Guidelines for Corporate Social Responsibility on Labour and adopted by the ASEAN Senior Labour Officials Meeting, and the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers.

### **Application in Law and Practice**

#### *Freedom of Association*

- Ensure in law and in practice that every person has the right to form and join associations, including trade unions, in a manner consistent with the principle of non-discrimination. Associations are entitled to determine their purposes and activities freely, and to participate equally in public and political affairs.
- Where notification or registration is required for administrative purposes, establish simple, fair, transparent, accessible and fast procedures and processes for workers' organizations and their activities. Remove substantial and excessive requirements that expressly or effectively hinder such processes, such as unnecessarily cumbersome financial and administrative requirements.
- Give priority to the urgent transition of workers from the informal to the formal economy, in law and in practice, in line with ILO Recommendation 204.
- Eliminate explicit exclusions in labour laws that deny groups of predominantly women workers, including domestic workers, agricultural workers and migrant workers, the right to freedom of association.
- Workers in digital environments should enjoy the same right to freedom of association and other rights as workers in physical environments. National law should not make distinctions in this regard.
- Ensure that no restrictions are placed on the right to freedom of association other than those prescribed by law and which are necessary and proportionate in the interest of national security or public order, public health, morals or for the protection of the rights and freedoms of others.
- Prohibit in law and in practice gender-based and other violence, exploitation including but not limited to sexual and child exploitation, and harassment in the world of work to create a safe and enabling environment for the exercise of the rights to freedom of association and to organize.
- Ensure rights of freedoms of association are recognized in law and in practice in special economic zones, and other specially designated areas designed to promote foreign investment and trade.
- Ensure that impartial and fair inspection and other oversight mechanisms are fully functioning without hindrance and any undue interference, including in special economic zones and economic agreements concluded with transnational actors to operate in those zones duly recognize and guarantee the right to freedom of association and other relevant rights.

#### *Freedom of Assembly*

- Ensure that the exercise of the right is not subject to previous authorization by the authorities and at most to a prior notification procedure the purpose of which is to allow the authorities to facilitate the exercise of the right by taking measures to protect public safety and order and the rights and freedoms of others. Requirements of prior authorization are not permissible under international law and must not be required in domestic law.

- Avoid blanket time and location prohibitions and provide for the possibility of other less intrusive restrictions. Prohibition should be a measure of last resort and should not be invoked for fear of public disturbance.
- Ensure that all assemblies are allowed to take place free of charge.
- Allow for and protect the right to spontaneous assemblies, whether coordinated or not, where organizers are either unable to comply with any notification requirements, including because they are direct responses to current events.
- Ensure that peaceful assemblies are not unduly dissolved, regardless as to whether notification procedures were respected, and that civil or criminal sanctions resulting in heavy fines or imprisonment are not imposed merely for failure to observe notification or similar administrative requirements.
- Ensure that organizers are not held responsible for the isolated unlawful conduct of others and should not be made responsible for the maintenance of public order. If, in exceptional circumstances, organizers are held responsible, it must be confined to cases where the evidence demonstrates that the organizers knew or should have reasonably foreseen and prevented that serious harm to the safety of others would have resulted.
- Ensure that internet and mobile telecommunications access is maintained at all times and that communication technology including social media is not blocked, hampered or interfered with.
- Ensure the protection of participants of peaceful assemblies from individuals or groups of individuals, including "agents provocateurs" and counter-demonstrators who aim at disrupting or dispersing such assemblies, including where such actors are agents of the State.
- Generally, prohibit the use of force by both State and private security officials during public assemblies. Where, exceptionally, the use of force may need to be employed for security reasons, it must be necessary and proportionate and as a last resort. The intentional use of lethal force is always unlawful unless strictly unavoidable to protect the life of others.

#### *Freedom of Expression and Information*

- Respect and protect in law and practice the right to freedom of expression exercised in the context of associations or assemblies. This includes, but is not limited to, online and offline expressions of public concern, public interest and criticisms of the state or state officials.
- Restrictions on freedom of expression must strictly comply with international law and standards, including the principles of legality, legitimacy, necessity and proportionality. Restrictions are permissible for expression or speech that amounts to advocacy of hatred that constitutes incitement to discrimination, hostility or violence.
- Ensure that the online speech of associations and individuals are protected against the abuses of businesses, including threats of lawsuits and judicial proceedings with the intention to retaliate, intimidate or harass persons with a view to frustrate their exercise of their rights to criticize or otherwise comment.
- Refrain from restricting the dissemination of and access to information for the purpose of exercising the rights to freedom of association and peaceful assembly and right to privacy, political participation and work.

#### *Right to Political Participation*

- Create and maintain a safe and enabling environment that facilitates the exercise of the right to participate, on a non-discriminatory basis, in the conduct of civic, public and political affairs.
- Ensure individual and collective rights to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.
- Involve associations for the protection and promotion of the rights of workers and trade unions in the definition of priorities, decision-making, planning, implementation and evaluation of strategies to promote fair, just and equitable employment, such as in national employment strategies.



- Take all appropriate measures in law and practice to remove barriers to equal participation and ensure that all workers in all settings, especially those belonging to marginalized and/or underrepresented groups, are able to meaningfully participate in associations, including trade unions to promote and protect their interests.
- Empower rights holders, especially those belonging to marginalized and/or underrepresented groups, to meaningfully and effectively participate in public affairs, including through the development and implementation of civic education programmes and initiatives to challenge discriminatory attitudes and practices.

#### *Right to Work*

- Take steps to protect the right to work by ensuring the acceptability and quality of work, which includes the right of the worker to just and favourable conditions of work, in particular to safe working conditions, the right to form trade unions and the right to freely choose and accept work.
- Formulate and implement a national employment strategy that respects fully the principles of accountability, transparency, and participation by associations for the protection and promotion of the rights of workers and workers' organizations, including trade unions.
- Include in the national employment strategy measures to eliminate in law and in practice discrimination and unfair treatment in access to and enjoyment of employment and other rights for all persons.
- Develop and maintain mechanisms to monitor the progress towards realizing the right to decent work, identify factors and difficulties impeding compliance with human rights obligations, and to facilitate the adoption of preventative and corrective legislative, administrative and other necessary measures.
- Respect, protect and facilitate the activities of trade unions, workers' organizations and other members of civil society who assist disadvantaged and marginalized individuals and groups in realizing and defending their right to decent work and ensure they are able to operate without fear of reprisal or intimidation.
- Adopt comprehensive policies that encourage the provision of the necessary supporting social services to enable caregivers to combine family obligations with work responsibilities and participation in associations and public life, in particular through subsidized affordable day care and the promotion of equal sharing of family responsibility.

#### *Generally*

- Remove restrictions on the rights to freedom of association, peaceful assembly, opinion, expression and information and the rights to privacy, political participation and work (collectively, "the right to freedom of association and other fundamental freedoms"), unless they are imposed in conformity with the law, and are necessary and proportionate for such legitimate purpose as national security, public order and public health or the protection of the rights of others. Ensure that limitations are clearly and narrowly defined in order to prevent abuse by authorities.
- Ensure that new legal measures imposed during declared states of emergency, such as during a public health emergency, respect the right to freedom of association and other fundamental freedoms and are not used as a pretext for the infringement of human rights. Any derogations of rights during a declared state of emergency must be non-discriminatory and strictly necessary to meet a specific threat to the life of the nation, in compliance with international human rights law and the Siracusa Principles.
- Take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of their legitimate exercise of the right to freedom of association and other fundamental freedoms.
- Prohibit, in particular, retaliation, threats and acts of intimidation in physical and online spaces against those who are exercising their right to freedom of association and other fundamental freedoms. These include but are not limited to unlawful surveillance, improper use of judicial proceedings, harassment, breaches of privacy and other forms of restrictions.

- Create and maintain an enabling environment for the enjoyment of the right to freedom of association and other fundamental freedoms of all workers in all settings and in that regard take positive measures to ensure that everyone has equal opportunities to exercise these rights, in line with the right to non-discrimination. This includes integrating a gender perspective and human rights mainstreaming in legislation and other government initiatives.
- Remove barriers that prevent persons from disadvantaged and marginalized workers in all settings from exercising the right to freedom of association and other fundamental freedoms, including by removing physical, economic, legal, cultural and political obstacles.
- Ensure that any restrictions or limits on the right to freedom of association and other fundamental freedoms are subject to judicial oversight and review, and that affected persons must have the right to fair, independent and effective judicial proceedings to challenge the legality of these measures and/or their conformity with national or international law.
- Ensure that an effective remedy and reparation for violation of the right to freedom of association and other fundamental freedoms is available as a right and accessible to all by providing strong legal frameworks, resources, information, training and education, and social welfare services. This includes establishing specialized courts on labour disputes to ensure access to justice, and other complementary alternative mechanisms of dispute resolution such as mediation, reconciliation and arbitration bodies without creating additional hurdles to the right to access an effective remedy of judicial nature.
- Ensure in law and practice that businesses comply with national and international human rights norms and standards on the right to freedom of association and other fundamental freedoms.
- Incorporate in public procurement processes requirements for bidding companies to commit to respect for human rights, including freedom of association and other fundamental freedoms, and to exercise due diligence and adopt adequate processes and mechanisms to respect those rights in accordance with international standards. Bidders with a record of engaging in widespread or systematic abuses of the right to freedom of association and other fundamental freedoms may be barred from public contracts and/or public financial support.
- Ensure through legal empowerment and adequate resources the right to freedom of association and other fundamental freedoms and effective labour inspections and monitoring mechanisms in all territories and settings, including export processing zones, special economic zones and digital platforms.
- Ensure that trade and investment agreements contain binding provisions on the respect and protection of the right to freedom of association and other fundamental freedoms and that appropriate mechanisms are incorporated in these agreements for legitimate parties to raise grievances for lack of compliance.
- Ensure that national law requires businesses domiciled or operating within the state territory or jurisdiction to respect human rights, including freedom of association and other fundamental freedoms, in their local and global operations.
- Recognize that workers, workers' organizations, and civil society organizations supporting the workers and workers' organizations are human rights defenders who are entitled to support and protection in relation to their advocacies for their rights, as well as protected under international human rights law.
- Establish the jurisdiction of domestic courts over claims of human rights abuses against business enterprises, including State enterprises, and commercial or other parties over whom the State exerts control or influence, which are domiciled or conduct substantial business activity in its territory, regardless of where the alleged abuses were committed.

## **B. Guidance for Business**

- Respect the rights of all workers to form and join trade unions and labour associations and to engage in collective bargaining and other collective action, including the right to protest and strike without fear of intimidation or reprisal.
- Respect the rights of all workers in all settings to freedom of association, and the independence of workers' organizations in selecting representatives and collective bargaining, subject to the principle of non-discrimination.
- Respect the effective recognition of the right to collective bargaining, including by ensuring that collective bargaining is carried out voluntarily, freely and in good faith. Respect agreements obtained through collective bargaining, and refrain from altering employment conditions without agreement from workers' representatives.
- Ensure that company policies, procedures and practices, including those relating to hiring, promotion and working conditions, do not discriminate against individuals on any grounds, including because of their membership or views on trade unions or for their trade union activities or favour workers who choose not to be members of trade unions and/or other workers' organisations.
- Ensure that policy commitments to respect the right to freedom of association and other fundamental freedoms are respected and conduct due diligence in relation to human rights in respect of global supply chains and purchasing practices, including making transparent and public information on their company supply chains.
- Exercise human rights due diligence to identify, prevent, mitigate and address violations of the right to freedom of association and other fundamental freedoms, closely associating workers and their representatives in the design, implementation and public reporting of these processes and outcomes.
- Provide workers and their representatives access to information needed to exercise their right to freedom of association and other fundamental freedoms, such as those needed for meaningful bargaining.
- Take steps to improve the climate in labour-management relations, especially in those countries without an adequate institutional and legal framework for recognizing trade unions and for collective bargaining. This includes the encouragement and support for parallel representation systems, with free election of worker representatives and adequate dialogue and grievance mechanisms.
- Ensure that the right to freedom of association and other fundamental freedoms are also protected and respected by their commercial partners, suppliers, or sub-contractors through contractual requirements, effective periodic auditing and inspection, supporting training and education activities, advocating for strong legal frameworks, continuous dialogues, due diligence activities, and similar actions.

## **C. Guidance for Trade Unions and Civil Society**

- Commit to the principle that labour rights are human rights.
- Continue to innovate and partner with governments, companies and academia to develop policies and solutions, including the efficient use of technology and local knowledge, that facilitate the exercise of the rights to freedom of peaceful assembly and of association.
- Outreach and advocacy at disenfranchised worker groups and make efforts to include the full incorporation of domestic, migrant and informal workers into trade unions and bargain collective agreements.
- Ensure that the principles of non-discrimination and equality is upheld in the operation and activities of trade unions. Any differential treatment of persons within unions based on the grounds set out in the principles on non-discrimination and equality above must have a reasonable justification.
- Adopt and implement policies to prevent and respond to gender-based violence and harassment and intersectional discrimination within trade unions.
- Take positive measures to remove specific barriers, such as acts of discrimination or exclusion, faced by marginalized and/or underrepresented persons or groups in their meaningful participation, representation and leadership in unions. These groups include, but are not limited to, indigenous peoples, migrant workers, workers in the informal sector, minorities, persons with disabilities, LGBTI persons, women and youth.
- Support and assist individual workers and related individuals or organizations in the filing of grievances or complaints and relating proceedings before responsible judicial, administrative or company bodies.

## **Annex A: Current Context and Specific Challenges in Southeast Asia**

This regional guidance on freedom of association in the context of business and human rights has been developed to localize international human rights norms and standards, reflect the particular human rights concerns of human rights defenders and empower community-driven labour rights movements in ASEAN Member States.

ASEAN countries have typically failed to implement fundamental international labour standards, especially those concerning freedom of association. Six out of 10 ASEAN Member States have not ratified the International Labour Organization's Convention No. 87 on Freedom of Association and Protection of the Right to Organise. Four out of 10 have not ratified the International Labour Organization's Convention No. 98 on Right to Organise and Collective Bargaining. Four out of 10 have not ratified the International Covenant on Civil and Political Rights and three out of 10 have not ratified the International Covenant on Economic, Social and Cultural Rights, the main human rights instruments that protect the rights to freedom of association, peaceful assembly, expression and information, and the rights to privacy, political participation and work.

This unfavourable regional legal landscape disproportionately impacts persons from certain marginalized and disadvantaged groups. Migrant workers and their families are in particularly vulnerable employment situations in the region, but the laws of ASEAN Member States fall short of protecting rights of migrant workers and their families and even restrict their rights to organizing and social protection. This is notwithstanding the adoption by ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers in 2007. Additionally, women workers navigate dire labour environments where there is a high incidence of gender-based violence. Workers in the informal sector also face challenges in accessing justice and have fewer opportunities to assemble, form or join unions, or bargain for higher wages or better working conditions. This is because they are generally outside the framework of labour law protection. LGBTI workers in the region also face barriers in exercising their rights, especially given the prevalence of discrimination and the absence of anti-discrimination legislation for diverse sexual orientations and/or gender identities. Similarly, workers with disabilities may face difficulties asserting their rights because of social stigma, and the lack of access to reasonable accommodations, including adequate infrastructure and information.

Finally, special investment frameworks, special economic zones and other government-led initiatives in the region are often used to justify lowering human rights standards, or imposing new restrictions that limit workers' rights to freedom of association, peaceful assembly, expression and information, and the rights to privacy, political participation and work.

**Annex B: Ratification or Accession Status of International Labour Standards in Southeast Asia**

	<b>ILO C087</b>	<b>ILO C098</b>	<b>ICCPR</b>	<b>ICESCR</b>
<b>Brunei</b>	N/A	N/A	N/A	N/A
<b>Cambodia</b>	1999	1999	1992	1992
<b>Indonesia</b>	1998	1957	2006	2006
<b>Laos</b>	N/A	N/A	2009	2007
<b>Malaysia</b>	N/A	1961	N/A	N/A
<b>Myanmar</b>	1955	N/A	N/A	2017
<b>Philippines</b>	1953	1953	1986	1974
<b>Singapore</b>	N/A	1965	N/A	N/A
<b>Thailand</b>	N/A	N/A	1996	1999
<b>Vietnam</b>	N/A	2019	1982	1982
<b>Total ratified or acceded:</b>	<b>4</b>	<b>6</b>	<b>6</b>	<b>7</b>



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