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REGIONAL SITUATION ANALYSIS

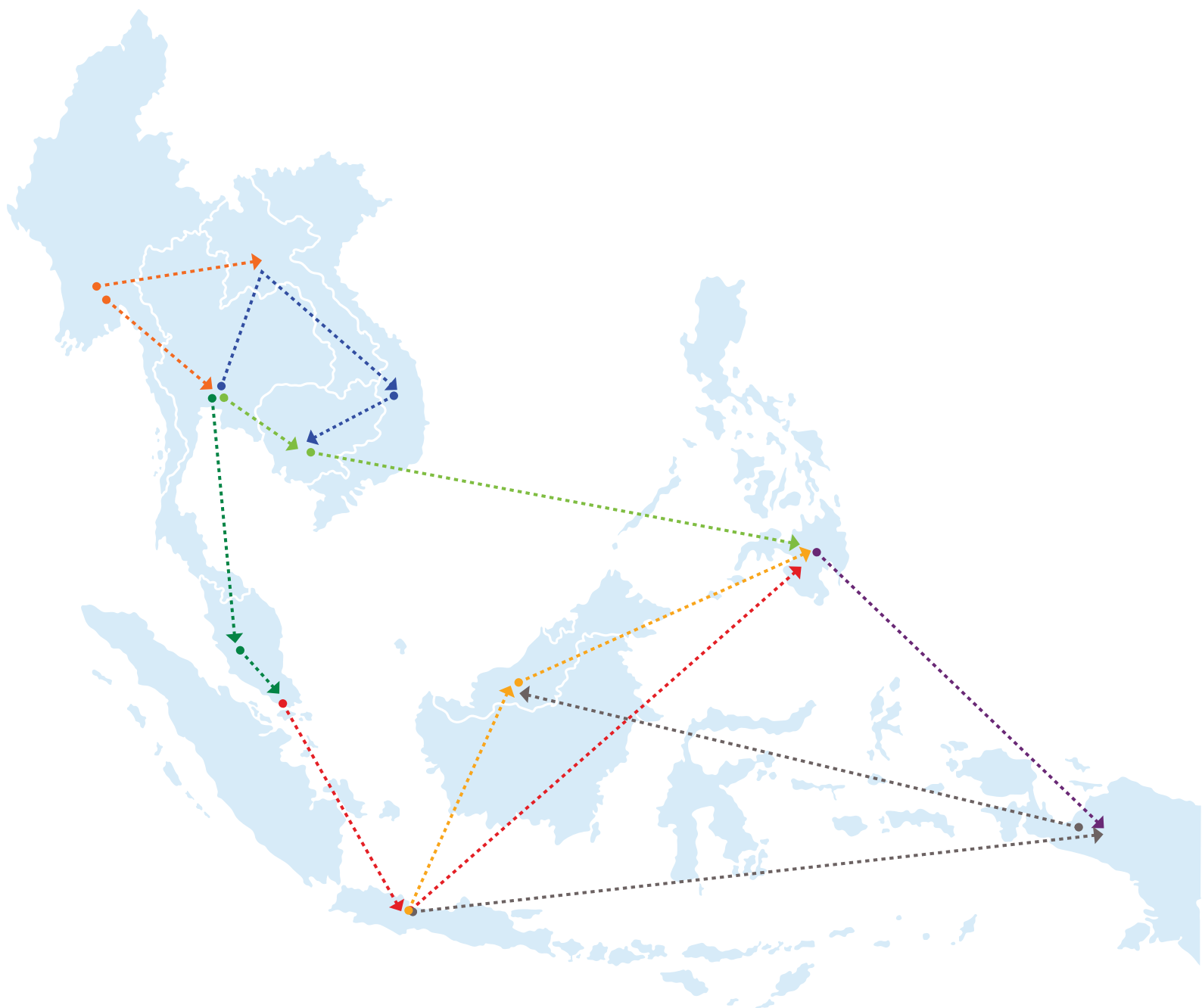
Situation of Children Affected by Migration in ASEAN Member States



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Internally displaced children play inside a camp for displaced peoples in Namtu township in Myanmar's Northern Shan State. © UNICEF/UN0579237/Nyan Zay Htet

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Acronyms

AIDS	Acquired immune deficiency syndrome
ASEAN	Association of Southeast Asian Nations
CCIHP	Center for Creative Initiatives for Health and Population
CMW Committee	Committee on the Protection of the Rights of All Migrant Workers and Members of their Families
COVID-19	Coronavirus disease 2019
CRC	United Nations Convention on the Rights of the Child
CRC Committee	United Nations Committee on the Rights of the Child
CRUMP	Cambodia Rural Urban Migration Project
EU	European Union
FGDs	Focus group discussions
HIV	Human immunodeficiency virus
ICT	Information communications technology
ILO	International Labour Organization
IOM	International Organization for Migration
Lao PDR	Lao People's Democratic Republic
MICS	Multiple Indicator Cluster Survey
MoU	Memorandum of Understanding
NGO	Non-governmental organization
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
OFWs	Overseas Filipino Workers
OHCHR	United Nations Office of the High Commissioner for Human Rights
SDGs	Sustainable Development Goals
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNICEF EAPRO	United Nations Children's Fund East Asia and Pacific Regional Office
UNODC	United Nations Office on Drugs and Crime
WFP	World Food Programme

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Children attend class in a temporary learning space after Typhoon Odette severely damaged nine out of 12 classrooms at the Magallanes Elementary School on the Philippines' Limasawa Island.
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1 Introduction

1.1 Background

The Southeast Asian region is a major migration hub comprising countries of origin, destination and transit – with some countries a mix of all three – for a large number of migrants. Migrants include displaced persons moving both within and between countries for diverse and mixed purposes. In 2020 alone, there were 1.3 million (1,266,009) child migrants in the Association of Southeast Asian Nations (ASEAN) region and in 2021, around 630,000 (627,390) refugees from ASEAN countries in the world were children. Natural disasters and conflict led to almost more than 2.5 million (2,522,801) internal displacements of children in 2021. Millions more children remained behind while parents migrated for work, leaving many children at risk.¹

Until recently, much of the migration literature focused on the experiences of, and the impact on, migrant adults. Children and their interests have been largely rendered invisible and their agency downplayed.² As a result, little is known about the unique drivers or the impact of migration on children. Similarly, little is known about the impact of particular migration policies on children. In the last decade, however, there has been a greater interest in relation to children, with a number of publications focusing on their experiences of migration.³

Like adults, children migrate within the Southeast Asian region in diverse contexts and for a range of reasons.⁴ They may accompany their parent(s) who pursue economic opportunities in other regions either within their home country or in other Southeast Asian countries, driven by a demand for migrant labour, by economic disparities and by the changing demographic composition of populations in neighbouring countries. Some children migrate on their own, in order to seek economic opportunities as a solution to poverty, to pursue education, to escape exploitation or abuse or for a range of other reasons. Children may also need to flee persecution, conflict or natural disasters (which are increasing in prevalence and severity as a result of the climate crisis),⁵ either on their own or with parents or carers. Of course, children may be driven to move by a mix of different factors and circumstances.

While migration can have a positive impact on individual children and families, particularly where States facilitate safe and orderly forms of movement, it can expose children to higher-risk movements, including smuggling and trafficking. State and regional cross-border policies that narrow available routes for regular migration (for instance, those which do not allow children to migrate regularly with parents or caregivers as dependents) and leave only irregular channels can create risky situations for children, who have the option either to migrate irregularly with their parents or be left at home.⁶

¹ This paragraph draws from a combination of UNDESA, UNHCR and UNICEF data. For more information, see <<https://data.unicef.org>>.

² Asis, Maruja M. B., and Alan Feranil, 'Not for Adults Only: Toward a child lens in migration policies in Asia', *Journal on Migration and Human Security*, vol. 8, no. 1, 2020, pp. 68–82.

³ *Ibid.*, p.68.

⁴ See, generally, United Nations Economic and Social Commission for Asia and the Pacific, et al., *Asia-Pacific Migration Report 2020: Assessing implementation of the Global Compact for Migration*, United Nations, Bangkok, 2020.

⁵ McKinsey Global Institute, 'Climate Risk and Response in Asia', 24 November 2002, <www.mckinsey.com/business-functions/sustainability/our-insights/climate-risk-and-response-in-asia>, accessed 10 December 2022.

⁶ Asis, Maruja M. B., and Alan Feranil, 'Not for Adults Only: Toward a child lens in migration policies in Asia', *Journal on Migration and Human Security*, vol. 8, no. 1, 2020, p. 68.

Children affected by migration in the region face a range of protection risks, including vulnerability to exploitation; exposure to arrest, detention and deportation; lack of birth registration and legal status; statelessness; family separation and abandonment; violence and abuse; emotional harm; sexual and economic exploitation; child marriage; and discrimination. These risks are heightened for the large number of children who migrate irregularly: the lack of legal status afforded them in their destination countries places these children at risk of exploitation, arrest and detention and limits their access to essential services, including healthcare, education and birth registration. Evidence suggests that many of these protection risks have been exacerbated by the COVID-19 pandemic and the impact of lockdown and containment measures in ASEAN Member States. Former UNICEF Executive Director Henrietta Fore refers to children as the “*hidden victims*” of COVID-19 and for children on the move, “*the consequences will be unlike any we have ever seen*”.⁷

Protection risks may also arise for children who decide to return or are forcibly returned to their home State after migration or displacement. Depending upon the circumstances which caused their movement in the first place, this may include lack of access to education or healthcare, particularly where natural disaster or conflict has resulted in disruption of services or where the child does not have the right identity documentation; child protection risks that led the child to leave originally; loss of home language, making it difficult to communicate; and lack of accommodation and financial and family support.⁸

While there are a range of risks that may impact on children who migrate or who are refugees or internally displaced, **children who remain behind when their parent(s) migrate are, increasingly, the subject of attention.** For many of these children left with family members, remittances sent home by the migrating parent(s) can improve living conditions, access to educational opportunities and other services. However, left-behind children may not be in a secure and stable family setting during the parents’ absence and may also be exposed to protection risks and to poor social and emotional outcomes.⁹ The negative impacts of COVID-19 in limiting economic opportunities for migrant parents and reducing the amount of remittances they were able to send back home to support their left-behind children has also been noted.¹⁰

Recent policy developments in the region, including in particular the adoption of the ASEAN Declaration on the Rights of Children in the Context of Migration and the accompanying Regional Plan of Action to guide and support its implementation, signal **a willingness on the part of ASEAN Member States to address the challenges faced by children affected by migration in the region.** A more robust and detailed understanding of the many ways that children are affected by migration in Southeast Asia is necessary, however, to ensure the development of effective and targeted programmes which reflect and implement the vision and objectives set out in the ASEAN Declaration and Plan of Action.

1.2 Purpose and scope

It is within this context that the UNICEF East Asia and Pacific Regional Office (UNICEF EAPRO) decided to undertake **a situation analysis of children affected by migration in ASEAN Member States.**¹¹ It is anticipated that the situation analysis will inform efforts within ASEAN to support children affected by migration, including the implementation of the ASEAN Declaration on the Rights of Children in the Context of Migration.

⁷ United Nations Children’s Fund, ‘Child Migration/Displacement and COVID’, September 2020.

⁸ See International Organization for Migration, et al., *Guidance to Respect Children’s Rights in Return Policies and Practices: Focus on the EU legal framework*, September 2019, <https://picum.org/wp-content/uploads/2019/09/2019_Guidance_childrens_rights_in_return_policies.pdf>, accessed 12 May 2021.

⁹ United Nations Children’s Fund, ‘Children “Left Behind”’, UNICEF Working Paper, <www.unicef.org/media/61041/file>, accessed 6 April 2021.

¹⁰ For example, the amount of remittances into the Philippines from Overseas Filipino Workers (OFWs) was predicted by the National Economic and Development Authority to fall by around US\$6.7 billion to US\$10 billion in 2021: Mogato, Manuel, ‘Phil may lose up to \$10 billion in OFW remittances amid Covid-19 pandemic’, *One News Philippines*, 9 April 2020, <www.onenews.ph/phl-may-lose-up-to-10-billion-in-ofw-remittances-amid-covid-19-pandemic>, accessed 6 April 2021.

¹¹ ASEAN is the Association of Southeast Asian Nations, which is an intergovernmental organization comprising 10 States with the aims of accelerating economic growth, social progress and cultural development and promoting peace and security through Southeast Asia.

‘Children affected by migration’ is a broad umbrella term that encompasses children (those aged under 18 years)¹² who move or have moved within their country of origin or across the border into another State, temporarily or permanently. This includes children who migrate voluntarily or involuntarily, whether as a result of forced displacement due to national disaster or conflict, or for economic, social, educational or cultural reasons, or individually or to accompany parents who have migrated internally. It also includes children affected by the migration of a parent/parents (‘children remaining behind’).¹³

The focus of the study is on **child protection** – the prevention and response to “*all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse*”¹⁴ against persons under 18 years of age.¹⁵ This includes an examination of the types of protection risks to which children affected by migration may be exposed and the response of child protection systems and services to these risks. While an in-depth examination of other essential services and systems (education, health, social protection, and labour laws and regulations) is beyond the scope of this report, it is noted that a complementary, multi-thematic analysis of child migration is important for building a holistic, empirical understanding of the situation.

Box 1: ‘Children affected by migration’ – Unpacking legal categories

Children affected by migration may fall within a range of different legal and non-legal categories and statuses. While these categories may be difficult to apply in practice as they tend to overlap and the circumstances of children can fluctuate, causing them to move between legal categories, how child migrants are labelled (i.e., their status), can have important ramifications for the way they are treated and the services to which they are entitled in international and domestic laws.

Migrant children outside their country of origin

Migrant children who are outside their country of origin may be regarded as being in a ‘regular’ situation or an ‘irregular’ situation (sometimes referred to as ‘documented’ and ‘undocumented’). Migrants in a regular situation are those who enter and stay in a country in accordance with that country’s immigration laws and regulations or in accordance with international agreements to which the State is a party.

A migrant in an irregular situation is “*a person who lacks legal status in a transit or host country due to unauthorized entry, breach of a condition of entry, or the expiry of a visa. The definition includes those persons who have entered a transit or host country lawfully but who have stayed for a longer period than authorized, or subsequently taken up unauthorized employment (also called clandestine/undocumented migrant or migrant in an irregular situation).*”¹⁶

¹² This is in accordance with international definitions of childhood, in particular as set out in the Convention on the Rights of the Child, Article 1. It should be noted that in the domestic laws of some ASEAN States such as Thailand, children who have attained majority through marriage are not included within the definition of ‘child’ in the Child Protection Act 2003. In addition, in some domestic laws such as the Philippine Republic Act 7610, a child over the age of 18 who cannot fully take care of themselves because of a physical or mental disability or condition is included within the definition of a child.

¹³ Joint general comment No.3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, and Joint general comment No.22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of migration), CRC/C/GC/22 16 November 2017, para. 9. See also: UNDESA, which defines an international migrant as anyone who changes her/his country of usual residence, ‘Recommendations on Statistics on International Migration, Revision 1’, 1998; and International Organization for Migration, ‘IOM Definition of “Migrant”’, <www.iom.int/who-is-a-migrant>, accessed 6 April 2021.

¹⁴ Convention on the Rights of the Child (CRC), Article 19(1); Committee on the Rights of the Child, general comment No. 13 (2011), The right of the child to freedom from all forms of violence, CRC/C/GC/13 (CRC general comment No. 13 (2011)), 18 April 2011, para. 4.

¹⁵ This is in accordance with the CRC Article 1.

¹⁶ International Organization for Migration, ‘Key Migration Terms’, <www.iom.int/key-migration-terms>, accessed 12 December 2022.

Migrant children who are living outside their country are usually referred to as accompanied, unaccompanied or separated. Accompanied child migrants are those who migrate and remain with their parents or legal caregivers and children who are born in destination countries to migrant parents. The United Nations Convention on the Rights of the Child (CRC) defines unaccompanied children as those *“who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.”*¹⁷ Separated children are *“children who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.”*¹⁸ Often, these two terms, ‘unaccompanied’ and ‘separated’, are used interchangeably and refer to children who are separated.

It has been noted that the distinction between the definitions of accompanied and unaccompanied/separated children may be difficult to apply in practice. For instance, some children may begin migrating alone, but may meet family members on the way or at their destination. Conversely, they may begin migrating with parents but be separated when their parents are arrested, detained or deported.

Refugees and asylum seekers

According to the Refugee Convention 1951, a refugee is a person who is: outside their country of origin; has a well-founded fear of persecution due to her/his race, religion, nationality, membership of a particular social group or political opinion; and is unable or unwilling to return. An asylum seeker is *“an individual who is seeking international protection. In countries with individualized procedures, an asylum-seeker is someone whose claim has not yet been finally decided on by the country in which the claim is submitted.”*¹⁹ Refugees and asylum seekers are granted certain protections under international law, such as the prohibition against refoulement, which means they cannot be returned to a country where they would face persecution. Returnee refugees are those *“who have returned to their country or community or origin.”*²⁰

Internally displaced persons

Internally displaced persons are *“persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.”*²¹ The key elements of this definition (which is descriptive rather than providing for a legal status) are: (1) the involuntary character of the movement; and (2) the fact that such movement takes place within national borders. Internally displaced persons include both citizens as well as other habitual residents of the country in which they are displaced, which may include, for example, stateless persons.

¹⁷ Committee on the Rights of the Child, general comment No. 6, Treatment of Unaccompanied and Separated Children Outside their Country of Origin, CRC/GC/2005/6 (CRC Committee GC No. 6 (2005)), para. 7.

¹⁸ Ibid., 1 September 2005, para. 8.

¹⁹ UNHCR, ‘Master Glossary of Terms’, Rev. 1, UNHCR, Geneva, 2006.

²⁰ Ibid.

²¹ United Nations Office for the Coordination of Humanitarian Affairs, ‘Guiding Principles of Internal Displacement’, 1998, para. 2.

Children affected by migration of parents/caregivers

Children who remain in their home country or community while one or both parents migrate either within or outside their country of origin/residence are also considered to be a group of children affected by migration. Most left-behind children are cared for by family members but in a minority of cases, may be placed in residential care homes or left to fend for themselves.

Stateless children

The study also includes children whose parents originated from another country but who are stateless; this means that they are *“not considered citizens or nationals under the operation of the laws of any country”*.²² It also applies to children whose parents have nationality but were/are unable or failed to pass on their nationality to their children as well as those with undetermined nationality.

Victims of child trafficking

Child trafficking is a legal term that refers to *“the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control of another person for the purposes of exploitation”*.²³ However, it should be noted that force or coercion is not required to be established for trafficking in children to occur. Children affected by migration will be considered to be victims of human trafficking where they fall within the legal definition of trafficking; a legal category that results in special protections under international law. Child trafficking is also a child protection risk and can be considered, in some cases, to be a driver of migration.

Smuggling

Smuggling of persons is *“the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State party of which the person is not a national or permanent resident”*.²⁴ Smuggling is different from human trafficking, as it does not involve exploitation and occurs with the consent of an individual (though, as noted above, consent is not relevant to child trafficking). Also, trafficking can occur without crossing an international border, whereas smuggling involves crossing an international border. In practice, though, acts of trafficking and smuggling can be difficult to distinguish until exploitation occurs (for example, where a person pays a smuggler to move them across a border, but the situation then becomes exploitative and falls within the definition of trafficking in persons).

This study integrates a **‘business lens’** by exploring the role of businesses in driving child migration, contributing to the protection risks experienced by children affected by migration and preventing and responding effectively to these risks.

²² United Nations Convention relating to the Status of Stateless Persons (adopted 28 September 1954, entered into force 6 June 1960), vol. 360, p. 117, art. 1.

²³ United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), General Assembly Resolution 55/25 15th November 2000, Article 3.

²⁴ United Nations Convention Against Transnational Organized Crime, UN Res. 55/25 (adopted 15 November 2000, entered into force 29 September 2003), United Nations, 2000.

1.3 Methodology

The situation analysis included a **regional review** across the 10 ASEAN Member States, together with a series of **five in-depth case studies** on different aspects of migration and their impact on children. This enabled an in-depth and focused examination of key issues and particular groups of children, and how these issues are embedded in particular contexts.

1.3.1 Data collection methods

The research employed a **mixed-methods approach** to data collection, including both quantitative and qualitative methods, along with legal and policy analysis.

Quantitative data were used to generate an objective description of the scale and ways in which children are affected by migration, together with (where possible) an analysis of the protection risks and child protection responses to children affected by migration. Quantitative data sources included:

- Survey data to establish prevalence of the ways in which children are affected by migration (e.g., Census data, routine household data on internal migration movements, multiple indicator cluster survey (MICS) data, etc.);
- Administrative data to establish prevalence of categories of child migration, child protection risks and the interaction of children affected by migration with protection and justice systems (e.g., routine administrative data on identified child trafficking cases, number of children in immigration detention, registered child marriages among migrant children, data on migrant children in the child protection system, and so forth); and
- Primary survey data collected by the team during the country case studies.

Disaggregated, quantitative data were examined (where possible) to enable a gender and equity sensitive analysis. It should be noted that major gaps exist in existing survey and administrative data which limit their use in providing a full and accurate picture of children affected by migration, as set out in section 4.5.

Qualitative data were used to provide in-depth and contextualized data on questions relating to how and why children migrate and the impact on them. In particular, qualitative data included:

- A thematic review of literature on children affected by migration;
- A legal and policy analysis of domestic laws and policies against international and regional (ASEAN) standards;
- A series of consultative interviews (key informant interviews) with a range of stakeholders with particular knowledge and/or positions in relation to children affected by migration (including UNICEF, government partners and non-governmental organizations (NGOs), which included 18 interviews with United Nations agencies, representatives of the ASEAN Secretariat and key NGOs at the regional level and 28 at the country level across the 10 ASEAN Member States (see Annex A for details); and
- In-depth interviews (IDIs) and focus group discussions (FGDs) with children and families affected by migration, key stakeholders, 'front-line' service providers and other key stakeholders as part of the country case studies.

Figure 1: Summary of data collection methods



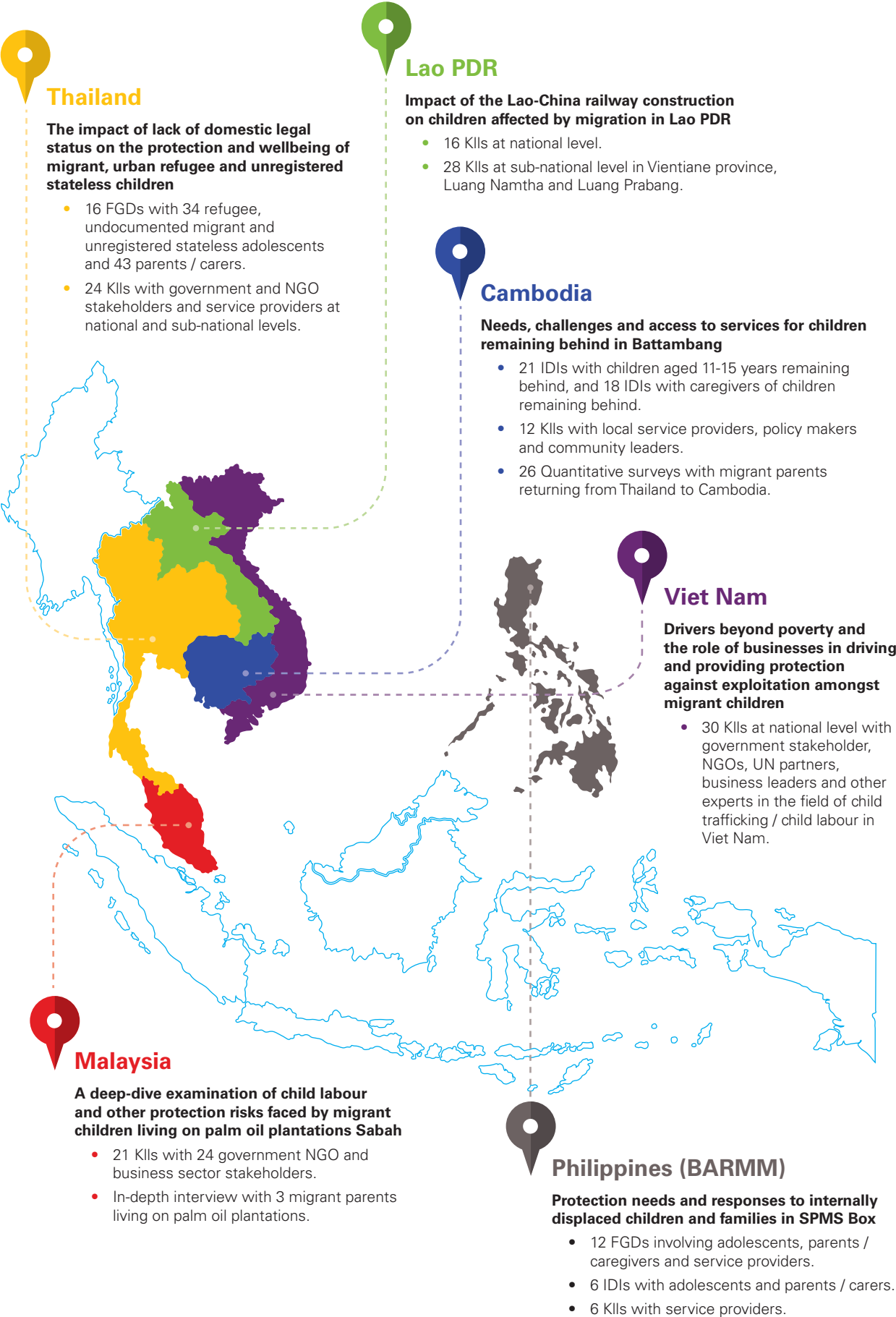
1.3.2 In-depth country-based qualitative research

In addition to a regional thematic review and analysis, the research included five in-depth case studies and one qualitative field research across different countries in the ASEAN region, with each focusing on a different topic. The purpose was to explore, in a localized/contextualized and in-depth manner, the ways in which children are affected by migration. A thematic analysis was undertaken in which data were coded according to themes and an analysis was carried out in separate NVivo²⁵ files for each country. A separate report was written for each case study. Key findings are also integrated into this regional report to illustrate the risks, needs and responses to children who are affected by migration in different ways across diverse contexts.

Separate and tailored ethical protocols were developed to guide primary data collection, analysis and reporting for each of the five case studies, which were reviewed and approved by an independent expert Research Ethics Committee prior to data collection commencing.

²⁵ Qualitative data analysis software that enables the thematic organization of qualitative data.

Figure 2: In-depth research themes and primary data collection





CAMBODIA, Siem Reap, Phnom Krom floating village; June 15, 2017:
A young boy waits in a tuk-tuk in Siem Reap town, Cambodia.
© UNICEF/UN077801/Khoy Bona



A volunteer holds cartoons depicting different forms of child abuse during a violence awareness workshop at a children's centre in Roxas City, Philippines.
© UNICEF/UNI45400/Ninfa Bitó

2 Movement of children in ASEAN: Dynamics and drivers

Key points

- International migration within Southeast Asia has increased substantially over the past 50 years, with the vast majority of movement occurring *within* the region, principally from lower-income countries to higher-income countries (especially Malaysia and Thailand).
- A large proportion of international migration occurs irregularly, outside the destination country's regular process or not in compliance with its laws. It is driven by costly, complex and slow legal processes limiting the viability of regular migration and options for parents to migrate with their children lawfully.
- It is likely that the number of internal migrants far outnumbers the number of international migrants, with dominant routes involving the flow of migrants – including children who travel with families or independently – from rural to urban areas, drawn by better economic opportunities.
- Thailand, Malaysia and Indonesia have substantial populations of child refugees and asylum seekers who have fled a range of situations both from within and outside the region, including a large population who has fled violence and persecution in Myanmar.
- Children and families in Southeast Asia are routinely forcibly displaced within their country of residence by conflict, persecution, violence, human rights abuses, natural disasters and environmental degradation, including populations who are in protracted displacement in Myanmar and the Philippines.
- There are large populations of stateless children in Myanmar and Thailand, and smaller populations in Malaysia, Cambodia, Viet Nam and Brunei Darussalam; statelessness negatively impacts the ability of these children to access basic services and impairs their freedom of movement and sense of belonging and identity.
- A large number of children in ASEAN Member States remain behind in their home communities following the migration of one or both parents. This can provide economic benefits through remittances but can disrupt a child's stable caregiving.
- COVID-19 and government responses to the pandemic resulted in significant changes to migration flows in the ASEAN region as a result of travel restrictions and periodic border closures that caused substantial numbers of migrants to return to their home countries. However, these impacts have lessened following the opening up of the borders and removal of movement restrictions in ASEAN Member States.



Child migration is driven by an interplay of different factors operating on structural, community-wide, family and individual levels:

- **Structural drivers** of migration include uneven economic development across ASEAN Member States (and globally), contributing to a demand for foreign workers to fill labour market gaps in higher-income ASEAN (and other) States; regional integration and bilateral agreements between ASEAN Member States, which have encouraged and incentivized short-term migration to close these gaps and promote a livelihood strategy for migrants; environmental risks, disasters and degradation, exacerbated by the climate crisis, which have contributed to short-term displacement as a response to disasters, along with longer-term migration as a response to environmental degradation; conflict and persecution, which has driven migration by a large number of refugees and asylum-seeking children and families in ASEAN, the majority from Myanmar; and the feminization of migration and social norms and expectations that have encouraged more women to migrate.
 - **Community drivers** of migration include access to family and social networks which help to 'bridge' the financial and logistical challenges facing new migrants and provide essential information and access to opportunities.
 - **Family drivers** include: the sense of familial duty among children, particularly girls, to contribute to the support of their family; and the poverty and economic hardship of families for which migration provides a solution.
 - **Individual drivers** include: cross-border child marriages, which can involve trafficking; violence and trauma within the family; a lack of access to services, including high-quality education for which migrants may move to more developed education systems; and social aspirations, including a desire to improve socioeconomic status, along with a desire for independence and self-sufficiency.
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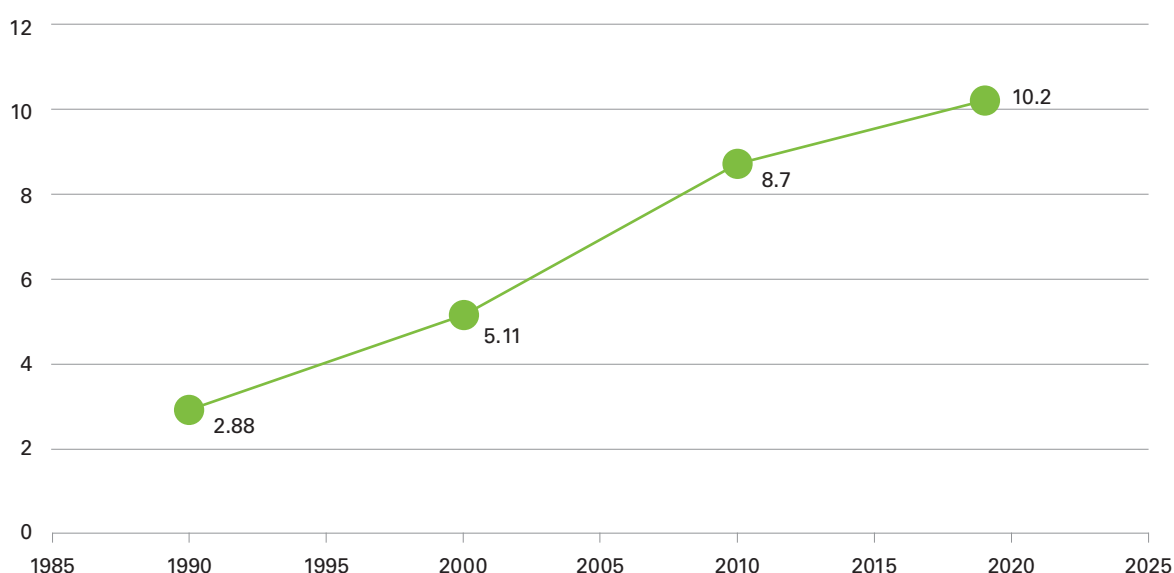
CAMBODIA, Siem Reap, Puok District, Kork Run village; June 15, 2017:
A 4-year-old girl collects water mimosa in Siem Reap's Puok District, Cambodia.
© UNICEF/UN077779/Khoy Bona

2.1 Migration patterns within ASEAN Member States

2.1.1 International migration

International migration across Southeast Asia has soared over the past 50 years, with increasing numbers of people moving across international borders within and outside the ASEAN region in response to new legal channels for movement, but also through irregular channels. The total migrant stock in Southeast Asian States (that is, the number of migrants known to be residing in these States based on census data)²⁶ has risen substantially in the past 30 years, from just over 2.8 million persons in 1990 to just over 10.1 million in 2019.²⁷ During that time, the percentage of known migrants as a proportion of the total population rose from 0.6 per cent to 1.5 per cent.²⁸ In 2020 alone, there were 1.27 million international child migrants in the ASEAN region.²⁹

Figure 3: International migrant stock in Southeast Asia, 1990–2019 (millions)³⁰



²⁶ Though note that the data include Timor-Leste, in addition to the 10 ASEAN States.

²⁷ United Nations, Economic and Social Commission for Asia and the Pacific, *Asia-Pacific Migration Report 2020: Assessing implementation of the Global Compact for Migration*, Bangkok 2020, Annex Table 1, p. 191.

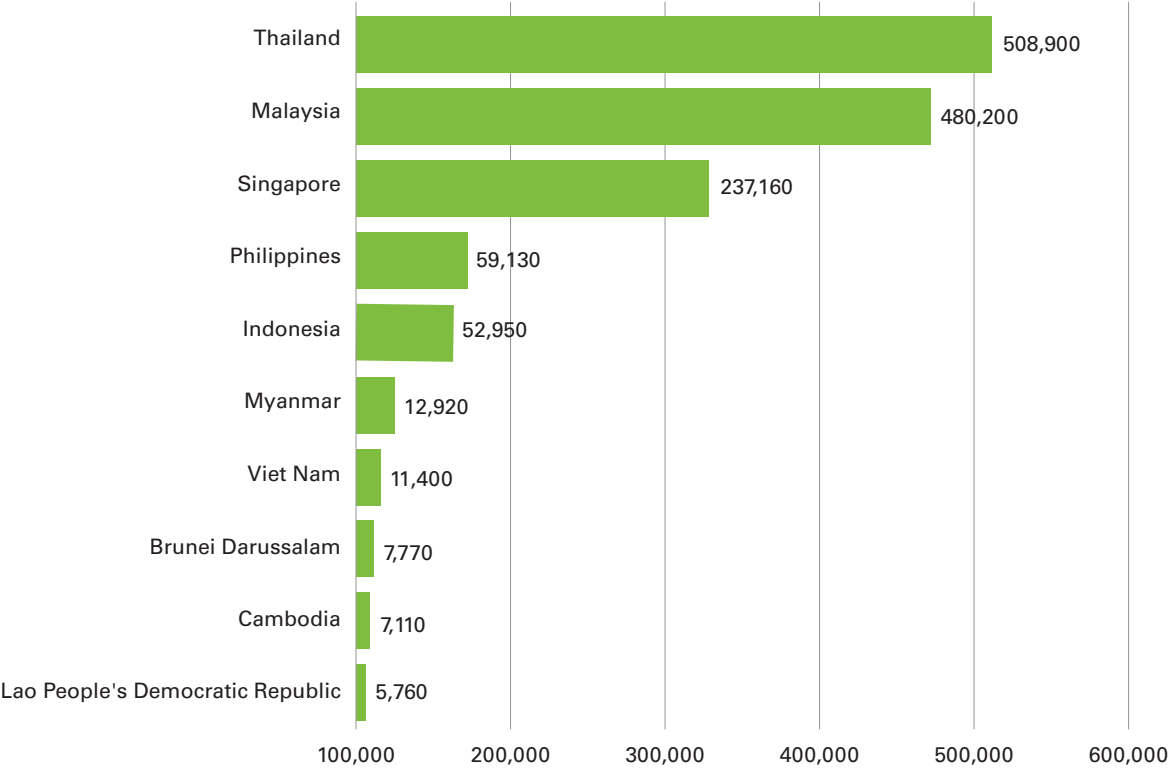
²⁸ Ibid.

²⁹ Combination of UNDESA, UNHCR and UNICEF data. For more information, see <<https://data.unicef.org>>.

³⁰ United Nations, Economic and Social Commission for Asia and the Pacific, *Asia-Pacific Migration Report 2020: Assessing implementation of the Global Compact for Migration*, Bangkok 2020, Annex Table 1, p. 191. Includes: Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, the Philippines, Singapore, Thailand, Timor-Leste and Viet Nam.

The vast majority of international migration in Southeast Asia occurs within the region: According to data from 2019, intraregional migrants made up over 92 per cent of the migrant population of Southeast Asia, particularly in terms of migration to neighbouring countries.³¹ Three of the top five host countries for migrants from ASEAN are other ASEAN Member States, including Thailand (3.6 million), Malaysia (1.5 million) and Singapore (1.2 million).³² As shown in Figure 4 and Figure 5 below, according to the most recent data (2019), the largest number of international child migrants moved to Thailand (508,900), Malaysia (408,200) and Singapore (237,160). A large number of children also migrated to the Philippines (59,130) and Indonesia (52,950). Far fewer children migrated to other countries in the region. However, it is likely that these data represent just a small proportion of the child (and adult) migrant populations. The reason for this is that the vast majority of migrants entering and remaining in ASEAN Member States from within the region are those in irregular situations. The scale of children on the move in terms of their country of origin appears to be unknown, due to a lack of data.

Figure 4: International child migrants by country of destination, ASEAN Member States, 2019



The most established intraregional migration routes are the movement of persons from lower-income countries to the region’s higher-income countries, principally Malaysia and Thailand, though Singapore and Brunei Darussalam also host a proportion of migrants from within the ASEAN region (and beyond).³³ The largest proportion of this population are temporary migrant workers, who are predominantly low skilled and increasingly female.³⁴ The importance of migrants to the economies and societies of destination countries is increasingly recognized, with migrants making up the majority of workers in some key sectors, including domestic work, entertainment, seafood processing, electronics manufacturing and garment manufacturing, among others.³⁵ Migrant workers from the Philippines, Indonesia and Viet Nam

³¹ Ibid.
³² International Labour Organization, *Countries of Origin and Destination for Migrants in ASEAN*, Bangkok, 2015.
³³ Ibid.
³⁴ Ahsan, Ahmad, et al., *International Migration and Development in East Asia and the Pacific*, World Bank Group, 2014, p. 1.
³⁵ International Labour Organization and UN Women, *Public Attitudes to Migrant Workers in Japan, Malaysia, Singapore and Thailand*, 2019, p. x.

tend to migrate outside the region, with the top destinations being the Middle East (particularly Saudi Arabia and the United Arab Emirates)³⁶ and East Asia (especially Hong Kong and Taiwan).³⁷ Migrants from Cambodia, Lao PDR and Myanmar tend to migrate to seek work in neighbouring countries with relatively robust economies. In particular, a substantial proportion of migration from Myanmar, Cambodia and Lao PDR is to neighbouring Thailand.³⁸ Thailand, with a strong and stable economy, has become a hub for migration in Southeast Asia, enabled by its long, porous borders with the three countries.³⁹

It is likely that **a large proportion of migration within the ASEAN region occurs irregularly** – that is, outside the destination country’s regular migration process or not in compliance with its laws, though reliable and comprehensive data are not available. In Thailand and Malaysia, for example, as much as 50 per cent of migration is thought to be irregular,⁴⁰ though this proportion is likely to be much higher among migrants who move from neighbouring countries. A study of over 1,800 migrant workers from Cambodia, Lao PDR, Myanmar and Viet Nam in Malaysia and Thailand in 2016 found that 74 per cent of respondents had migrated through irregular means.⁴¹ Another study found even higher rates of irregular migration among persons from Lao PDR (96 per cent), Myanmar (91 per cent) and Viet Nam (91 per cent).⁴² The large scale of irregular migration to Thailand is also evidenced through the country’s occasional regularization initiatives. For instance, in a 12-month period in 2018, 1.2 million irregular migrants residing in Thailand had their status regularized.⁴³

Irregular migration is fuelled by complex, lengthy and costly legal migration processes, despite various initiatives in the region to improve legal channels for regular migration.⁴⁴ A recent study found that irregular migration channels into Thailand, for example, were considerably quicker (by an average of 78 days) and cheaper (by an average of US\$286) than migration through regular channels.⁴⁵ The cost and complexity of formal migration channels has facilitated a smuggling market in the Southeast Asian region.⁴⁶ For many migrants, smugglers offer services that they believe will enable them to flee persecution or reach essential economic opportunities faster and cheaper, despite the risks.⁴⁷ Irregular migrants are considered to be at heightened risk of protection concerns, including trafficking and labour and sexual exploitation, as they tend to be engaged in informal or even clandestine work and have limited recourse in cases of violence, abuse or exploitation (see section 3, below).

³⁶ For example, 26.6 per cent of registered Overseas Filipino Workers moved to Saudi Arabia and 14.6 per cent moved to the United Arab Emirates in 2020: Philippine Statistics Authority, ‘2020 Overseas Filipino Workers (Final Results)’, 7 March 2022, <<https://psa.gov.ph/statistics/survey/labor-and-employment/survey-overseas-filipinos>>, accessed 12 December 2022.

³⁷ The top two destination countries for Indonesian migrant workers deployed abroad in 2021 were Hong Kong and Taiwan: Indonesian Workers Protection Agency (BP2MI) in Anaf, Aswatini, et al., ‘Indonesian Migrant Workers: The migration process and vulnerability to Covid-19’, *Journal of Environmental Public Health*, 15 June 2022.

³⁸ Um, Khatharya, *Southeast Asian Migration: People on the move in search of work, refuge and belonging*, Sussex Academic Press, 2015, p. 60.

³⁹ United Nations, *Thailand Migration Report 2019*, edited by Benjamin Harkin, Thematic Working Group on Migration, 2019, pp. 10–11. It is important to note that a significant proportion of persons entering Thailand from Myanmar are asylum seekers and refugees who are fleeing persecution.

⁴⁰ Harkins, Benjamin, Daniel Lindgren and Tarinee Suravoranon, *Risks and Rewards: Outcomes of labour migration in South-East Asia*, International Organization for Migration, International Labour Organization and Rapid Asia, 2017, p. 45.

⁴¹ *Ibid.*, p. 33.

⁴² *Ibid.*

⁴³ *Thailand Migration Report 2019*, p. 3.

⁴⁴ *Ibid.*, p. 7.

⁴⁵ Harkins, Lindgren and Suravoranon, *Risks and Rewards: Outcome of labour migration in South-East Asia*, ILO, ILM and Rapid Asia, 2017.

⁴⁶ Collins, Francis, et al., ‘Introduction: Approaching migration and diversity in Asian contexts’, in *Migration and Diversity in Asian Contexts*, edited by Eng, Lai et al., Institute of South-East Asian Studies, Singapore, 2013, p. 4.

⁴⁷ Harkins, Lindgren and Suravoranon, *Risks and Rewards: Outcome of labour migration in South-East Asia*, ILO, ILM and Rapid Asia, 2017.

Table 1: Summary of major international migration routes within ASEAN Member States⁴⁸



Origin countries

Cambodia	<ul style="list-style-type: none"> Economic migration predominantly into neighbouring Thailand (regular and irregular)
Lao PDR	<ul style="list-style-type: none"> Economic migration predominantly into neighbouring Thailand (regular and irregular)
Myanmar	<ul style="list-style-type: none"> Economic migration predominantly into Thailand and Malaysia (regular and irregular); Refugee and displaced populations into Thailand and Malaysia.
Philippines	<ul style="list-style-type: none"> Economic migration predominantly outside ASEAN, but also into Brunei Darussalam, Malaysia and Singapore; Irregular migrants in Malaysia (Sabah)
Viet Nam	<ul style="list-style-type: none"> Economic migration predominantly outside ASEAN, but also into Thailand, Brunei Darussalam, Malaysia and Singapore.

Origin, transit and destination countries

Indonesia	<ul style="list-style-type: none"> Origin country for economic and other migration predominantly into Malaysia; Transit country for refugee and asylum-seeking populations.
Thailand	<ul style="list-style-type: none"> Destination country for migrants predominantly from neighbouring countries (regular and irregular); Destination country for refugees and displaced persons, predominantly from Myanmar but also from other countries outside the region; Origin country for migration to Singapore and Malaysia and outside ASEAN.

Destination countries

Brunei Darussalam	<ul style="list-style-type: none"> Destination country for migrants from Thailand (predominantly regular)
Malaysia	<ul style="list-style-type: none"> Destination country for economic migrants predominantly from neighbouring countries (regular and irregular); Destination country for refugees and displaced persons, predominantly from Myanmar but also from other countries outside the region.
Singapore	<ul style="list-style-type: none"> Destination country for migrants from Thailand, Malaysia and Indonesia (predominantly regular)

⁴⁸ Note that this table excludes migration routes with destinations outside of ASEAN.

2.1.2 Internal migration

Available data and estimates from a number of countries indicate that **internal migrants are likely to far outnumber international migrants in ASEAN Member States**, though nationally representative data on internal migration in the region are difficult to access (as countries do not routinely collect data on internal migration or define it too narrowly⁴⁹). According to Cambodia's most recent Population Census (2019), 21.5 per cent of the population had migrated, the majority from other locations within Cambodia; most from one province to another.⁵⁰ In Indonesia, nearly 9.8 million individuals were estimated to be temporary internal migrants in 2010, according to Census data (though this only represents the number of migrants who had moved in the previous five years,⁵¹ indicating that internal migration far outnumbered international migration from the country. Lao PDR's 2015 Population Census found that 7.4 per cent of the population were internal migrants and the majority of these (4 per cent) had moved from one province to another.⁵² In Viet Nam, where migration has long been actively discouraged,⁵³ official rates of internal migration are quite low. However, a national study on migration involving data from 18,131 households found that 13.6 per cent of Viet Nam's population were migrants, and among 15–59-year-olds, 17.9 per cent were migrants (17.7 per cent of migrants were female compared to 16.8 per cent male), indicating that rates of 'unofficial' or undocumented internal migration are high.⁵⁴

Internal migration in Southeast Asia typically follows rural to urban routes, usually involving migrants who are drawn to improved economic opportunities in urban centres. For instance, among the proportion of internal migrants in Cambodia, according to its latest Population Census, 64 per cent had moved from rural to urban or urban to urban locations.⁵⁵ Rural to urban internal migration routes are also the largest flow in Viet Nam, where migration plays a major role in meeting the labour demands of urban areas.⁵⁶ Internal migration can also be a springboard to international migration. A number of studies have found that a move across international borders can be preceded by a move to an urban centre within a migrant's country of origin.⁵⁷

Studies in Viet Nam and Myanmar have found that **a substantial proportion of internal migrants are adolescents, who sometimes migrate independently.** The study on internal migrant workers in Viet Nam's apparel and footwear industry found that child migrants aged 15–17 years, typically from rural areas, were employed lawfully in this sector under the same conditions as adults. A further "unknown number" of younger child migrants are also thought to be employed through the use of false identity documents (e.g., those of older siblings) that inflate their age.⁵⁸ A 2017 study based on the analysis of Census data in Myanmar found that 1.7 per cent of children aged 10–14 years and 3.6 per cent of all youth (aged 15–29) had moved within Myanmar in the 12 months prior to the Census, and 5.2 per cent and 10.8 per cent respectively, had moved less than five years prior, suggesting that the rates have been increasing over the last several years, with older adolescents (15–19 years) more likely to move independently for work.⁵⁹ A study in 2017 found that a substantial proportion of child migrants in Myanmar are unaccompanied by anyone.⁶⁰

⁴⁹ Jones, Nicola, Elizabeth Presler-Marshall and Dang Bich Thuy, *Falling Between the Cracks: How poverty and migration are resulting in inadequate care for children living in Viet Nam's Mekong Delta*, ODI, December 2014, p. 9. For instance, in Viet Nam, children under 5 years of age are excluded from data collection on internal migration, as are temporary internal migrants.

⁵⁰ National Institute of Statistics, Ministry of Planning, General Population Census of the Kingdom of Cambodia, *National Report on Final Census Results, 2019*, October 2020, Table 6.2.1, p. 72.

⁵¹ United Nations Educational, Scientific and Cultural Organization, et al., *Overview of Internal Migration in Indonesia*, p. 3, <<https://bangkok.unesco.org/sites/default/files/assets/article/Social%20and%20Human%20Sciences/publications/Policy-brief-internal-migration-indonesia.pdf>>, accessed 12 December 2022.

⁵² Lao PDR Statistics Bureau, *Results of Population and Housing Census, 2015*.

⁵³ Viet Nam Academy of Social Sciences and World Bank, *Viet Nam's Household Registration System*, Hong Duc Publishing House, Ha Noi, 2016.

⁵⁴ Viet Nam General Statistics Office and United Nations Population Fund, *The 2015 National Internal Migration Study: Major findings*, Vietnam News Agency Publishing House, Ha Noi, 2016, p. 3.

⁵⁵ National Institute of Statistics, Ministry of Planning, General Population Census of the Kingdom of Cambodia, *National Report on Final Census Results, 2019*, October 2020, Table 6.2.1, p. 72.

⁵⁶ Viet Nam General Statistics Office and United Nations Population Fund, *The 2015 National Internal Migration Study: Major findings*, Vietnam News Agency Publishing House, Ha Noi, 2016, p. 3.

⁵⁷ Phouxay, Kabmanivanh, *Patterns of Migration and Socio-economic Change in Lao PDR*, Department of Social and Economic Geography, Umea University, Sweden, 2010, p. 32.

⁵⁸ UNICEF Viet Nam, *The Apparel and Footwear Sector and Children in Viet Nam*, UNICEF Vietnam, Ha Noi, 2017, p. 3.

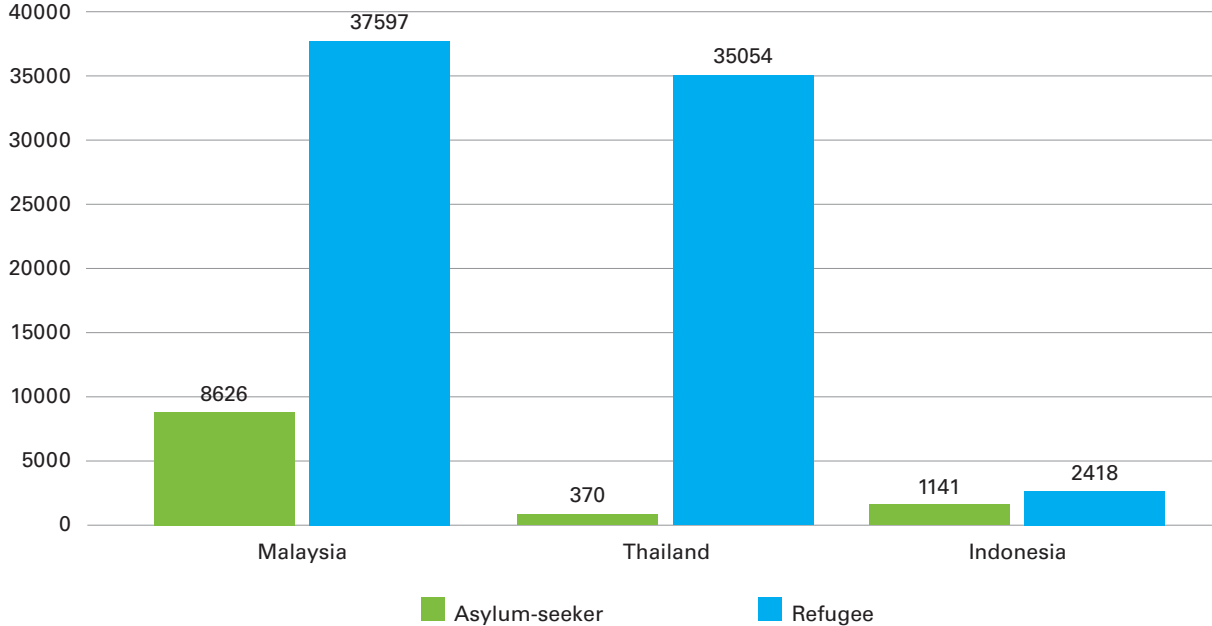
⁵⁹ Fry, Deborah, 'Migration Among Adolescents in Myanmar: Opportunities for child protection', Data brief, United Nations Children's Fund, Yangon, 2019.

⁶⁰ Ibid.

2.1.3 Children in forced displacement: Asylum seekers, refugees and the internally displaced

Children in the ASEAN region may be living outside their country of origin as a result of fleeing conflict or persecution – a situation for which they may have claimed, or be in the process of claiming, refugee status. Others may have fled environmental disasters or environmental degradation linked to climate change.⁶¹ Three countries – Thailand, Malaysia and Indonesia – have substantial populations of child refugees and asylum seekers and together host 99 per cent of asylum seekers and refugees in the Southeast Asian region.⁶² As shown in Figure 6 below, the largest number of child refugees in ASEAN (registered with UNHCR at the end of 2021) are in Malaysia (37,587) and Thailand (35,054). Children make up 40 per cent of all refugees in Thailand; just over a quarter of all refugees in Malaysia; 27 per cent in Indonesia and just 10 per cent in the Philippines. However, the number of children residing in ASEAN Member States who have fled or are fleeing conflict or persecution but have not been formally identified as refugees or ‘persons of concern’ (e.g., through UNCHR’s determination process), is unknown.

Figure 5: Number of child refugees and asylum seekers by country of asylum, 2021



⁶¹ As discussed further below (section 4), only two States in the ASEAN region (Cambodia and the Philippines) are party to the Refugee Convention 1951. Malaysia and Thailand, which have substantial populations of refugees and asylum seekers, are not party to this Convention and they do not have domestic laws allowing for the determination and granting of refugee status. Therefore, the legal status of ‘refugee’ and ‘asylum seeker’ does not exist in Malaysian or Thai domestic law. Persons fleeing conflict and persecution are nevertheless refugees under international law and UNHCR’s mandate.

⁶² Migration data portal, ‘Migration data in Southeastern Asia’ (data from 2020), <<https://www.migrationdataportal.org/regional-data-overview/south-eastern-asia>>

The ASEAN refugee population is very mixed and asylum seekers and refugees come from a wide range of countries, both within and outside the region. In Thailand, there are two distinct populations of refugees: those residing in camps on the Thai-Myanmar border, who are predominantly of Karen, Karenni and Burmese ethnicity,⁶³ and the ‘urban’ asylum seeking and refugee population, who have fled persecution from a range (upwards of 51) of different origin countries,⁶⁴ and who reside in urban settings in and around Bangkok.⁶⁵ Anecdotal evidence suggests the military coup of February 2021 and resultant poverty has caused a spike in the number of irregular arrivals from Myanmar,⁶⁶ many of whom are likely to be refugees.⁶⁷ In Malaysia, UNHCR reported that, as of the end of October 2022, there were 182,780 refugees and asylum seekers registered with the agency, of which 48,130 were children. The vast majority of asylum seekers and refugees (157,680) were from Myanmar, comprising 105,790 Rohingyas, 23,290 Chins and 28,600 from other ethnic groups from conflict-affected areas or who were fleeing persecution in the country. The remaining persons were from 50 countries, including Pakistan (6,990), Yemen (3,350), the Syrian Arab Republic (2,910), Somalia (3,070), Afghanistan (3,320), Sri Lanka (780), Iraq (780) and State of Palestine (680).⁶⁸

Box 2: Asylum-seeking and refugee children from Myanmar

The vast majority of asylum seekers and refugees in the ASEAN region are from Myanmar, with large populations from Myanmar residing in communities predominantly across Thailand and Malaysia. A substantial proportion of these populations (37.9 per cent) are children: 6.8 per cent are under 4 years of age; 16.5 per cent are aged 5–11 and 14.6 per cent are aged 12–17 years.⁶⁹ Outbreaks of violence following the country’s military coup in 2021 have led to large displaced populations, including 71,000 estimated movements into neighbouring countries from February 2021 until 1 November 2022, along with 1.1 million internally displaced persons.⁷⁰

A large proportion of asylum-seeking and refugee persons from Myanmar are Rohingya. The movement of Rohingya persons from Arakan State and other parts of Myanmar has been occurring for several decades as a consequence of the systematic oppression of the community by the military Government, and especially following legal changes that stripped Rohingya persons of their citizenship in 1982. The exodus has become particularly marked over the last 10 years, following persistent, targeted violence and the persecution of Rohingya women, girls, boys and men in Rakhine State and the systematic organizing of anti-Rohingya sentiment among local Burmese populations. This was accompanied by effective organizing on the part of people smugglers and human traffickers.⁷¹ In August 2017, the largest and fastest refugee influx of Rohingya populations occurred, and since then more than 773,000 Rohingya – including more than 400,000 children – have fled to Cox’s Bazaar in Bangladesh,⁷² along with substantial populations into Malaysia and Thailand.

⁶³ The refugees living in camp settings on the border are in what is referred to as a ‘protracted’ refugee situation, having fled to Thailand years previously, during periods of conflict in Myanmar. They are forbidden from leaving the camps, are unable to work or access hospitals or schools and rely on assistance and services provided by a collection of NGOs mandated to enter the camps. These refugees do not face risks of arrest and detention, so long as they remain within camp borders.

⁶⁴ UNHCR, Fact Sheet, Thailand, March 2022. <https://www.unhcr.org/th/wp-content/uploads/sites/91/2022/04/UNHCR-Thailand-Fact-Sheet_31-March-2022.pdf>.

⁶⁵ UNHCR, Fact Sheet, Thailand, 31 March 2021, available at: <https://www.unhcr.org/th/wp-content/uploads/sites/91/2021/04/UNHCR-Thailand-Fact-Sheet_31-March-2021.pdf>.

⁶⁶ Bangkok Post, Myanmar coup-fuelled poverty pushes thousands to Thailand, 6 Jan 2022. Available at: <<https://www.bangkokpost.com/thailand/general/2243067/myanmar-coup-fuelled-poverty-pushes-thousands-to-thailand>>.

⁶⁷ Triggs, Gillian, UNHCR Assistant High Commissioner for Protection, ‘News Comment: UNHCR calls on Myanmar’s neighbours to protect people fleeing violence’, 31 March 2021, <www.unhcr.org/uk/news/press/2021/3/60648c304/news-comment-unhcr-calls-myanmars-neighbours-protect-people-fleeing-violence.html>.

⁶⁸ UNHCR, ‘Figures at a Glance in Malaysia’, <www.unhcr.org/en-au/figures-at-a-glance-in-malaysia.html> (data as at October 2022).

⁶⁹ UNHCR, Thai Border Operation, Information Management Unit, ‘RTG/MOI-UNHCR Verified Refugee Population’, <www.unhcr.org/th/wp-content/uploads/sites/91/2021/06/Thailand_Myanmar-Border_Refugee-Population-Overview_May-2021.pdf>, accessed 21 May 2021.

⁷⁰ UNHCR, ‘Myanmar Emergency Update, November 2022’, <<https://reporting.unhcr.org/document/3626>>, accessed 12 December 2022.

⁷¹ UNHCR, ‘Refugee Movements in South-East Asia 2018’, June 2019, p. 6.

⁷² United Nations Office for the Coordination of Humanitarian Affairs, ‘Rohingya Refugee Crisis’, 2022, <www.unocha.org/rohingya-refugee-crisis>, accessed 12 December 2022.

Southeast Asia is also host to populations of internally displaced persons (IDPs), and substantial IDP populations exist in Myanmar, the Philippines and Indonesia. Internal displacement in Southeast Asia is driven by conflict, violence, human rights abuses, disasters or the impacts of the climate crisis and/or environmental degradation. Such displacement may be short or long term. If persons are unable to return to their communities of origin or if they remain vulnerable to repeated displacement, they may also be more vulnerable to unsafe and irregular forms of international migration.⁷³ In Myanmar, political and intercommunal conflict have caused a large number of displacements that occur on a regular basis. According to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), due to the upsurge in violence as a result of the military takeover of the country in February 2021, 1,113,000 people were internally displaced in Myanmar as of 22 November 2022.⁷⁴ This represents a large increase from 370,400 people who were living in protracted displacement before February 2021,⁷⁵ including around 241,000 living in camps or “*camp-like situations*” in Myanmar after fleeing violence in Rakhine, Kachin and Shan States.⁷⁶ Natural disasters also triggered approximately 158,200 displacements in 2021, predominantly as a result of floods and storms.⁷⁷ In the Philippines, protracted conflict in the Bangsamoro Autonomous Region in Muslim Mindanao (BARMM) and several other locations has led to a substantial number of displaced persons, and large-scale displacement also occurs as a result of natural disasters. UNHCR identified 105,214 IDPs in the Philippines as at the end of 2021 (the number of children included within this figure is not reported).⁷⁸ According to the Internal Displacement Monitoring Centre, around 140,100 new displacements (instances of displacement, not total number of persons displaced) associated with conflict and violence were recorded in the Philippines in 2021, the majority in Mindanao.⁷⁹ In addition, the Internal Displacement Monitoring Centre recorded just under 5.7 million instances of displacement linked to natural disasters (including earthquakes, volcanic activity, cyclones, storms and floods), some of which were pre-emptive evacuations.⁸⁰ Conflict and disasters also cause regular internal displacements in Indonesia (conflict-driven displacement occurs mostly in Papua province)⁸¹ while in 2018, 6,000 persons were displaced in emergency camps in Lao PDR due to flooding.⁸²

2.1.4 Children who are stateless

According to UNCHR, there are over 1 million stateless persons (who are not considered citizens of any country) in ASEAN Member States.⁸³ Persons can become stateless in a number of ways. One of the most common causes of statelessness is through discriminatory nationality laws that deny nationality to particular groups (e.g., persons from particular ethnic minority groups) or that do not allow women to confer their nationality to their child (causing a child to become stateless if the father is unknown or missing or if the child is unable to obtain citizenship from elsewhere).⁸⁴ Statelessness can also be caused by conflicting nationality laws, where a child is born to parents from different countries. In addition, it can result when a country ceases to exist, or where state borders are redrawn and a child is residing outside the territory of the State.⁸⁵ Children may be at risk of statelessness where they have not been able to obtain identity documentation, such as a birth certificate, and/or cannot prove their connection to

⁷³ *Asia-Pacific Migration Report 2020*, p. 4.

⁷⁴ UNHCR, ‘Myanmar Emergency Update’, 1 November 2022, <<https://reporting.unhcr.org/document/3626>>.

⁷⁵ United Nations Office for the Coordination of Humanitarian Affairs, ‘Myanmar Humanitarian Update No. 5’, 15 February 2022, <<https://reliefweb.int/report/myanmar/myanmar-humanitarian-update-no-15-15-february-2022>>, accessed 12 December 2022.

⁷⁶ United Nations Office for the Coordination of Humanitarian Affairs, ‘Myanmar’, <www.unocha.org/myanmar>, accessed 28 March 2021.

⁷⁷ Internal Displacement Monitoring Centre, ‘Myanmar’, <www.internal-displacement.org/countries/myanmar>, accessed 16 December 2022.

⁷⁸ UNHCR, *Global Trends: Forced displacement in 2021, 2022*, Full Annexed Tables (Table 4).

⁷⁹ Internal Displacement Monitoring Centre, Philippines, <www.internal-displacement.org/countries/philippines>, accessed 17 December 2022.

⁸⁰ Ibid.

⁸¹ Internal Displacement Monitoring Centre, Indonesia, <www.internal-displacement.org/countries/indonesia>, accessed 16 December 2022.

⁸² United Nations Children’s Fund, ‘Lao PDR Flood Emergency’, 12 September 2018, <www.unicef.org/stories/lao-pdr-flood-emergency>, accessed 16 December 2022.

⁸³ UNHCR, ‘Refugee Data Finder’, 2019, <www.unhcr.org/refugee-statistics>, accessed 10 July 2021.

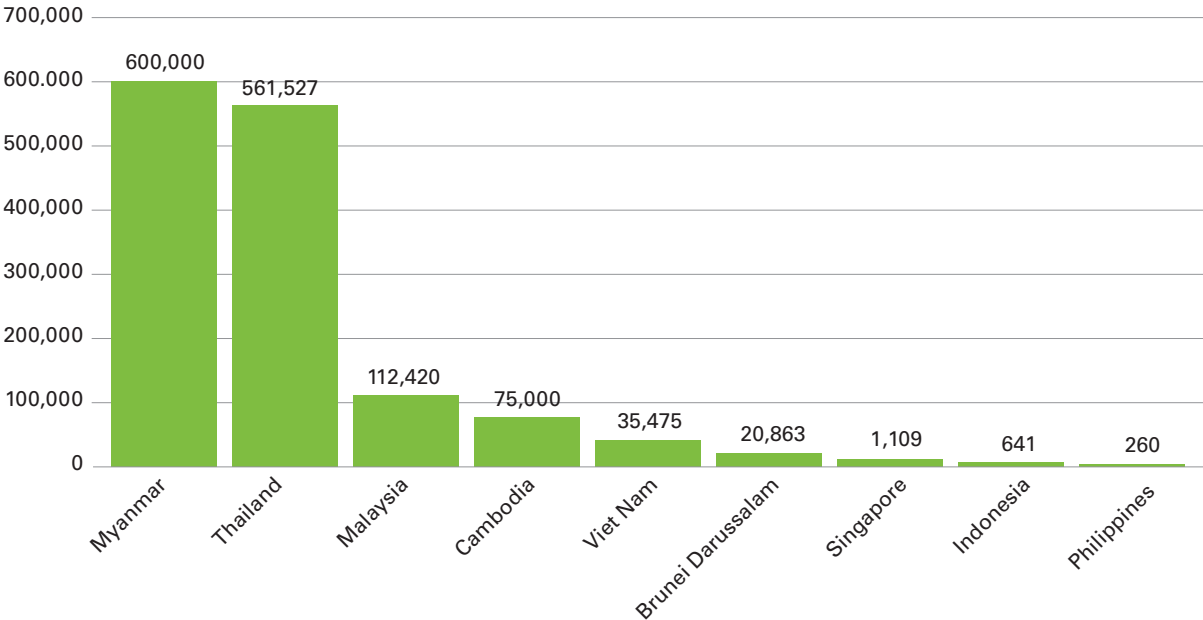
⁸⁴ UNHCR, ‘Ending Statelessness’, <www.unhcr.org/en-au/ending-statelessness.html>, accessed 19 December 2022.

⁸⁵ Ibid.

a country through ancestry.⁸⁶ Statelessness is a major disadvantage for children, and unless active steps are taken to remedy their status, challenges will last their entire lives (see section 3, below).

In ASEAN, the largest number of stateless persons live in Myanmar, where there are 600,000 stateless individuals registered with UNHCR,⁸⁷ and in Thailand, where there are over 560,000. As set out in Figure 7, a substantial number of stateless persons also live in Malaysia (112,420),⁸⁸ Cambodia (75,000), Viet Nam (35,475) and Brunei Darussalam (20,863). Just over 1,100 stateless persons live in Singapore, 641 in Indonesia and 260 in the Philippines (there are no data on the number of stateless persons for Lao PDR). There are no nationally representative data on the number of stateless *children* for countries in the ASEAN region with the exception of Thailand and the Philippines, for which UNHCR provides data on the number of stateless children (and adults) under their mandate. However, UNHCR estimates that globally, roughly a third of stateless persons are children.⁸⁹

Figure 6: Total number of persons under UNHCR’s statelessness mandate residing in ASEAN Member States, at end-2021⁹⁰



In Thailand, according to UNHCR, there are 153,574 stateless children (74,262 girls and 79,312 boys), representing 27 per cent of all stateless persons.⁹¹ The largest number of stateless persons belong to a community often referred to as the ‘hill tribes’ (or sometimes ‘highlanders’).⁹² Minority communities in Thailand comprise a large number of different tribes, with different languages and cultures, including the Akha, Karen, Lahu, Lisu and Meo (also known as Hmong).⁹³

⁸⁶ Ibid.
⁸⁷ This includes forcibly displaced stateless persons.
⁸⁸ This includes around 10,000 stateless persons living in West Malaysia. It also includes stateless Rohingya persons living in Malaysia. The true population of stateless persons residing in East Malaysia is unknown: UNHCR, ‘Ending Statelessness in Malaysia’, <www.unhcr.org/en-my/ending-statelessness-in-malaysia.html> , accessed 19 December 2022.
⁸⁹ UNHCR, 2021, <www.unhcr.org/ibelong/special-report-ending-statelessness-within-10-years> , accessed 19 December 2022.
⁹⁰ Note that the figure for Malaysia only includes known stateless persons in West Malaysia. An unknown number of stateless persons also reside in East Malaysia.
⁹¹ UNHCR, *Global Trends: Forced displacement in 2021, 2022*, Full Tables, Table 12: Demographic composition by country/territory of asylum and type of population, end-2021. It should be noted, however, that this figure likely underreports the number of stateless persons, as Rohingya persons may not register as stateless in Thailand.
⁹² Rijken, Conny, et al., *The Nexus between Statelessness and Human Trafficking in Thailand*, 2015, <https://files.institutiesi.org/Stateless-Trafficking_Thailand.pdf> , accessed 19 December 2022.
⁹³ Ibid.

A large number of stateless persons reside in Myanmar as a result of Myanmar’s discriminatory Citizenship Law, including the Rohingya, who are the largest stateless group in the world. In addition to those residing in ASEAN Member States, around 860,000 stateless and displaced Rohingya persons reside in camps in Cox’s Bazaar, Bangladesh.⁹⁴ Under the 1982 Citizenship Law, in order to acquire citizenship by birth, both parents must be members of one of the 135 prescribed national ethnic groups,⁹⁵ and both of the child’s parents must be citizens. This excludes persons from ethnic groups not classified as a national ethnic group under the 1982 Law from claiming citizenship, rendering the large Rohingya population of around half a million, stateless, along with persons from a number of other ethnic groups, including the Gurkha, Tamil and Hindu speakers of Bengali dialects.⁹⁶ The Citizenship Law does not allow for naturalization through, for example, marriage or long-term residence.

There are also substantial stateless populations in Cambodia and Malaysia. In Cambodia, a large number of stateless individuals are part of the Khmer Krom people, who are originally from the region of Tây Nam Bộ in southwestern Viet Nam.⁹⁷ Although these populations have been residing in Cambodia for generations, and the Cambodian Government has declared that they are considered Cambodian, many do not have the documentation required to prove their identity and therefore do not have the ability to apply for Cambodian citizenship.⁹⁸ In Peninsular Malaysia, there are an estimated 9,040 stateless persons, including those of Indian or Sri Lankan descent, but who have been unable to prove and confirm their Malaysian citizenship⁹⁹. The number of stateless children in East Malaysia is unknown.¹⁰⁰ However, statelessness exists among children of Indonesian or Filipino migrant workers and among Indigenous communities in Sabah and Sarawak with disputed nationalities.¹⁰¹ In addition, children of the Sama Bajau indigenous group, who are a community of sea-faring indigenous peoples residing in the Philippines and Malaysia, are at risk of statelessness due to frequent border crossings and generations of non-registration at birth. They are likely to have no documentation relating to their identity and are most commonly not recognized by any State.¹⁰²

2.1.5 Children who remain behind

Globally, millions of children remain behind when one or both parents migrate to find work, seek a better life or continue their studies.¹⁰³ Parents may migrate without their children because there are few job opportunities in their home communities, or because existing jobs are poorly paid. By leaving and working away from home, whether in another area of the country or abroad, parents can improve children’s circumstances through remittances.¹⁰⁴ The limited opportunities for children to migrate in a lawful way with their parents is a deterrent to parents taking children with them, as is the often very limited access to education and other services for undocumented children in destination countries.¹⁰⁵ Business policies and practices also contribute to family separation. Poor working conditions involving long hours, with limited flexibility and few safe and affordable day-care options are a barrier to children migrating with parents, both internally and internationally.¹⁰⁶ In Ho Chi Minh City, for example, where

⁹⁴ UNHCR, ‘The Displaced and Stateless of Myanmar in the Asia-Pacific Region: An overview of the current situation for Rohingya and other persons of concern from Myanmar and UNHCR’s response across the region’, January 2021, p. 2.

⁹⁵ European Network on Statelessness and Institute on Statelessness and Inclusion, ‘Statelessness in Myanmar’, Country Position Paper, May 2019, <<https://statelessjourneys.org/wp-content/uploads/StatelessJourneys-Myanmar-final.pdf>>, accessed 19 December 2022.

⁹⁶ Ibid.

⁹⁷ Phom, Ravy, ‘The Problem of Statelessness in Cambodia’, Master Thesis, Riga Graduate School of Law, 2018 2017, <https://dspace.lu.lv/dspace/bitstream/handle/7/45361/Phom_Ravy.pdf?sequence=1&isAllowed=y>, accessed 19 December 2022.

⁹⁸ Minorities Rights Group International, World Directory of Minorities and Indigenous Peoples’, ‘Cambodia: Ethnic Vietnamese’, 2017, <[https://minorityrights.org/minorities/ethnic-Viet Namese](https://minorityrights.org/minorities/ethnic-Viet-Namese)>, accessed 19 December 2022.

⁹⁹ UNHCR, Global Trends: Forced Displacement at end-2021, 2022, Full Tables, Table 5.

¹⁰⁰ UNICEF Malaysia, *Situation Analysis of Women and Children in Malaysia*, 2020, p. 80.

¹⁰¹ UNHCR, ‘Ending Statelessness: Malaysia’, 2019, <www.unhcr.org/ending-statelessness-in-malaysia.html>, accessed 19 December 2022.

¹⁰² DHRRA Malaysia, 2019, referenced in UNICEF Malaysia, *Situation Analysis of Women and Children in Malaysia*, 2020, p. 80.

¹⁰³ United Nations Children’s Fund, Children left behind, UNICEF Working Paper <www.unicef.org/media/83581/file/Children-Left-Behind.pdf>, accessed 19 December 2022.

¹⁰⁴ The global volume of funds sent by foreign nationals to their country of origin is substantial and surpassed US\$466 billion in 2017; Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

a large proportion of the workforce in the apparel, information and communication technologies and footwear industries are female, mothers take on the dual responsibilities of paid work and childcare. Inflexible working hours, the negative consequences of refusing overtime and potential fines and loss of subsidies for days off or late starts further contribute to women leaving their children in their place of origin to earn remittances to support their families.¹⁰⁷

In the ASEAN region, national governments generally do not have representative data on the number of children left behind; however, **available data from several countries, including Cambodia, Myanmar and the Philippines, indicate that a substantial number of children remain behind when their parents migrate.** In Cambodia, the Cambodia Rural Urban Migration Project (CRUMP) surveys have consistently found quite substantial populations of children who remain behind when parents migrate (including both internal and international migrants). According to the most recent CRUMP survey (2015), 22.4 per cent of migrant households had at least one child who had remained behind.¹⁰⁸ Additionally, a study of over 5,000 Myanmar migrant workers in Thailand in 2013 found that 39.5 per cent of surveyed migrants had children under the age of 15 years and, among these migrants, 30.9 per cent reported that all their children lived in Myanmar and a further 10.6 per cent had some children living in Myanmar (and some in Thailand).¹⁰⁹ Migrants living in border provinces were more likely to take their children with them than those living in non-border provinces.¹¹⁰ There is likely to be a large number of children in the Philippines who remain behind when parents migrate,¹¹¹ though recent reliable data are not available. Current estimates vary widely, and scholars have estimated that anywhere from 2 million to 9 million children in the country are in situations of remaining behind when parents migrate.¹¹² UNICEF's Multiple Indicator Cluster Survey (MICS) data indicate that a proportion of children remain behind when parents migrate in Lao PDR, Thailand and Viet Nam. It is important to note, though, that the MICS data are limited to children who remain behind when parents have migrated abroad, therefore excluding the considerable number of children left behind by parents who have migrated internally.

Data indicate that younger children (those aged 10 years and under) are more likely to remain behind when a parent or parents migrate. According to Cambodia's CRUMP survey, a high percentage of children who remain behind are 2–10 years of age, after which percentages decline, potentially because older children travel with their parents to work.¹¹³ MICS data show that children under 9 years of age are most likely to be left behind by at least one parent migrating abroad in Lao PDR (3.6 per cent of children under 9, compared to 1.5 per cent of those aged 15–19 years) and in Thailand (2.7 per cent of children under 9, compared to 1.8 per cent of those aged 15–19 years).

Studies on the impact of migration on children who remain behind in several ASEAN Member States have shown mixed results – both positive and negative (see section 3.6 for a full discussion). These impacts depend on a range of factors, including the gender and age of migrants, sociocultural and circumstantial factors, destinations and length of stay, as well as the presence of a migration culture.¹¹⁴ Most crucially, the nature and capacity of caregivers influence the impact of parental migration on children who remain behind.¹¹⁵

¹⁰⁷ United Nations Children's Fund, 'Internal Migration into Ho Chi Minh City and the Situation for Children', Policy brief, undated, pp. 8–9.

¹⁰⁸ Ministry of Planning (Cambodia), *Migration and Left-Behind Households in Rural Areas in Cambodia: Structure and socio-economic conditions*, A CRUMP Series Report, December 2015, p. 12.

¹⁰⁹ International Organization for Migration and ARCM, *Assessing Potential Changes in the Migration Patterns of Myanmar Migrants and their Impacts on Thailand*, IOM, Bangkok, 2013.

¹¹⁰ Ibid.

¹¹¹ Since the 1970s, the Government of the Philippines has promoted international migration through various policies and incentives as a means of increasing labour market opportunities for Filipino workers. International migration has since come to be recognized as an important livelihood strategy for Filipinos, and there are currently 2.2 million registered 'Overseas Filipino Workers' who have migrated internationally for work, predominantly to countries in East Asia and the Middle East.

¹¹² International Organization for Migration, *Supporting Brighter Futures: Young women and girls and labour migration in South-East Asia and the Pacific*, 2019, p. 13.

¹¹³ Ministry of Planning (Cambodia), 'Migration and Left-Behind Households in Rural Area in Cambodia: Structure and Socio-economic Condition', CRUMP Series Report, December 2015, p. 12.

¹¹⁴ *Supporting Brighter Futures*, p. 13.

¹¹⁵ Ministry of Planning (Cambodia), 'Migration and Left-Behind Households in Rural Area in Cambodia: Structure and Socio-economic Condition', CRUMP Series Report, December 2015, p. 12.

2.2 Drivers of child migration

Migration is driven by an often-complex interplay of factors which operate at the structural, community, family and individual levels, as summarized in Figure 7. The interplay between these factors can operate differently on different children and families, depending on their unique circumstances. Much of the research on migration drivers has focused on adults, with child migrants typically being seen as an extension of their parents in much of the literature. However, it is important to understand the factors that are associated with child migration and that drive the ways in which children are affected by migration, as this can inform better policies and practices that support safe migration and its benefits and discourage unsafe and harmful migration practices.

Figure 7: Summary of individual, family, community and structural drivers of migration



2.2.1 Structural drivers

Disparities in economic development and opportunities

Uneven economic development between and within ASEAN Member States is one of the main structural drivers of both internal and international migration. More broadly, global economic inequalities have also driven migration from ASEAN Member States to other regions, including East Asia, Europe and the Middle East (though in lesser numbers than intraregional migration). Economic development and poverty levels vary considerably among ASEAN Member States, with rates of income and multidimensional poverty considerably higher in 'sending countries'.¹¹⁶ This has driven international migration, particularly from Cambodia, Lao PDR and Myanmar, to Thailand; from Cambodia, Indonesia and Myanmar to Malaysia;¹¹⁷ and from the Philippines¹¹⁸ and Indonesia¹¹⁹ to countries in the Middle East and East Asia, as individuals and families migrate to search for economic opportunities, find better-paying jobs and rise out of destitution.¹²⁰ Limited income and high unemployment remain core drivers of internal migration flows to industrialized and urbanized towns and cities in some ASEAN Member States (e.g., Cambodia, Indonesia, Lao PDR, Myanmar, the Philippines, Thailand and Viet Nam¹²¹), as persons from poorer agricultural communities migrate to find employment.¹²²

This uneven economic development has contributed to a demand for foreign labour to fill labour markets gaps in higher-income ASEAN Member States (namely, Singapore, Malaysia and Thailand) – historically a major pull factor for economic migrants, mainly to low-skilled jobs.¹²³ Several industries in the ASEAN region rely heavily on migrant labour, such as the palm oil industry in Indonesia and Malaysia, in which the majority of workers are internal migrants;¹²⁴ the agriculture, fisheries, domestic work, factory work and construction sectors in Thailand;¹²⁵ the garment and footwear industries in Cambodia and Viet Nam,¹²⁶ and the seafood and poultry industries across ASEAN. These sectors may *prefer* to recruit migrant workers over local workers, including migrant workers in irregular situations. The potential mobility of migrant workers lends to their perceived suitability to undertake seasonal work, created by the demands of business, such as the palm oil industry in Malaysia and Indonesia, tourism and manufacturing of agricultural goods in Thailand, as well as other industries which use short-term, project-based work, such

¹¹⁶ Alkire, Sabina, et al., *Global Multidimensional Poverty Index 2020, Charting Pathways Out of Multidimensional Poverty: Achieving the SDGs*, Oxford Poverty and Human Development Initiative and United Nations Development Programme, <www.ophi.org.uk/wp-content/uploads/G-MPI_Report_2020_Charting_Pathways.pdf>, accessed 26 March 2021.

¹¹⁷ Davy, Deanna, *Analysis of Protection Frameworks, Referral Pathways and Service Availability for Myanmar Migrant Children*, United Nations Children's Fund and the European Union, Myanmar, 2019, p. 33; International Organization for Migration, et al., *Rapid Assessment: Migration communities and skills development in Siem Reap – the migrants' Perspectives*, IOM, Phnom Penh, 2016, p. 2; Crispin, Vimala, and Guy Thompstone, *The Commercial Sexual Exploitation of Children in Lao PDR*, United Nations Children's Fund, Lao PDR, February 2011, pp. 7, 12, 17–18; Capaldi, Mark P., 'Rethinking Independent Child Migration in Thailand: Victims of exploitation or competent agents?' *Journal of Population and Social Studies*, vol. 23, no. 1, January 2015, p. 20; United Nations Children's Fund, *Situation Analysis of Women and Children in Malaysia 2020*, UNICEF, Malaysia, 2020, p. 82.

¹¹⁸ Among registered OFWs, 26.6 per cent moved to Saudi Arabia and 14.6 per cent moved to the United Arab Emirates in 2020: Philippine Statistics Authority, '2021 Overseas Filipino Workers (Final Results)', 7 March 2022, <<https://psa.gov.ph/statistics/survey/labor-and-employment/survey-overseas-filipinos>>, accessed 12 December 2022.

¹¹⁹ The top two destination countries for Indonesian migrant workers deployed abroad in 2021 were Hong Kong, and Taiwan: Indonesian Workers Protection Agency (BP2MI) in Anaf, Ahmad, et al., 'Indonesian Migrant Workers: The migration process and vulnerability to Covid-19', *Journal of Environmental Public Health*, 15 June 2022.

¹²⁰ Harkins, Lindgren and Suravoranon, *Risks and Rewards: Outcomes of labour migration in South-East Asia*, p. xiii.

¹²¹ No literature was available on Brunei Darussalam.

¹²² University of the Philippines Manila, The University of Edinburgh, Child Protection Network Foundation and UNICEF Philippines, *A Systematic Review of the Drivers of Violence Affecting Children in the Philippines*, United Nations Children's Fund, Manila, 2016, p. 66; International Organization for Migration, et al., *Assessing Potential Changes in the Migration Patterns of Laotian Migrants and their Impacts on Thailand and Lao People's Democratic Republic*, IOM, Country Mission Thailand, Bangkok, p. xi; Crispin and Thompstone, *The Commercial Sexual Exploitation of Children in Lao PDR*, p. 14; Capaldi, Mark P., 'Rethinking Independent Child Migration in Thailand: Victims of exploitation or competent agents?', *Journal of Population and Social Studies*, vol. 23, no. 1, January 2015, p. 20; United Nations Children's Fund, et al., *Executive Summary Study on the Impact of Migration on Children in the Capital and Target Provinces, Cambodia*, UNICEF Cambodia, May 2017, p. 3.

¹²³ International Organization for Migration, et al., *Country Migration Report: The Philippines 2013*, IOM, Philippines, 2013, p. 36.

¹²⁴ United Nations Children's Fund, *Palm Oil and Children in Indonesia: Exploring the sector's impact on children's rights*, UNICEF, Jakarta, October 2016, p. 3; Sabah Labour Department, Ministry of Human Resources of Sabah, Malaysia, Online Earthworm Seminar, Malaysia, 11 May 2022; Aplan, Kara, and Rosalie Lord, *Malaysia Case Study: A deep-dive examination of child labour and other protection risks faced by migrant children living on palm oil plantations in Sabah*, United Nations Children's Fund and Coram International, 2023.

¹²⁵ United Nations Children's Fund and Baan Dek Foundation, *Building Futures in Thailand: Support to children living in construction site camps*, UNICEF, Thailand, 2018, p. 20; Individual interview, Human Resources Manager, construction company in Thailand, 27 June 2022.

¹²⁶ *The Apparel and Footwear Sector and Children in Viet Nam*, p. 2; Key informant interview, UNICEF East Asia and the Pacific Regional Office, 2 March 2021.

as the construction industry in Thailand.¹²⁷ Businesses may also perceive migrant labour to be cheaper and migrant workers more willing to work for lower wages and in poorer conditions than local workers.¹²⁸

Large wage disparities between and within ASEAN Member States also shape migration flows.¹²⁹

Wage disparities have been described as the greatest pull for migrants from Myanmar¹³⁰ and a key reason for cross-border migration flows from Myanmar to Thailand, Malaysia or China,¹³¹ and from Cambodia, Viet Nam and Lao PDR more generally.¹³² This includes children as young as 12 migrating from Myanmar to China to benefit from China's higher wages.¹³³ The higher wages earned by sex workers in Thailand has also been identified as a main driver for cross-border migration, particularly for women who have fewer opportunities than men in the formal sector.¹³⁴

Demographic imbalances in ASEAN Member States and consequential gaps in labour market underpin migration.¹³⁵

Studies highlight that the young population and growing labour force in Lao PDR is linked to economically driven migration flows within and from the country, with similar trends in Cambodia and Myanmar.¹³⁶ These can be contrasted with Thailand, which has an aging workforce and decreasing birth rate, resulting in a huge demand for foreign workers, which is likely to continue in light of Thailand's drive to become a high-income economy.¹³⁷

Regional integration and government policies encouraging economic migration

The broad economic drivers of migration mentioned above have been supported by ASEAN-wide, bilateral and national policies and agreements that have encouraged migrant workers.

Governments have identified policy solutions to fill labour shortages through promoting in-migration, and to address poverty and deprivation by promoting out-migration. At the regional level, the Global Compact for Safe, Orderly and Regular Migration, adopted in 2018 and signed by eight of the 10 ASEAN Member States, provides a framework for safe economic migration.¹³⁸ The framework is intended to contribute to the achievement of a "globally integrated and competitive single market, built on principles of equitable economic development and shared prosperity" in the ASEAN region.¹³⁹ However, it has been noted that limited progress has been made in implementing this Framework due (among other things) to "protectionist attitudes of national level professional bodies," "restrictive national immigration laws of member States," "cumbersome regulations," high migration costs,¹⁴⁰ as well as States reserving vacancies in these occupations for domestic workers.¹⁴¹

¹²⁷ *Building Futures in Thailand: Support to children living in construction site camps*, p. 21; Aplan and Lord, *Malaysia Case Study: A deep-dive examination of child labour and other protection risks faced by migrant children living on palm oil plantations in Sabah*.

¹²⁸ Bonanno, Gianluca, 'Special Economic Zones: Areas of social exclusion', Torino World Affairs Institute, RISE series no. 29, November 2021, p. 2; Sabah Labour Department, Ministry of Human Resources of Sabah (for the palm oil sector), Malaysia, Online Earthworm Seminar, Malaysia, 11 May 2022.

¹²⁹ Tuccio, Michele, 'Determinants of Intra-ASEAN Migration', *Asian Development Review*, vol. 34, no. 1, 2017, p. 144.

¹³⁰ *Ibid.*, p. 152.

¹³¹ Davy Deanna, *Analysis of Protection Frameworks, Referral Pathways and Service Availability for Myanmar Migrant Children*, UNICEF, 2019, p.33; Myint, Geoff, *Building Labour Migration Policy Coherence in Myanmar*, International Organization for Migration, Yangon, Myanmar, 2017, p.6.

¹³² International Organization for Migration, et al., *Rapid Assessment: Migration communities and skills development in Siem Reap – the migrants' perspectives*, IOM, Phnom Penh, 2016, p. 2; Seng, Sary, 'Unseen: Undocumented Cambodian migrant workers in Thailand', ch. 7 in *South-east Asian Migration: People on the move in search of work, refuge, and belonging*, Sussex Academic Press, UK, 2015, p. 63.

¹³³ Davy, *Analysis of Protection Frameworks, Referral Pathways and Service Availability for Myanmar Migrant Children*, p. 71.

¹³⁴ *Thailand Migration Report 2019*, p. 47.

¹³⁵ Tuccio, Michele, 'Determinants of Intra-ASEAN Migration', *Asian Development Review*, vol. 34, no. 1, 2017, p. 162.

¹³⁶ *Thailand Migration Report 2019*, p. 160.

¹³⁷ *Ibid.*, p. 9. See also International Organization for Migration, *Flow Monitoring Surveys: Insights into the profile and vulnerabilities of Lao migrants in Thailand*, IOM, Vientiane, 2020, p. 5.

¹³⁸ General Assembly Official Record, A/73/PV.60, United Nations, New York, 19 December 2018. Singapore abstained and Brunei Darussalam was absent for the vote.

¹³⁹ *Asia-Pacific Migration Report 2020*, p. 71.

¹⁴⁰ Kikkawa and Suan, 2019, referenced in *Asia-Pacific Migration Report 2020*, p. 71.

¹⁴¹ International Labour Organization, 2019, referenced in *Asia-Pacific Migration Report 2020*, p. 71.

Bilateral agreements between a number of ASEAN Member States have aimed to encourage migration to fill labour shortages in the region's largest economies, particularly in temporary, lower-skilled, lower-wage work in sectors such as agriculture, construction, care work and the service industry.¹⁴² It appears that migration has increased steadily under these bilateral agreements.¹⁴³ For example, under a Memorandum of Understanding (MoU) between the Malaysian and Cambodian Governments, 52,265 workers migrated to Malaysia between 1998 and 2015.¹⁴⁴ Seventy-six per cent of these workers were women working in the domestic sector with the rest being men working in the construction and manufacturing sectors.¹⁴⁵ An MoU between Cambodia and Thailand drafted in 2003 led to a total of 115,420 Cambodian workers migrating to Thailand between 2006 and 2015, the majority of whom were men employed in the manufacturing and services sectors.¹⁴⁶ These bilateral agreements have focused on filling short-term labour shortages, while at the same time restricting access to longer-term settlement options and to government services. This has left migrant workers in vulnerable positions, forced temporary migrant workers into irregular migration situations and impacted negatively on children¹⁴⁷ (see part 4, Protection risks faced by children affected by migration). The reason for this is that existing bilateral agreements or temporary labour migration programmes do not permit migrating parents to be accompanied by their children.¹⁴⁸ This has had the effect of driving parents and children to migrate through smugglers or other irregular channels,¹⁴⁹ or making the decision to leave children behind.¹⁵⁰ As noted above (see section 2.1), bilateral agreements have created quite complex, costly and time-consuming processes for migration, which has further driven irregular migration as a more viable alternative.

Businesses also play a key role in contributing to the challenges relating to temporary labour migration programmes. Businesses, to which the temporary worker is 'tied', may fail to comply with administrative measures to secure work permits or employment contracts for temporary workers. Companies may do this to avoid administration costs, retain skilled workers without the added cost of rehiring or because of a lack of awareness of national laws and regulations.¹⁵¹ This, in turn, pushes workers under these programmes into irregular situations. States also delegate responsibility for the management and supervision of these programmes to private entities, thereby potentially involving businesses in the human rights violations experienced by these workers and their families.¹⁵²

A number of ASEAN Member States have pursued policies encouraging out-migration in order to address limited economic opportunities and high levels of poverty at home. These policies have formalized international migration management and resulted in temporary, circular migration that has brought major benefits to destination and source countries as well as to the migrants themselves: destination countries are able to fill gaps in the domestic labour market with foreign workers; source countries benefit from remittances and migrants benefit from secure employment, albeit via short-term contracts.¹⁵³ For example, the Indonesian Government has encouraged overseas labour migration, particularly by low-skilled workers, contributing to remittances becoming an important part of the country's economic growth. The Government has established agencies to recruit (mostly lower-skilled) workers and

¹⁴² Office of the United Nations High Commissioner for Human Rights, *We Wanted Workers, but Human Beings Came: Human rights and temporary labour migration programmes*, OHCHR, 2022, p. i.

¹⁴³ *Asia-Pacific Migration Report 2020*, p. 71.

¹⁴⁴ Organisation for Economic Co-operation and Development et al., *Interrelations between Public Policies, Migration and Development in Cambodia*, OECD Publishing, Paris, 2017, p. 38. In 2017, the Cambodian Government was reportedly negotiating a new MoU with Malaysia, though the available literature does not provide an update on the status of these negotiations.

¹⁴⁵ *Interrelations between Public Policies, Migration and Development in Cambodia*, p. 38.

¹⁴⁶ *Ibid.*, p. 39. The report notes that legal Cambodian workers only started to arrive in 2006, however, when the Cambodian Inter-Ministerial Working Group conducted a nationality check of irregular Cambodian migrant workers in Thailand and issued them with identity certificates.

¹⁴⁷ *We Wanted Workers, but Human Beings Came*.

¹⁴⁸ *Ibid.*, p. 29.

¹⁴⁹ Schloenhardt, Andreas, 'Irregular Migration and Smuggling of Young Women and Girls in South-East Asia and the Pacific: A review of existing evidence', in *Supporting Brighter Futures*, p. 101.

¹⁵⁰ *Ibid.*; *We Wanted Workers, but Human Beings Came*.

¹⁵¹ *Ibid.*, pp. I, 10 and part 3.2.

¹⁵² *Ibid.*

¹⁵³ Lindquist, Johan, et al., 'Opening the Black Box of Migration: Brokers, the Organisation of Transnational Mobility and the changing political economy in Asia', *Pacific Affairs*, vol. 85, no. 1, March 2012, p. 12.

organize placements overseas.¹⁵⁴ Similarly, in the Philippines, the Government has adopted a dual policy of facilitating overseas migration (predominantly of migrant workers) and, particularly over the last decade, protecting overseas migrant workers' rights.¹⁵⁵ This has contributed to establishing the Philippines as a major source country for the global labour market and to making remittances "the country's lifeline".¹⁵⁶

Government policies, particularly resettlement policies, also drive internal migration in a number of ASEAN Member States. In Lao PDR, for example, the Government has been implementing policies and programmes to address inequalities in rural, agricultural areas by resettling families in more developed areas and urban locations.¹⁵⁷ Migration in Myanmar has been influenced by a broader policy to move from an agricultural-based economy to a manufacturing and services-based economy, contributing to migration from rural to urban areas of the country.¹⁵⁸ In Cambodia, agricultural subsidies may have encouraged outgoing migration by providing agriculture-dependent households with the costs needed to fund migration.¹⁵⁹

The establishment of 'Special Economic Zones' within ASEAN Member States (notably in Cambodia, Lao PDR, Myanmar and Viet Nam) attracts internal and cross-border migration of individuals who relocate to the vicinity to farm on land which has increased in value or to work for businesses operating in the zone.¹⁶⁰ On the other hand, as industrial zones are normally clustered according to sector, locals who are unwilling or unable to find work in that sector are driven to migrate elsewhere in search of other work.¹⁶¹ For instance, in Lao PDR, the establishment of Special Economic Zones to facilitate economic cooperation with, among others, China, Thailand and Viet Nam, is expected to decrease cross-border migration from Lao PDR to Thailand and encourage returnees.¹⁶²

Environmental disasters, degradation and the climate crisis

ASEAN Member States are among the most vulnerable to environmental disasters and the impacts of climate change.¹⁶³ The Global Climate Risk Index, which provides an indication of the level of exposure and vulnerability of a country to extreme events,¹⁶⁴ ranks Myanmar, the Philippines and Thailand among the top 10 countries in the world that were most affected by extreme weather events between 2000 and 2019.¹⁶⁵ Children are disproportionately impacted by the climate crisis and environmental degradation. Research has found that children today will face around three times as many climate disasters than their grandparents.¹⁶⁶ As a result of their developing immune systems and organs, children are more likely to be impacted by an increase in vector-borne diseases and respiratory and other illnesses associated with decreasing air quality.¹⁶⁷

¹⁵⁴ Ananta, Aris, and Evi N. Affin, 'Emerging Patterns of Indonesia's International Migration', *Malaysian Journal of Economic Studies*, vol. 51, no. 1, 2014, p. 34.

¹⁵⁵ Asis, Maruja M.B., 'The Philippines: Beyond labor migration, toward development and (possibly) return', Migration Policy Institute, 12 July 2017, <www.migrationpolicy.org/article/philippines-beyond-labor-migration-toward-development-and-possibly-return>, accessed 26 March 2021.

¹⁵⁶ Ibid. The Philippines is among the top five remittance receiving countries in the world: In 2018, US\$33.8 billion was received into the country in the form of personal remittances, amounting to 9.3 per cent of the country's gross domestic product, World Bank, *Personal remittances received (% GDP), Philippines*, 2019, <https://data.worldbank.org/indicator/BX.TRFPWKR.DT.GD.ZS?locations=PH>, accessed 6 April 2021.

¹⁵⁷ Phouxay, 'Patterns of Migration and Socio-Economic Change in Lao PDR', Department of Social and Economic Geography, Umea University, Sweden, GERUM 2010, pp. 8–9; More recently, see: Outcome 3 (Output 1.1) of the Lao PDR Ninth Five Year National Socio-Economic Development Plan, 2021–2025 (providing targets for resettlement and stable occupations as a response to poverty).

¹⁵⁸ International Labour Organization, *Building Labour Migration Policy Coherence in Myanmar*, ILO, Myanmar, 2017, p. 8.

¹⁵⁹ Another theory is that the subsidies encouraged agricultural household members to migrate in order to send remittances back to their families and invest in their land, hence maximizing the benefits of subsidies for agricultural items such as seeds; *Interrelations between Public Policies, Migration and Development in Cambodia*, p. 16.

¹⁶⁰ Bonanno, Gianluca, *Special Economic Zones: Areas of social exclusion*, Torino World Affairs Institute, RISE series no. 29, November 2021, p. 2.

¹⁶¹ Online key informant interview, focal point, UNICEF Viet Nam Country Office.

¹⁶² Phouxay, 'Patterns of Migration and Socio-Economic Change in Lao PDR', p. 18.

¹⁶³ Asian Development Bank, *A Region at Risk: The human dimensions of climate change in Asia and the Pacific*, ADB, Manila, 2017, p. 81.

¹⁶⁴ Eckstein, David, et al., 'Global Climate Risk Index 2021: Who suffers most from extreme weather events?', Germanwatch, Bonn, Germany, January 2021, p. 3.

¹⁶⁵ Myanmar ranks second, the Philippines fourth and Thailand ninth. Eckstein, David, et al., 'Global Climate Risk Index 2021: Who suffers most from extreme weather events?' Germanwatch, Bonn, Germany, January 2021, p. 12.

¹⁶⁶ Thiery, Wim, et al., 'Intergenerational Inequities in Exposure to Climate Extremes', *Science*, vol. 374, no. 6564, 8th October 2021, p. 158–160.

¹⁶⁷ Harvard University T.H. Chan School of Public Health, Centre for Climate, Health and the Global Environment, 'Climate Change and the Health of Children', <www.hsph.harvard.edu/c-change/news/climate-change-and-the-health-of-children>, accessed 30 January 2023.

Environmental disasters are a key cause of displacement in the ASEAN region. In 2020, natural disasters led to almost 2.2 million (2,193,220) internal displacements of children.¹⁶⁸ In Indonesia, an estimated 250,000 people are displaced by natural disasters every year, approximately 116,000 of whom are children.¹⁶⁹ Around 4 million people were displaced in the Philippines in 2013 as a result of typhoon Haiyan, which led to the movement of residents from rural to urban areas where they could more easily access aid and resources.¹⁷⁰ Viet Nam is regarded as one of the world's most vulnerable countries to storms and typhoons, with more than 2 million people displaced by natural hazards between 2008 and 2015, approximately half of which took place between 2013 and 2014.¹⁷¹ The frequency and intensity of these disasters have increased over the last 50 years, leading to the further destruction of properties and homes.¹⁷² In 2017, over 300,000 people were displaced temporarily during the monsoon season in Myanmar due to intense flooding.¹⁷³ Many types of natural disasters that result in the displacement of large populations are linked to the climate crisis.¹⁷⁴ However, difficulties arise in quantifying the extent to which climate change is a direct driver of migration, as other factors also come into play, including non-climate variables such as affordability of migration pathways, accessibility of international borders, reception of host populations, social networks and information about labour market opportunities.¹⁷⁵ Climate change is nonetheless considered as a driver in that it intensifies " *the consequences of underlying environmental, social and governance challenges to reduce resilience, exposing people to increased risks of displacement or motivating people to move elsewhere*."¹⁷⁶

Environmental disasters lead to food insecurity and water shortages, driving migration as a strategy for survival, with poorer agricultural communities being most at risk.¹⁷⁷ For example, in the Philippines, the Asian Development Bank has reported a link between declines in rice yields as a result of extreme weather events and an increase in international migration.¹⁷⁸ This was found to be a particular driver of cross-border migration of women, who tend to be unskilled agricultural workers, as compared to skilled male labourers who were less affected by adverse changes to the agricultural yield.¹⁷⁹ Similarly, in Viet Nam, those who make a living through agriculture often migrate in search of alternative livelihoods following periods of intense flooding.¹⁸⁰

Changes in sea levels and weather patterns and resulting environmental degradation linked to the climate crisis have also driven longer-term migration between and within ASEAN Member States. In Viet Nam, the Mekong River Delta area (previously a popular destination for migrants) is at risk of increased flooding, intensity of droughts and evaporation and soil sanitization, and an increased risk of typhoons, damaging livelihoods that depend on agriculture and fisheries.¹⁸¹ This, in turn, has influenced individuals and (extended) families to migrate either temporarily/seasonally or permanently to more urban areas in Viet Nam, particularly Ho Chi Minh City, with or without sending remittances home to their families.¹⁸² The impacts of these environmental risks to population movements is potentially staggering: It is estimated that a one metre rise in sea level could displace over 7 million residents in the Mekong River

¹⁶⁸ This paragraph draws from a combination of UNDESA, UNHCR and UNICEF data. For more information, see <<https://data.unicef.org>>.

¹⁶⁹ United Nations Children's Fund, UNICEF Indonesia Country Office Focal Point's Written Responses to Key Informant Interview Tool.

¹⁷⁰ *A Region at Risk: The human dimensions of climate change in Asia and the Pacific*, p. 86.

¹⁷¹ Anh, Dang N., et al., *Assessing the Evidence: Migration, environment and climate change in Viet Nam*, International Organization for Migration et al., Switzerland, 2016, pp. xi, 3.

¹⁷² *Ibid.*, pp. 14, 25.

¹⁷³ Davy Deanna, *Analysis of Protection Frameworks, Referral Pathways and Service Availability for Myanmar Migrant Children*, p. 20.

¹⁷⁴ Economic and Social Commission for Asia and the Pacific, 'Migration and Climate Change in Asia and the Pacific', Asia-Pacific Regional Preparatory Meeting for the Global Compact for Safe, Orderly and Regular Migration, E/ESCAP/GCM/PREP/5, 5 September 2017, para. 13.

¹⁷⁵ *A Region at Risk: The human dimensions of climate change in Asia and the Pacific*, pp. 81–82, 87.

¹⁷⁶ Economic and Social Commission for Asia and the Pacific, 'Migration and Climate Change in Asia and the Pacific', Asia-Pacific Regional Preparatory Meeting for the Global Compact for Safe, Orderly and Regular Migration, E/ESCAP/GCM/PREP/5, 5 September 2017, para. 11; See also, Sakdapolrak, Patrick, and Harald Sterly, 'Building Climate Resilience through Migration in Thailand', Migration Policy Institute, <www.migrationpolicy.org/article/building-climate-resilience-through-migration-thailand>, accessed 25 March 2021.

¹⁷⁷ *Ibid.*, p. 31.

¹⁷⁸ *A Region at Risk: The human dimensions of climate change in Asia and the Pacific*, p. 87.

¹⁷⁹ *Ibid.*

¹⁸⁰ Dunn 2009 referenced in Anh, *Assessing the Evidence: Migration, environment and climate change in Viet Nam*, p. 46.

¹⁸¹ *A Region at Risk: The human dimensions of climate change in Asia and the Pacific*, p. 92.

¹⁸² Anh, *Assessing the Evidence: Migration, environment and climate change in Viet Nam*, pp. 42–43.



A young girl with a disability stands in the ruins of her collapsed home following a flood in Viet Nam.
© UNICEF/UN0355655/Truong Viet Hung

Delta and destroy the homes of over 14 million people and half of the region's cultivated land.¹⁸³ This has led to more organized efforts by the Government to resettle parts of the population who are particularly vulnerable to 'natural hazards' and 'environmental degradation'.¹⁸⁴ Similarly, Lao PDR and Cambodia have been identified as being extremely vulnerable to the effects of climate change, with longer dry seasons and more intense rainfall (in Lao PDR) and flooding from rising seawater and storms (in Cambodia) predicted to push internal migration from rural areas.¹⁸⁵ Additionally, a 2014 study in Indonesia found that permanent migration from one province to another is strongly influenced by local temperatures.¹⁸⁶

Closely linked to environmental damage as a driver of migration are the land acquisitions and displacements of communities to make way for business operations in ASEAN Member States. These business operations either forcibly displace communities directly or contribute to driving displacement by affecting livelihoods and housing, disrupting the sociocultural norms of indigenous communities and causing or contributing to environmental risks such as land degradation and climate change.¹⁸⁷ Such business activities typically involve mining and other extractive industries, logging, manufacturing, real estate developments and sugar and palm oil plantations. Accidents and disasters on business sites also drive migration. For example, thousands of individuals were displaced as a result of the collapse of Saddle Dam D in Champasak province, Lao PDR.¹⁸⁸

¹⁸³ Warner, et al., referenced in Anh, *Assessing the Evidence: Migration, environment and climate change in Viet Nam*, p. 32.

¹⁸⁴ *A Region at Risk: The human dimensions of climate change in the Asia and Pacific*, p. 92; Anh, *Assessing the Evidence: Migration, environment and climate change in Viet Nam*, pp. xi, 29–30.

¹⁸⁵ United Nations Educational, Scientific and Cultural Organization, et al., 'Overview of Internal Migration in Lao PDR', Briefing paper, UNESCO et al., p. 4; United Nations Educational, Scientific and Cultural Organization et al., 'Overview of Internal Migration in Cambodia', Briefing paper, UNESCO et al., p. 4.

¹⁸⁶ Bohra-Mishra, Oppenheimer and Hsiang, 2014, referenced in *A Region at Risk: The human dimensions of climate change in Asia and the Pacific*, pp. 81–82.

¹⁸⁷ Human Rights Resource Centre, *Business and Human Rights in ASEAN: A baseline study*, University of Indonesia, Depok, 2013, p. 13; Online key informant interview, Regional NGO, 26 November 2021.

¹⁸⁸ Office of the High Commissioner for Human Rights, 'Lao Dam Disaster: UN experts decry lack of progress for survivors four years on', Press release, 22 July 2022, <www.ohchr.org/en/press-releases/2022/07/lao-dam-disaster-un-experts-decry-lack-progress-survivors-four-years>, accessed 23 November 2022.

Conflict and persecution

A large proportion of refugees and asylum-seeking children and families in ASEAN are from Myanmar and a substantial number of these are Rohingya persons fleeing persecution. To escape persecution, refugees from Myanmar have resorted to taking perilous journeys organized by smugglers and traffickers, mainly to Malaysia. In May 2015, at least 5,000 ‘refugees and migrants’ on their way to Malaysia from Myanmar and Bangladesh were left stranded in the Bay of Bengal and the Andaman Sea after being abandoned by their smugglers and crews¹⁸⁹ and unable to seek refuge from surrounding countries. UNHCR has reported that, since January 2014, 94,000 people, approximately half of whom were believed to be Rohingya people from Rakhine State, were estimated to have fled using this route.¹⁹⁰ A similar ‘boat crisis’ occurred in 2020, exacerbated by State border closures due to COVID-19 (see section 2.2.1 for more details).¹⁹¹ The literature also indicates that persecution is a driver of refugee flows from Myanmar to Thailand as well as to China, India, Singapore, the Republic of Korea and Arab States, albeit in fewer numbers.¹⁹² The numbers of refugees and displaced persons from Myanmar has increased substantially in light of the violence resulting from the military coup of February 2021, including from areas that had previously enjoyed relative stability.¹⁹³ Persecution is also a driver of migration from outside the ASEAN region. For example, Hazara minority refugees from Afghanistan and Pakistan have sought refuge in Indonesia.¹⁹⁴ There is also a population of urban-based refugees and asylum seekers in Bangkok who are registered with UNHCR, from a range of countries (Pakistan, Viet Nam, State of Palestine, the Syrian Arab Republic, Iraq and Cambodia), as set out above.¹⁹⁵

Conflict is a well-documented driver of child migration in the ASEAN region, particularly from Myanmar, though the ways in which conflict drives child migration in the region vary. Conflict may lead directly to internal and cross-border displacement of children and their families, who are forced to leave their homes due to the destruction of houses, livelihoods and violence in the community. Conflict may also be an underlying cause of economic migration. In Myanmar, for example, “[a]s the conflicts have become protracted, the financial assets of families are depleted, leading families to resort to negative coping mechanisms that may lead to unplanned and thus risky migration.”¹⁹⁶ There are a reported 17 major ethnic armed groups in Myanmar that have been engaged in conflicts with the Government over the past decade.¹⁹⁷ The sustained nature of the conflict, despite a number of ceasefire agreements made over the years, has led to situations of protracted displacement. Such displacement has been further exacerbated by the violence resulting from the February 2021 military coup in Myanmar, which has caused an increase in both internal and cross-border displacement.¹⁹⁸ Conflict in the Mindanao region of the Philippines between the Government and Moro and communist insurgencies also routinely displaces children and families, forcing them to move internally or cross-border to seek shelter.¹⁹⁹ In both Myanmar and the Philippines, families and children may also migrate as a ‘preventative strategy’ to avoid the recruitment or use of children by non-State armed groups in armed conflict.²⁰⁰ In addition, displacement due to conflict (among other causes) has been identified as a driver of trafficking in the Philippines.²⁰¹

¹⁸⁹ UNHCR, ‘Abandoned at Sea’, UNHCR UK, 26 August 2015, <www.unhcr.org/uk/news/stories/2015/8/56ec1eabd/abandoned-at-sea.html>, accessed 28 March 2021.

¹⁹⁰ Ibid.

¹⁹¹ UNHCR, et al., ‘Joint Statement by UNHCR, IOM and UNODC on Protection at Sea in the Bay of Bengal and Andaman Sea’, UNHCR UK, 6 May 2020, <www.unhcr.org/uk/news/press/2020/5/5eb15b804/joint-statement-unhcr-iom-unodc-protection-sea-bay-bengal-andaman-sea.html>, accessed 28 March 2021.

¹⁹² International Labour Organization, *Building Labour Migration Policy Coherence in Myanmar*, ILO, Myanmar, 2017, p. 6.

¹⁹³ UNHCR, ‘Global Focus, Myanmar Strategy 2022–2024’, <<https://reporting.unhcr.org/myanmar#toc-populations>>, accessed 5 December 2022.

¹⁹⁴ Missbach, Antje, and Wayne Palmer, ‘Indonesia: A country grappling with migrant protection at home and abroad’, International Labour Organization, 2018, <www.apmigration.ilo.org/resources/indonesia-a-country-grappling-with-migrant-protection-at-home-and-abroad>, accessed 28 March 2021.

¹⁹⁵ UNHCR, ‘Thailand Fact Sheet’, 31 March 2021, <www.unhcr.org/th/wp-content/uploads/sites/91/2021/04/UNHCR-Thailand-Fact-Sheet_31-March-2021.pdf>, accessed 19 December 2022.

¹⁹⁶ Davy, *Analysis of Protection Frameworks, Referral Pathways and Service Availability for Myanmar Migrant Children*, pp. 36–37.

¹⁹⁷ Ibid., p. 36.

¹⁹⁸ Triggs, Gillian, UNHCR Assistant High Commissioner for Protection, ‘News Comment: UNHCR calls on Myanmar’s neighbours to protect people fleeing violence’, 31 March 2021, <www.unhcr.org/uk/news/press/2021/3/60648c304/news-comment-unhcr-calls-myanmars-neighbours-protect-people-fleeing-violence.html>, accessed 1 April 2021.

¹⁹⁹ *A Systematic Review of the Drivers of Violence Affecting Children in the Philippines*, p. 63.

²⁰⁰ Ibid.; Davy, *Analysis of Protection Frameworks, Referral Pathways and Service Availability for Myanmar Migrant Children*, p. 72.

²⁰¹ Ibid., p 4.

Conflict is closely linked with other drivers of migration, often exacerbating them. In the Philippines, armed conflict leading to economic insecurity and unemployment has further driven migration from the areas affected by insurgencies.²⁰² Similarly, in Myanmar, civil conflict has contributed to limited livelihood and economic opportunities in some rural areas, which, along with social aspirations and desires, drive migration.²⁰³ The 2021 military coup in Myanmar has created a humanitarian crisis. The United Nations Secretary-General's Special Envoy on Myanmar recently reported that 17.5 million people will require humanitarian aid in 2023, compared with 1 million before the coup. Moreover, the World Bank has reported that 40 per cent of the population now lives under the poverty line, with 15.2 million people being food insecure.²⁰⁴ For IDPs in Myanmar, continuing insecurity, the risk of pollution from mines and a lack of funds to repair the damage caused by the conflict prevent families from returning to their homes. Furthermore, it prompts them to plan their migration, either to other parts of Myanmar or abroad, in order to avoid poor conditions and increasing levels of discrimination in the IDP camps.²⁰⁵

There is some evidence that the business sector may be contributing to conflict situations in ASEAN Member States and impacting migration flows; however, evidence is limited and this is an area that requires further research. Most of the information available relates to the role of the business sector in land disputes, land confiscations and forced evictions, which contribute to conflict situations. For example, in Myanmar, it is reported that private companies linked to the military as well as multinational corporations in joint ventures with state-owned or local businesses have been involved in land confiscation and forced evictions, affecting both adults and children.²⁰⁶ Land disputes involving businesses are also common in Cambodia, Lao PDR and Myanmar, where the system of registering land rights is still under development.²⁰⁷ Land disputes may become violent and result in land grabs.²⁰⁸

Gender dynamics and gender-related social norms and beliefs

The increasing access of women to labour markets and the feminization of migration is a further structural factor driving migration in ASEAN Member States; that is, the increase in the numbers and proportion of women and girls migrating internationally and independently (i.e., without accompanying family members).²⁰⁹ The feminization of labour migration is a response to the preference and demand for female labour in higher-income ASEAN Member States on the one hand, and limited economic opportunities in source countries on the other.²¹⁰ The increase in the number of women migrating for labour comes largely from poor rural communities in Indonesia and the Philippines and more recently, Cambodia and Myanmar, with women and girls migrating as a multigenerational poverty reduction strategy.²¹¹ However, interest in labour migration is also evident among wealthier women, for example in Indonesia, where women and girls may migrate to improve their livelihoods and lifestyle.²¹²

Government policies play a key role in shaping these gender dynamics by supporting or incentivizing labour migration among women, which has encouraged a broader culture of feminized migration in some countries.²¹³ For example, in Indonesia, the Government has actively encouraged and facilitated international female labour migration to increase remittances and reduce unemployment.²¹⁴

²⁰² Ibid., p 63.

²⁰³ International Labour Organization, *Building Labour Migration Policy Coherence in Myanmar*, ILO, Myanmar, 2017, p. 6. See also Ball, Jessica, and Sarah Moselle, 'Living liminally: Migrant children living in the Myanmar-Thailand border region', *Global Studies of Childhood*, vol. 5, no. 4, 2015, p. 428.

²⁰⁴ UN News, 'Deny Legitimacy of Myanmar's Military Junta, UN expert urges', 31 January 2023, <<https://news.un.org/en/story/2023/01/1133027>>, accessed 2 February 2023.

²⁰⁵ Davy, *Analysis of Protection Frameworks, Referral Pathways and Service Availability for Myanmar Migrant Children*, pp. 72, 76, 116.

²⁰⁶ Human Rights Resource Centre, *Business and Human Rights in ASEAN: A baseline study*, University of Indonesia, Depok, 2013, p. 26.

²⁰⁷ Ibid., p. 13

²⁰⁸ Ibid., p. 25.

²⁰⁹ *Supporting Brighter Futures*, pp. 1–2.

²¹⁰ Lam, Theodora, 'Young Women and Girls Left Behind: Causes and consequences', in *Supporting Brighter Futures*, p. 13; Beazley, Harriot, 'Intergenerational Cycles of Migrating for Work', in *Supporting Brighter Futures*, pp. 45–48.

²¹¹ Ibid.

²¹² Lubis, Sofni, *The Well-Being of Children Left by their Mothers who Become Migrant Workers: Case study in two districts in Indonesia*, SMERU Research Institute, Jakarta, November 2014, p. 21.

²¹³ Lam, Theodora, 'Young Women and Girls Left Behind: Causes and consequences', in *Supporting Brighter Futures*, p. 13.

²¹⁴ Beazley, Harriot, 'Intergenerational Cycles of Migrating for Work', in *Supporting Brighter Futures*, p. 48.

At the same time, however, some governments have sought to restrict female migration, which has led to a disproportionate number of irregular migrant females as compared to males (particularly in Thailand). For instance, Myanmar, Indonesia and Cambodia have reportedly banned women from migrating internationally to undertake domestic work, but women continue to migrate through irregular channels, exposing them to additional risks.²¹⁵ Similarly, the Thailand Migration Report 2019 by the United Nations Thematic Working Group on Migration highlighted that “*protectionist policies and laws*” restricting female migration through legal channels was a cause of high numbers of undocumented female workers in the domestic service sector and sex industry.²¹⁶

Government policies encouraging gender-based migration can also serve to reinforce gender-based discrimination. It has been argued that temporary labour migration programmes entrench and compound gender discrimination which often intersects with other forms of discrimination based on nationality or class.²¹⁷ These programmes are normally only available to women in specific sectors such as domestic work, care work and hospitality, if at all.²¹⁸ This results in an overrepresentation of men in temporary labour migration programmes, which again drives the irregular migration of women, restricting women’s choices concerning work and family life and contributing to decisions by women to migrate without their children.²¹⁹

The feminization of labour migration is closely linked to cultural-religious beliefs or expectations that women have a duty to maintain their families, including through financial contributions.

According to the dominant social norms in a number of countries, women and girls who do not contribute to their family are considered ‘immoral’ (in Myanmar), while daughters have a duty to provide for their families (in Cambodia) (see section 3.3.1, below).²²⁰ Similar findings were seen in a qualitative study in the Philippines, which found evidence that gender norms which hold women responsible for their families were a driver of migration.²²¹ In migrant-sending communities in the Philippines and Indonesia, older female relatives play an important role in sustaining cycles of intergenerational female migration by looking after their grandchildren while their daughters migrate to work.²²² In Lao PDR, a culture of familial duty was found to be a driver of girls resorting to mobile prostitution (i.e., migrating internally on a temporary basis to engage in sex work) to support their families financially.²²³

While gender norms may drive migration from some ASEAN Member States, they may also contribute to hindering migration from others.

In Viet Nam, studies highlight how gender norms reinforcing the role of the woman as the home-maker do not exert the same cultural pressures on women and girls to migrate as those seen in the Philippines.²²⁴ This may explain why young people in Viet Nam tend to migrate before they marry and start a family, as opposed to the Philippines, where women and girls marry at a younger age and migrate to support their children.²²⁵ Despite these findings, the literature indicates a gradual easing of the social stigma surrounding female labour migration in Viet Nam and evidence of increasing feminization of *internal* labour migration over the last two decades.²²⁶ Indeed, it is reported that in the Mekong Delta region of Viet Nam, there is a sense of “*filial piety and an ethic of sacrifice*” among adolescents, particularly girls, encouraging them to “*act against their own longer-term interests*” to benefit their parents’ economic situation.²²⁷

²¹⁵ Ibid., p 47; Deshingkar, Priya, ‘Criminalisation of Migration for Domestic Work from Myanmar to Singapore – Need for a radical policy shift’, *European Journal on Criminal Policy and Research*, vol 27, 2021, pp.135–149.

²¹⁶ *Thailand Migration Report 2019*, p. XV.

²¹⁷ *We Wanted Workers, but Human Beings Came*, p. 29 and part 2.5.

²¹⁸ Ibid.

²¹⁹ Ibid.

²²⁰ International Organization for Migration, *Covid-19 Impacts on the Labour Migration and Mobility of Young Women and Girls in South-East Asia and the Pacific*, IOM, Geneva, 2020, p. 7; *A Systematic Review of the Drivers of Violence Affecting Children in the Philippines*, p. 66.

²²¹ Anderson, Kirsten, et al., *Women in the Wind: Analysis of migration, youth economic empowerment and gender in Viet Nam and the Philippines*, Plan International, March 2017, p. 11.

²²² Graham, et al., 2012; Ball, Butt and Heazley, 2017, referenced in Beazley, Harriot, ‘Intergenerational Cycles of Migrating for Work’, in *Supporting Brighter Futures*, p. 51.

²²³ Crispin and Thompstone, *The Commercial Sexual Exploitation of Children in Lao PDR*, pp. 7, 17–18.

²²⁴ Anderson, Kirsten, et al., *Women in the Wind: Analysis of migration, youth economic empowerment and gender in Viet Nam and the Philippines*, Plan International, March 2017, p. 11; Hoang, Lan A., ‘Young Women and Girls as Providers for Households of Origin’, in *Supporting Brighter Futures*, pp. 69–70.

²²⁵ Ibid.

²²⁶ Ibid.

²²⁷ Jones, Nicola, et al., *Falling Between the Cracks: How poverty and migration are resulting in inadequate care for children living in Viet Nam’s Mekong Delta*, Overseas Development Institute, December 2014, p. 3.

Impacts of COVID-19

COVID-19 and government responses to the pandemic resulted in significant changes to migration flows in the ASEAN region. Most directly, travel restrictions and periodic border closures resulted in substantial numbers of migrants returning to their home countries. For example, the closure of Thailand's borders and reduced economic activities as a result of the pandemic led to over 100,000 Cambodian migrant workers crossing back into Cambodia between March and June 2020.²²⁸ An IOM survey of returning migrants in Cambodia in June 2020 identified a range of reasons for their return, with worries about COVID-19 being the overarching reason (reported by 25 per cent of the respondents). Other reasons included families wanting the respondents to return; the respondent being asked to return specifically because of COVID-19; the inability to find work; and border closures and unrenewed contracts due to COVID-19.²²⁹ Eighty-seven per cent of respondents in the survey reported having children.²³⁰ Similarly, in the week beginning 22 March 2020, there was an 'exodus' of 'tens of thousands' of returning workers from Thailand to Myanmar due to a combination of COVID-19-related factors, including fears that the COVID-19 situation would worsen and of job losses resulting from the pandemic.²³¹ However, a subsequent lockdown in Thailand restricted movement between the provinces, which created barriers to migrants returning to Myanmar.²³² Between 22 March and 15 June 2020, almost 100,000 migrants were recorded entering Myanmar from Thailand, though actual numbers are likely to be higher due to unofficial or undetected border crossings.²³³ In addition, since the outbreak of COVID-19, approximately 200,000 migrant workers are reported to have crossed the border from Thailand to Lao PDR, though internal travel restrictions in Thailand slowed this down.²³⁴ According to an IOM survey, the top three reasons for return were worries about COVID-19, the respondents' families wanting them to return, and being told to leave Thailand by their employer because of COVID-19.²³⁵

While it is still too early to tell, some data indicate that returning migrants will simply remigrate following the opening of borders and improvement in the economy following the pandemic. An IOM survey of returning migrants in Cambodia, for instance, found that the majority of respondents (71 per cent) planned to remigrate, among whom 86 per cent wished to do so after the end of COVID-19 and 100 per cent wished to remigrate to the same country (Thailand).²³⁶ Similarly, according to an International Labour Organization (ILO) survey in Myanmar, 58 per cent of returning migrants from Thailand planned to remigrate to their previous job, though the feasibility of this has been questioned in light of long quarantine obligations, the risk of others taking their jobs and uncertainty as to whether work permits (where issued) would remain valid.²³⁷ However, unlike the findings in Cambodia and Myanmar, more than 50 per cent of returning migrants in Lao PDR who were surveyed as part of an IOM study in 2020 reported that they did not plan to remigrate, or were not sure of their plans, while 36 per cent expressed a willingness to upgrade their skills to access better opportunities.²³⁸ It remains to be seen whether these findings are reflective of a broader trend in the country and how these will affect migration flows within and from Lao PDR, particularly by children.²³⁹

²²⁸ International Organization for Migration, *Cambodia Returning Migrants Survey*, IOM, Cambodia, July 2020, p. 1.

²²⁹ *Ibid.*, p 2.

²³⁰ *Ibid.*

²³¹ Pollock, Jacqueline, et al., *COVID-19: Impact on migrant workers and country response in Myanmar*, International Labour Organization Myanmar, 22 June 2020, p. 2.

²³² *Ibid.*, p 3.

²³³ *Ibid.*

²³⁴ International Organization for Migration et al., *Lao People's Democratic Republic Returning Migrants Survey*, IOM et al., Lao PDR, 2020, p. 6.

²³⁵ *Ibid.*

²³⁶ International Organization for Migration, *Cambodia Returning Migrants Survey*, IOM, Cambodia, July 2020, p. 10.

²³⁷ International Labour Organization, *Experiences of ASEAN Migrant Workers during COVID-19, 2020*, referenced in Pollock, Jacqueline, et al., *Covid-19: Impact on migrant workers and country response in Myanmar*, ILO Myanmar, 22 June 2020, p. 6.

²³⁸ *Ibid.*

²³⁹ *Ibid.*

Perhaps unsurprisingly, **COVID-19 appears unlikely to have halted children and their families fleeing persecution as refugees from Myanmar; however, it appears to have heightened the vulnerability of this group.**²⁴⁰ Border closures due to COVID-19 reportedly increased the risks of refugees being stranded at sea and extortion by traffickers and smugglers in order to take them to safety.²⁴¹ The Child Rights Coalition of Malaysia reported that between May and June 2020, Malaysian authorities intercepted and turned back 22 boats carrying refugees, and that charges for violating Malaysian immigration laws were laid on those allowed to dock.²⁴² The child protection risks associated with children embarking on these journeys are discussed in section 3.

2.2.2 Community/social drivers

Social networks as a driver of migration

Family, friends and broader social networks are essential facilitators of the migration process, providing children and their families with information, community networks and financial support to enable internal and cross-border migration. This is particularly true for the majority of child migrants, many of whom have limited autonomy in decisions about their own migration journeys and rely on parents or community members to make decisions on their behalf. While children express their agency in many ways as part of collective household decision-making processes around migration, owing to their relative lack of power, the decision to migrate is generally made on their behalf by adults. It is likely that the prospect of migration increases when family members and friends have had previous experience with migration. According to one study, half of all internal migrants in Cambodia had at least one connection in Phnom Penh at the time they migrated there, who helped to ease the transition.²⁴³ According to another study in Lao PDR, internal migration between rural and urban communities across the region was higher in areas where social networks and a history of migration existed between the sending and receiving communities.²⁴⁴

Social networks help to 'bridge' the financial and logistical challenges facing new migrants and provide essential information and access to opportunities.²⁴⁵ A migrant's ability to make the journey, decisions around migration routes, their likelihood of finding employment and housing and accessing key services such as education and healthcare can be impacted by or be dependent on the migrant's social network.²⁴⁶ Settled migrants can also act as a go-between for new migrants, using their pre-existing social capital to expedite the process of finding employment.²⁴⁷ Furthermore, existing migrants may open their homes to family and friends, lowering the cost of migration. This is particularly true for children who travel unaccompanied, as their families often arrange for them to stay in the homes of a family member or friends upon arrival. In Cambodia, one small-scale study found that family and friends were often eager to fill this role, with 74 per cent of migrant workers reporting having helped a relative, friend or fellow villager find employment, or having provided accommodation.²⁴⁸ Social networks can help to make the migration process more manageable and safer (or at least can give the perception of making the process safer and more manageable),²⁴⁹ which is likely to be a significant driver for child migrants in particular. Social networks

²⁴⁰ International Organization for Migration and United Nations Children's Fund, 'Guidance Note for Service Providers Working with Victims of Human Trafficking During Covid-19 in Myanmar', p. 2.

²⁴¹ Johar, Ali, et al., 'Human Rights and Covid-19: What now for the Rohingya?', Briefing paper, August 2020, p. 5.

²⁴² Child Rights Coalition Malaysia, *Status Report on Child Rights in Malaysia 2019*, Child Rights Coalition Malaysia, 2020, p. 109.

²⁴³ United Nations Educational, Scientific and Cultural Organization, United Nations Development Programme, International Organization for Migration and United Nations Human Settlements Programme, 'Overview of Internal Migration in Cambodia: Policy brief', Bangkok, 2018, p. 5.

²⁴⁴ Phouxay, *Patterns of Migration and Socio-Economic Change in Lao PDR*, Department of Social and Economic Geography, Umea University Sweden, 2010, p. 37.

²⁴⁵ Anderson, K., et al. *Women in the Wind: Analysis of migration, youth economic empowerment and gender in Viet Nam and the Philippines, report summary*, Plan International, London, 2017, p. 12.

²⁴⁶ Poros, Maritsa, 'Migrant Social Networks: Vehicles for migration, integration, and development', Migration Policy Institute, 30 March 2011, <www.migrationpolicy.org/article/migrant-social-networks-vehicles-migration-integration-and-development#:~:text=Migration%20researchers%20have%20typically%20defined,ties%20also%20exist%20for%20migrants>, accessed 19 December 2022.

²⁴⁷ Phouxay, *Patterns of Migration and Socio-Economic Change in Lao PDR*, Department of Social and Economic Geography, Umea University Sweden, 2010, p. 37.

²⁴⁸ United Nations Educational, Scientific and Cultural Organization, United Nations Development Programme, International Organization for Migration and United Nations Human Settlements Programme, 'Overview of Internal Migration in Cambodia: Policy brief', Bangkok, 2018, p. 5.

²⁴⁹ Um, Khatarya., *Southeast Asian Migration: People on the move in search of work, marriage & refuge*, Sussex Academic Press, UK, 2015, p. 161.

can ensure strong communication between sending and receiving communities and also that new arrivals do not experience as much 'culture shock' as they would typically if migrating alone. Family and friends are also the main providers of financial support to new migrants in the form of in-kind assistance and direct financial support through paying brokers' fees to enable children and their families to migrate.²⁵⁰

Relationships based on kinship, friendship and shared community origin are often in themselves drivers of migration, as people encourage their friends or relatives to join them in their destination countries.²⁵¹ Many families also choose to let their children migrate unaccompanied because they believe that they will be supported on arrival by family or friends, who will welcome them into the new community. In addition, sending families are reassured that their children will be in a community with shared religious beliefs and cultural and traditional practices that are the same as their own. Migrant communities across the region have created networks of support to facilitate this transnational and religious and community gatherings.

Pre-existing relationships with migration brokers are a further major driver of migration within Southeast Asia. Recruiters in local communities play a central role in connecting individuals considering migration to brokers who, in turn, facilitate transnational migration. One survey by the Cambodia Development Resource Institute suggested that around 50 per cent of all migrants from Cambodia travel to Thailand with the help of a broker.²⁵² The literature suggests that personal connections with brokers are a facilitator of migration, although not generally the sole driver of the decision to migrate. Brokers often have a major influence on the destination country and the migration route travelled by children and their families.²⁵³ This is especially true for children, who typically migrate as a result of decisions taken by their relatives.²⁵⁴ One study that focused on the smuggling of children across the Myanmar-Thailand border suggests that migrants are particularly trusting of recruiters and brokers with whom they already have close personal relationships (such as relatives or recent returnees to their community) and who have strong knowledge of the migration process.²⁵⁵

Despite the role social networks play in assisting and easing migration, the evidence also suggests that for some would-be migrants, these networks can be a major factor in their decision not to migrate. Relationships with a spouse, friends or family often act as a major barrier for those who would like to migrate, as they feel a sense of community and duty to their already existing social network.²⁵⁶ In Mindanao in the Philippines, for instance, research suggests that the largest barrier to migration for respondents living in rural areas was the presence of friends or family.²⁵⁷ This barrier is particularly acute for young people, who are expected to marry and have children rather than pursue migration for economic or educational reasons.²⁵⁸ However, increased access to mobile phones and social media has helped to facilitate migration in recent years as migrants are able to maintain strong relationships with family members and friends back home, where in the past this loss of community may have been a barrier to migration.²⁵⁹ Digital connectivity can also provide access to information to help inform the decision to migrate as well as facilitate preliminary planning.

²⁵⁰ Carden, R. J., *Smuggling of Female Migrant Workers from Myanmar to Thailand*, Chulalongkorn University, Bangkok, 2014, p. 41.

²⁵¹ OECD & Cambodia Development Resource Institute., *Interrelations between public policies, migration and development in Cambodia*, OECD Development Pathways, Paris, France, 2017, p. 43.

²⁵² *Interrelations between Public Policies, Migration and Development in Cambodia*, p. 43.

²⁵³ Carden, R. J., *Smuggling of Female Migrant Workers from Myanmar to Thailand*, Chulalongkorn University, Bangkok, 2014, p. 46.

²⁵⁴ *Ibid.*, p. 39.

²⁵⁵ *Ibid.*, p. 52.

²⁵⁶ Anderson, Kirsten, et al. *Women in the Wind: Analysis of migration, youth economic empowerment and gender in Viet Nam and the Philippines: Report summary*, Plan International, London, 2017, p. 12.

²⁵⁷ Quisumbing, Agnes, and Scott McNiven, 'Migration and the Rural-Urban Continuum: Evidence from the rural Philippines', FCND Discussion Paper 197, Washington, D.C., February 2005, p. 22. <www.researchgate.net/publication/5056423_Migration_and_the_rural-urban_continuum_Evidence_from_the_Rural_Philippines>, accessed 19 December 2022.

²⁵⁸ Carden, R. J., *Smuggling of Female Migrant Workers from Myanmar to Thailand*, Chulalongkorn University, Bangkok, 2014, p. 39.

²⁵⁹ World Food Programme, *Rural Vulnerability and Migration in Cambodia: Trends, drivers and impacts – a descriptive analysis*, WFP Cambodia, November 2018, p. 18; Over 58 per cent of the population of ASEAN use the internet, and 55 per cent are active social media users: We are Social and Hootsuite, *The 2018 Global Digital Report*, 2018, <<https://wearesocial.com/uk/blog/2018/01/global-digital-report-2018>>, accessed 19 December 2022.



A UNICEF Nutrition Specialist provides infant and young child feeding counselling to a mother at a temporary displaced persons camp in Kyaukse township, northern Shan State of Myanmar. © UNICEF/UN0579220/Nyan Zay Htet

2.2.3 Family-based drivers

Sense of familial duty

The decision to migrate is often a family decision, with the views of the parents carrying particular, though not exclusive, weight. One report indicates that, in Myanmar, it is often the parents who decide that their children, particularly girls, should migrate to find work to support the family.²⁶⁰ Similarly, with regard to migration to Thailand, parents will typically “*instigate*” and in some cases “*facilitate*” the migration of older teenagers to search of work.²⁶¹ Even where young people appear to have made the decision to migrate independently or without the knowledge or consent of their parents, migration decisions are “*embedded within a household*.”²⁶² In the Philippines, for example, the search for economic opportunities has been linked to a ‘culture of migration’ or ‘cultural pressure’ (particularly on girls) to support the family by migrating internally to urban areas or internationally in search of work.²⁶³ Similar findings have been made in Myanmar, where “*a desire to support the family through earning income and supporting the family through remittances*” has been identified as a driver of child migration.²⁶⁴ A study on child migration in Thailand also describes child labour migration as a demonstration of “*honour, pride and cultural values*” by children in response to their parents’ “*blessing*” or “*permission*” for them to migrate.²⁶⁵

²⁶⁰ Davy, *Analysis of Protection Frameworks, Referral Pathways and Service Availability for Myanmar Migrant Children*, p. 70.

²⁶¹ See, for example, Schloenhardt, Andreas, ‘Irregular Migration and Smuggling of Young Women and Girls in South-East Asia and the Pacific: A review of existing evidence’, in *Supporting Brighter Futures*, p. 101.

²⁶² Beazley, Harriot, ‘Intergenerational Cycles of Migrating for Work’, in *Supporting Brighter Futures*, p. 48.

²⁶³ *A Systematic Review of the Drivers of Violence Affecting Children in the Philippines*, p. 66; International Organization for Migration, et al., *Country Migration Report: The Philippines 2013*, IOM, Makati and Quezon Cities, Philippines, 2013, p. 40.

²⁶⁴ Davy Deanna, *Analysis of Protection Frameworks, Referral Pathways and Service Availability for Myanmar Migrant Children*, UNICEF Myanmar, 2019, p. 70.

²⁶⁵ Capaldi, Mark P., ‘Rethinking Independent Child Migration in Thailand: Victims of exploitation or competent agents?’ *Journal of Population and Social Studies*, vol. 23, no. 1, January 2015, p. 21.

Economic hardship and household poverty

Poverty is understood to be a key driver of child migration, resulting in children either migrating unaccompanied in search of work or by accompanying family members who migrate to search for work.²⁶⁶ Poverty is also reported to be a key driver of the cycle of temporary, repeat migration, as migrants return to their source country with their savings before migrating again when their savings run out.²⁶⁷ A multitude of factors at the family and individual levels influence whether and how children and/or their family members migrate in response to poverty or in search of an improved livelihood. “*Conditions of change*” often influence decisions to migrate.²⁶⁸ For example, in Indonesia, migration may be triggered by a need to fund children’s education or to improve family welfare by building a house or purchasing a rice field or land.²⁶⁹ Similarly in Cambodia, such triggers include the need to save for a wedding; being newly married and needing to earn more money to feed and educate children; wanting to buy farming tools for parents; or saving money as a safety net in the event of sickness.²⁷⁰

Research has noted the need to pay off debts, such as medical loans, as a family level driver of migration,²⁷¹ though the research is not conclusive.²⁷² One UNICEF study in Cambodia highlighted that six out of seven case studies had a similar pattern of events leading to migration, including that a family member becomes ill and needs to take out a loan to cover medical expenses, then, faced with losing their land, a decision is made to send a working-age youth in the family to Thailand to work on construction sites.²⁷³ Similarly, a study on the impact of migration on children and families left behind in Cambodia concluded that the decision to migrate appeared to be based on the need to pay off household debts.²⁷⁴ However, it is difficult to establish a clear relationship between migration and indebtedness.²⁷⁵ Specifically with regard to women and girls, changes in circumstances resulting from divorce or similar family affairs influence their decision to migrate, with such conditions encouraging migration for longer periods of time.²⁷⁶

It should be noted that **migration as a solution to economic hardship and a way to improve family income is influenced by a range of other factors at the family and individual level**, including proximity of children and families to State borders and ease of access to a neighbouring State, which may drive the decision to migrate internationally. Research in Thailand highlights how child migrants from Cambodia travel across the border to sell goods on a daily basis.²⁷⁷ Similarly in Lao PDR, border-crossing children are influenced by their proximity to Thailand.²⁷⁸ Social networks, familiarity with migration and a culture of migration in communities are other factors that can drive migration. For instance, a 2019 assessment of child protection services for migrant children in Thailand found that the belief that migration is the “*usual practice*” to cope with poverty had motivated migration.²⁷⁹

²⁶⁶ See, for example, United Nations Children’s Fund, *Assessment of Child Protection Services for Migrant Children in Thailand*, UNICEF Thailand, December 2019, pp. 29–30.

²⁶⁷ Davy Deanna, *Analysis of Protection Frameworks, Referral Pathways and Service Availability for Myanmar Migrant Children*, UNICEF Myanmar, 2019, p. 71; Seng, Sary, ‘Unseen: Undocumented Cambodian migrant workers in Thailand’, ch. 7 in *South-east Asian Migration: People on the move in search of work, refuge, and belonging*, Sussex Academic Press, 2015, p. 61.

²⁶⁸ Ibid.

²⁶⁹ Lubis, Sofni, *The Well-Being of Children Left by their Mothers who Become Migrant Workers: Case study in Two Districts in Indonesia*, The SMERU Research Institute, Jakarta, November 2014, p. 4.

²⁷⁰ Seng, Sary, ‘Unseen: Undocumented Cambodian Migrant Workers in Thailand’, ch. 7 in *South-east Asian Migration: People on the Move in Search of Work, Refuge, and Belonging*, Sussex Academic Press, UK, 2015, pp. 61, 65; United Nations Children’s Fund et al., ‘Executive Summary Study on the Impact of Migration on Children in the Capital and Target Provinces, Cambodia’, UNICEF, Cambodia, May 2017, p. 6.

²⁷¹ Seng, ‘Unseen: Undocumented Cambodian migrant Workers in Thailand’, pp. 61, 65; *Executive Summary Study on the Impact of Migration on Children in the Capital and Target Provinces*, p. 6.

²⁷² World Food Programme, *Rural Vulnerability and Migration in Cambodia: Trends, drivers and impacts – a descriptive analysis*, WFP Cambodia, November 2018, p. 19.

²⁷³ *Executive Summary Study on the Impact of Migration on Children in the Capital and Target Provinces*, p. 6.

²⁷⁴ International Organization for Migration, et al., *Migration Impacts on Cambodian Children and Families Left Behind*, IOM Cambodia, 2019.

²⁷⁵ World Food Programme, *Rural Vulnerability and Migration in Cambodia: Trends, drivers and Impacts – a descriptive analysis*, World Good Programme Cambodia, November 2018, p. 19.

²⁷⁶ Lubis, Sofni, *The Well-Being of Children Left by their Mothers who Become Migrant Workers: Case study in two districts in Indonesia*, The SMERU Research Institute, Jakarta, November 2014, p. 4.

²⁷⁷ *Assessment of Child Protection Services for Migrant Children in Thailand*, p. 30.

²⁷⁸ Crispin and Thompstone, *The Commercial Sexual Exploitation of Children in Lao PDR*, p. 39.

²⁷⁹ *Assessment of Child Protection Services for Migrant Children in Thailand*, p. 27.

Business practices can have a direct and indirect impact on the migration decisions of children and their families and whether or not parents/carers choose to migrate alone or with their children.

Low wages and the lack of social benefits provided by businesses can create hardships for workers with families which, in turn, can contribute to parents and carers encouraging their children to leave school, migrate and find work themselves.²⁸⁰ Further, businesses which do not provide or facilitate access to social protection support, childcare, education, healthcare and other services for children also influence decision-making by parents and carers to migrate for work without their children, opting instead to send back remittances to support the family.²⁸¹

2.2.4 Individual drivers

Child marriage

Child marriage can be considered as both a driver and consequence of migration. Although child marriage in Southeast Asia has declined over the past decade, the latest figures show that there were still some 75 million girls who married before they reached the age of 18.²⁸² Some of these marriages involved girls being sold, forced, pressured or trafficked across international borders for marriage, with the hope or promise of a better life and a path to residency in a more developed country. Marriage trafficking occurs both within the ASEAN region (particularly in Thailand,²⁸³ Viet Nam,²⁸⁴ Myanmar,²⁸⁵ Malaysia²⁸⁶ and Lao PDR²⁸⁷) and internationally (from key sending countries such as the Philippines and Thailand), with children being trafficked to other parts of Asia (especially China, Japan, Taiwan and the Republic of Korea), the Middle East, Europe and North America.²⁸⁸ Some may marry before travelling abroad, particularly in the case of Vietnamese girls marrying Chinese men,²⁸⁹ but even in these cases, the men are almost entirely unknown to the girls before marriage. A major trend for marriage trafficking within the region is the movement, by force and coercion, of child brides from Cambodia, Indonesia, Lao PDR, Myanmar and Viet Nam across the border to China. Gender imbalances created by China's long-standing one-child policy appear to be driving a demand for child brides from other countries.²⁹⁰ To alleviate this demand, girls as young as 13 are taken across the border to China and sold as brides.²⁹¹

Trafficking for the purposes of marriage is driven by a complex interplay of social, cultural and religious norms, practices and customs, individual and household-level factors and broader economic factors. Poverty is a major driver of marriage trafficking, with families participating in trafficking in exchange for goods, payment in kind or an agreed 'bride price'. Bride prices are higher for younger girls as they are typically considered more desirable, increasing the incentive for families to sell their children into marriage at younger ages.²⁹² For some girls, marriage is seen as having the dual benefits of guaranteed

²⁸⁰ Online key informant interview, Representative of the Business and Human Rights Working Group, 26 October 2021.

²⁸¹ Online key informant interview, Centre for Child Rights and Business, 6 September 2021.

²⁸² United Nations Children's Fund, *Child Marriage: Latest trends and future prospects*, July 2018, <<https://data.unicef.org/resources/child-marriage-latest-trends-and-future-prospects>>, accessed 19 December 2022.

²⁸³ Ellis-Petersen, 'The Dark Secret of Thailand's Child Brides', *The Guardian*, 1 September 2018, <www.theguardian.com/world/2018/sep/01/thailand-malaysia-muslim-child-forced-marriage>, accessed 19 December 2022.

²⁸⁴ Jordana, Ashley D., *Situational Analysis on Child, Early and Forced Marriage in Viet Nam, Laos, Myanmar and Cambodia*, World Vision International, 6 February 2017, pp. 13–14, <www.wvi.org/end-violence-against-children-east-asia-region/publication/situational-analysis-child-early-and>, accessed 19 December 2022.

²⁸⁵ Human Rights Watch, "Give Us a Baby and We'll Let You Go: Trafficking of Kachin "brides" from Myanmar to China", 21 March 2019, <www.hrw.org/report/2019/03/21/give-us-baby-and-well-let-you-go/trafficking-kachin-brides-myanmar-china>, accessed 19 December 2022.

²⁸⁶ Latiff, Rozanna, and Harris, Ebrahim, 'Sold into Marriage – how Rohingya girls become child brides in Malaysia', *Reuters*, 15 February 2017, <www.reuters.com/article/uk-myanmar-rohingya-childbrides-insight/sold-into-marriage-how-rohingya-girls-become-child-brides-in-malaysia-idUSKBN15U009>, accessed 19 December 2022.

²⁸⁷ Breese, Hannah, *Agenda for Action against Commercial Sexual Exploitation of Children: Lao PDR*, EPCAT International, Thailand, 2017, pp. 22–25.

²⁸⁸ Chung, Chinsung, Kuntae, Kim, Piper, Nicola 'Marriage Migration in Southeast and East Asia Revisited Through a Migration-Development Nexus Lens', *Critical Asian Studies*, vol. 48, no. 4, 2016, pp. 464–468; International Organization for Migration., *Country Migration Report: The Philippines 2013*, Makati City, Philippines, 2013, p. 57.

²⁸⁹ Stöckl, Heidi, et al., 'Trafficking of Vietnamese Women and Girls for Marriage in China', *Global Health Research and Policy*, vol. 2, no. 28, 2017, p. 4–15.

²⁹⁰ United States Department of State, *Trafficking in Persons Report 2020*, Washington, D.C., 2020, p. 157.

²⁹¹ Ibid.

²⁹² Robinson, Courtland, Casey Branchini, *Estimating Trafficking of Myanmar Women for Forced Marriage and Childbearing in China*, Johns Hopkins Bloomberg School of Public Health and Kachin Women's Association Thailand, Baltimore, USA, December 2018, p. 7.



A mother takes her infant child to a birth registration centre in Indonesia.
© UNICEF/UN0232085/Shehzad Noorani

socioeconomic status and reducing the perceived financial burden on the family in communities where women are not a part of the labour force. This is particularly true of rural communities, where options are limited. In some communities, marriage trafficking has been ongoing for many generations. Vietnamese and Laotian Hmong communities practice forced marriage and bride theft of girls as young as 12 and 13 years of age.²⁹³ On the Indonesian island of Sumba, bride kidnapping, or *kawin tangkap*, persists.²⁹⁴ Evidence indicates that the COVID-19 pandemic exacerbated the underlying drivers of forced marriage, for example, by limiting access to education and economic opportunities and increasing household poverty – which are all key drivers of child marriage.²⁹⁵

Violence and trauma

Available evidence indicates that violence and trauma within the family is a contributing factor in an individual's decision to migrate. Large numbers of female cross-border and internal migrants report having experienced gender-based violence in their homes prior to migration. Mothers often choose to migrate to escape abusive domestic circumstances and to establish a new life in a safer setting. Across the region, women who choose to leave an abusive spouse due to violence in the home can become ostracized from their communities. In Viet Nam, for example "many child victims of sexual exploitation report being driven from their homes due to physical violence, family and household dysfunction, drug abuse and domestic violence and are forced to migrate to another region of Viet Nam to start a new life."²⁹⁶

²⁹³ Alliance Anti-Trafficking and ECPAT International, 'Sexual Exploitation of Children in Lao People's Democratic Republic, Submission for the Universal Periodic Review of the Human Rights Situation in Lao PDR', Bangkok, 18 July 2019.

²⁹⁴ Tambunan, Liza, 'Indonesia Vows to End Practice of Bride Kidnapping', *BBC News*, Indonesia, 21 July 2020, <www.bbc.co.uk/news/world-asia-53418099>, accessed 19 December 2022.

²⁹⁵ Plan International Australia, *Smart, Successful, Strong: The case for investing in adolescent girls' education in aid and Covid-19 response and recovery*, Plan International, 16 March 2021.

²⁹⁶ Loan, H, Le, Thanh, Vu Thi Le Thanh, & Catherine Maternowska, 'Applying the Child-Centred and Integrated Framework for Violence Prevention: A case study on physical violence in Viet Nam', *Vulnerable Children and Youth Studies*, vol. 13, suppl. 1, 2018, p. 43.

Limited access to services: Education and healthcare²⁹⁷

A lack of access to high-quality education is a major secondary driver of internal and cross-border migration in the ASEAN region, as families and individuals move to pursue schooling in more developed education systems. The education-migration nexus is particularly pronounced in Southeast Asia as families send children abroad for secondary education, viewing their children's education as a family investment for the future. Indeed, educational aspirations are often intertwined with other socioeconomic drivers of migration in the region and share similar characteristics to labour migration. Thailand, Malaysia and Singapore are major destination countries for children from Cambodia, Lao PDR, Myanmar, Viet Nam and Indonesia who are looking for schooling in a more developed education system.²⁹⁸ The pull of these education systems means that children as young as 10 years old may be sent away by their families, at times unaccompanied, in search of better schooling than is offered in their own community. These unaccompanied children often end up in the care of institutions or distant relatives.²⁹⁹ Children are also driven to migrate if they are unable to access secondary or higher education in their home countries.³⁰⁰ In some areas, children travel across the border daily in order to access better quality schools.³⁰¹ A migration corridor between Myanmar and Thailand has grown in recent years, in part due to the highly developed public education system in Thailand, which is attractive to families in Myanmar who seek a better life for their children.³⁰²

While educational opportunities are a draw for many child migrants, they do not always enjoy access to suitable or quality education in destination countries. In Thailand, for instance, despite a government policy allowing non-Thai nationals to attend Thai schools, migrant children still constitute the largest group of out-of-school children in the country, with some estimates indicating that half of all migrant children (approximately 200,000 children) are not receiving any form of education.³⁰³ In many communities, language barriers, cultural barriers, a lack of capacity to support migrant children adequately and widespread discrimination prevent children from accessing education.³⁰⁴ This has meant that in some migrant communities in Thailand, informal education structures have become the means by which migrant children receive schooling given their lack of access to the formal state-run education system.

While the data are limited, some studies indicate that **small numbers of middle- and high-income migrants travel overseas to access more developed healthcare systems.** This is particularly true for migrants who have limited access to healthcare in their home country and who can easily cross the border for a short time to access care, such as in the case of Myanmar and Thailand. Healthcare systems in ASEAN Member States are at varying stages of evolution, and great disparities exist between the different systems.³⁰⁵ Citizens of Singapore, Malaysia and Brunei Darussalam have access to tax-funded or free healthcare.³⁰⁶ In Thailand and the Philippines, national healthcare systems provide care to the

²⁹⁷ Across the ASEAN region access to services is a driver of migration. Given the complexity of these various services, this report only focuses on education and health services as drivers of migration. It is worth noting that access to other more specialized services may also be a driver of migration in the region but are outside the scope of this research.

²⁹⁸ Ananta, Aris, and Evi Nurvidya Arifin, 'Emerging Patterns of Indonesia's Internal Migration', *Malaysian Journal of Economic Studies*, vol. 51, no. 1, January 2014, pp. 29–41.

²⁹⁹ Davy Deanna, *Analysis of Protection Frameworks, Referral Pathways and Service Availability for Myanmar Migrant Children*, UNICEF Myanmar, 2019, p. 7.

³⁰⁰ *Ibid.*, p. 40.

³⁰¹ United Nations Children's Fund, *Protecting Children Affected by Migration in Southeast, South and Central Asia: 2nd Interim report*, 28 February 2020.

³⁰² Davy Deanna, *Analysis of Protection Frameworks, Referral Pathways and Service Availability for Myanmar Migrant Children*, UNICEF Myanmar, 2019, p. 40.

³⁰³ United Nations Educational, Scientific and Cultural Organization, *Bridging Education Systems for Migrant Children in Thailand and Myanmar*, Bangkok, UNESCO, 20 August 2019, <<https://bangkok.unesco.org/content/bridging-education-systems-migrant-children-thailand-and-myanmar>>, accessed 19 December 2022.

³⁰⁴ United Nations Children's Fund, 'Removing Barriers to Migrant Children's Education in Thailand', Bangkok, 19 December 2019, <www.unicef.org/thailand/press-releases/removing-barriers-migrant-childrens-education-thailand>, accessed 19 December 2022.

³⁰⁵ Chongsuivatwong, Virasakdi, et al., 'Health and Health-Care Systems in Southeast Asia: Diversity and transitions', *The Lancet*, vol. 377, no. 9763, 2011, pp. 429–437.

³⁰⁶ Citizens of Brunei Darussalam have access to wide-ranging healthcare services for just B\$1. For children under 12 years old, healthcare is free. For others, a nominal fee is charged, see 'Key Information on Brunei Darussalam', <https://web.archive.org/web/20110403054603/http://bruneidirecthys.net/about_brunei>, accessed 19 December 2022.

majority of the population.³⁰⁷ Since 2014, Indonesia has had a national health insurance scheme (Jaminan Kesehatan Nasional) that covers 83 per cent of its population.³⁰⁸ Research also suggests that healthcare migration is increasing in the region among HIV-positive people, particularly to Thailand. One explanation for this trend is that the Thai authorities began to scale up pre-exposure prophylaxis (PrEP) in 2018 in order to make it nationally available to people at high risk of HIV infection.³⁰⁹ A 2018 report found that access to gender-appropriate healthcare – including HIV treatment – and perceived lower rates of homophobia and transphobia in Thailand were important drivers of migration for some people.³¹⁰

However, it should be noted that **restrictions on migrants accessing national healthcare systems in their countries of destination are common**, and many migrant workers (documented and undocumented), refugees and asylum seekers have no access to state healthcare systems. Low-income migrants are often subject to restrictive healthcare policies and complex barriers in accessing care,³¹¹ which suggests that for these groups healthcare is more of a barrier to migration than a facilitator of interregional movement.

Social aspirations

Child and family migrants can also be driven by a desire to improve their socioeconomic status, along with a desire for independence and self-sufficiency.³¹² Personal aspirations or even a “*desire to get rich quickly*” may influence the decision to migrate, with anecdotal migration success stories contributing to individual decision-making.³¹³ Social aspirations are likely to be a significant driver particularly among youth. For instance, it has been found that in Cambodia, poverty is becoming less of a driver compared to a combination of factors, such as “*the prospect of higher income generation opportunities, better connectivity, mobility, and youth’s overall aspiration to live a life outside of their villages*.”³¹⁴ Similarly, a 2007 study on adolescent migrants in the Mekong Subregion found that one strong migration driver, even then, was the “*freedom to explore and choose new lifestyles*.”³¹⁵ Social aspirations are reported to be underpinned by the rise of a ‘consumer culture’ in the region, which has been found to influence migration among youth in the Philippines,³¹⁶ Lao PDR³¹⁷ and among youth migrating to Thailand, particularly from Lao farming communities.³¹⁸

³⁰⁷ Khoon, Chan Chee, ‘Universal Health Care? (Un)documented Migrants in Southeast Asia’, *Health and Human Rights Journal*, 5 November 2015, <www.hhrjournal.org/2015/11/universal-health-care-undocumented-migrants-in-southeast-asia>, accessed 19 December 2022.

³⁰⁸ Prabhakaran, S., et al., *Financial Sustainability of Indonesia’s Jaminan Kesehatan Nasional: Performance, prospects and policy options*, Palladium Health Policy Plus, Washington, D.C., and Tim Nasional Percepatan Penanggulangan, Jakarta, 2019, p. 39. <www.healthpolicyplus.com/ns/pubs/11317-11576_JKNFinancialSustainability.pdf>.

³⁰⁹ Avert, ‘HIV and AIDS in Thailand’, <www.avert.org>, accessed 30 March 2021.

³¹⁰ Harkins, Benjamin., ‘*Thailand Migration Report 2019*’, United Nations Thematic Working Group on Migration in Thailand, Bangkok, Thailand, 2019, p. 47.

³¹¹ World Health Organization South-East Asia, *Health of Refugees and Migrants: Regional situation analysis, practices, experiences, lessons learned and ways forward*, WHO, 2018, p. 8, <www.who.int/docs/default-source/documents/publications/health-of-refugees-and-migrants-searo-2018.pdf?sfvrsn=b7c1ad1f_1>, accessed 19 December 2022.

³¹² Capaldi, Mark P., ‘Rethinking Independent Child Migration in Thailand: Victims of exploitation or competent agents?’, *Journal of Population and Social Studies*, vol. 23, no. 1, January 2015, pp. 21–22.

³¹³ Seng, ‘Unseen: Undocumented Cambodian migrant workers in Thailand’, ch. 7 in *South-east Asian Migration, People on the Move in Search of Work, Refuge, and Belonging*, Sussex Academic Press, UK, 2015, p. 65.

³¹⁴ World Food Programme, *Rural Vulnerability and Migration in Cambodia: Trends, drivers and impacts – a descriptive analysis*, WFP Cambodia, November 2018, p. 1.

³¹⁵ National Maternal and Child Health Centre, Ministry of Health; ‘Adolescent Migrants in the Greater Mekong Sub-Region: Are they equipped to protect themselves against sexual and reproductive health risks?’, 2007, Referenced in Lao People’s Revolutionary Youth Union and United Nations Population Fund, *Adolescent and Youth Situation Analysis Lao People’s Democratic Republic: Investing in young people is investing in the future*, UNFPA, Lao PDR, 2014, p. 3.

³¹⁶ International Organization for Migration, et al., *Country Migration Report: The Philippines 2013*, IOM, Makati and Quezon Cities, Philippines, 2013, p. 23.

³¹⁷ Crispin and Thompstone, *The Commercial Sexual Exploitation of Children in Lao PDR*, p. 14.

³¹⁸ West, Andy, *Children on the Move in South-East Asia: Why child protection systems are needed*, Save the Children UK, London, 2008, p. 7.



Children help off load supplies from a boat for a grocery store in slum settlement on water in the state of Sabah
© UNICEF/UN0248129/Shehzad Noorani



A boy sits in front of military graffiti in a temporary classroom at the Baan Mai Nai Soi refugee camp in Mae Hong Son Province near the Myanmar border. © UNICEF/UNI45824/Robert Few

3 Protection risks faced by children affected by migration

Key points

- Children are exposed to multiple protection risks across all stages of the migration journey. Due to their migration status, they face challenges accessing child protection and other essential services within and between the places of their migration.
 - Migrant children experience particular challenges in having their births registered as a result of discriminatory or restrictive laws and a range of practical barriers, and this places children at particular risk of statelessness.
 - Migrant children, particularly those who are migrating irregularly, who lack documentation or are stateless, are vulnerable to trafficking and are exploited in a range of different industries and situations in ASEAN Member States.
 - Migrant children often work in informal sectors that are poorly regulated. This, along with their irregular status, places them at a higher risk of being engaged in exploitative or hazardous labour.
 - Child migrants, particularly in ASEAN 'destination countries', continue to face a real risk of detention on account of their irregular status despite a number of important policy commitments made by governments in the region in recent years. Children in immigration detention lack safeguards, and poor conditions contribute to a range of protection risks and harms.
 - Deportations of children occur in ASEAN Member States without assessment of the international protection needs of deportees, thus providing insufficient protection against non-refoulement (the return of refugees to any country or territory where they are likely to face persecution).
 - Family separation is another potential harm to children, and this may occur prior to migration, during migration, post-migration or due to remaining behind when parents or caregivers migrate. However, children left behind by migrating parents experience mixed impacts, both positive and negative, depending on their caregiving situation and other factors, such as the presence of a migration culture in their communities.
 - Child migrants, particularly those who are unaccompanied, stateless or undocumented, are particularly vulnerable to violence throughout the migratory process, including as a result of xenophobic attitudes in host communities.
-



A UNICEF staff member interviews a mother and her two young children, ages 3 years and 6 months, at their makeshift home in Yangon, Myanmar. © UNICEF/UN0645263/Nyan Zay Htet

While all children affected by migration are exposed to a range of protection risks at all stages of the migration journey, children who are undocumented face particular risks and challenges. As noted in other sections of this report, many children and families in the ASEAN region migrate irregularly due to legal restrictions that prohibit regular migration³²⁰ or in order to avoid inefficient, costly and slow immigration processes.³²¹ This lack of legal status exposes children to a host of serious protection risks during their journey and upon arrival in destination countries. Children may seek out brokers or smugglers to facilitate clandestine journeys or to help them cross borders irregularly. These relationships have the potential to become exploitative and children are vulnerable to becoming victims of trafficking *en route*. The smuggling of adults and children in the region has been described as “*a symptom, not a cause of irregular migration*” as “*smugglers act as enablers of migration where government systems fail to manage migration flows in a fair and effective way*.”³²² For many children and families, particularly (but not exclusively) asylum seekers and refugees, the risks associated with clandestine journeys are outweighed by the protection risks at home. Other risks associated with irregular migration include violence, threats and excessive administrative fines at the border, sexual exploitation and abuse and kidnap.³²³ Children also face risks of physical harm by traversing unsafe terrain, while those who travel by sea face serious risks of drowning, extreme dehydration or disease.³²⁴ Upon arrival in destination countries, children continue to face a host of protection risks, owing largely to their ‘irregular’ status, including exposure to arrest, detention and deportation; trafficking and exploitation; and family separation due to the risk of arrest and detention of parents/caregivers.³²⁵ Children without legal status also face challenges accessing protection and other basic services.

³²⁰ *Thailand Migration Report 2019*; Schloenhardt, Andreas, ‘Irregular Migration and Smuggling of Young Women and Girls in South-East Asia and the Pacific: A review of existing evidence’, in *Supporting Brighter Futures*, p. 101.

³²¹ *Ibid.*

³²² *Ibid.*

³²³ International Organization for Migration, *Viet Nam Migration Profile 2016*, IOM Viet Nam, Ha Noi, 2017, p. xii; Carden, R., *Smuggling of Female Migrant Workers from Myanmar to Thailand*, Faculty of Political Science, Chulalongkorn University, Bangkok, 2014.

³²⁴ See commentary on Rohingya at sea in section 2.4.5, ‘Deportation, pushbacks and refoulement’.

³²⁵ It should be noted that children with *regular* migration status are also vulnerable to experiencing the protection risks mentioned in this section.

Business practices can contribute to migrant children and families being undocumented, placing them at heightened risk of exploitation and abuse and leaving them unable to access essential services. Workers in Thailand, for example, are often employed in long supply chains through a series of subcontractors. A business along the supply chain is usually responsible for arranging the workers' documentation and for updating the documentation every time a worker moves jobs, which may happen often for seasonal workers, such as those in the construction or palm oil industries. Businesses may knowingly (to cut costs and time) or unknowingly (due to lack of awareness of national laws and regulations) fail to prepare or renew a migrant's documentation, pushing the (child) migrant and their dependents into irregular migration and cutting them off from essential services which are only available to regular migrants.³²⁶

3.1 Lack of documentation: Access to birth registration and statelessness

Lack of documentation is both a cause and consequence of irregular migration and displacement, as is statelessness. Migrant children are at particular risk of not having their births registered, which can make them vulnerable to a range of protection risks, including smuggling, trafficking and exploitation; limited access to services, such as health, education and social services; and an inability to access protective laws or measures that apply to children, for instance, laws prohibiting child labour or marriage or policies that aim to keep children out of immigration detention or that provide special protections within legal processes. Birth registration can also help to prevent statelessness by providing a formal legal record of where a child was born and who her or his parents are. As such, it serves as a key piece of evidence for a child's nationality claim.

Migrant children may experience particular challenges having their births registered for a range of reasons. This can be due to discriminatory laws, policies or practices. For example, some groups of irregular migrants, in particular children of Vietnamese origin, appear to be at risk of not having their births registered in Cambodia even though birth registration in the country is compulsory and free.³²⁷ The failure to allow registration in Cambodia appears to be linked to a denial of nationality and results in statelessness among children of Vietnamese origin, leaving them to "live in poor and segregated conditions without access to identity documents" and vulnerable to trafficking and exploitation.³²⁸ In Malaysia, access to birth registration for children of migrants is restricted by immigration laws which provide that certain categories of migrants are not permitted to marry or bear children while in the country.³²⁹

In Myanmar, discriminatory laws and policies have excluded certain ethnic groups from having their births registered, rendering these groups vulnerable to statelessness, trafficking and exploitation. Birth certificates have not been issued to Rohingya children since the 1990s. In the areas in which the Rohingya reside in north Rakhine State, administrative barriers, local orders and 'hidden policies' have delayed or altogether prevented the registration of marriages and births.³³⁰ Permissions to marry are only required for Rohingya populations and delays and obstacles in obtaining marriage permission prevent parents from registering children on household lists. Children born out of wedlock cannot be registered at all.³³¹ In addition, it has been reported that birth certificates issued in Thailand are only recognized by Myanmar if they are notarized by the Myanmar embassy, creating barriers for returning migrant families

³²⁶ Online key informant interview, focal point from NGO in Thailand [name of NGO withheld to protect anonymity], 25 May 2022; *We Wanted Workers, But Human Beings Came*, p. 30; Aplan Kara and Rosalie Lord, *Malaysia Case Study: A deep-dive examination of child labour and other protection risks faced by migrant children living on palm oil plantations in Sabah*, UNICEF and Coram International, 2023.

³²⁷ In accordance with Cambodia Sub-Decree on Civil Status No. 103 (2000). See Committee on the Rights of the Child, Concluding observations: Cambodia CRC/C/KHM/CO/2-3, 3 August 2011, para. 36.

³²⁸ *Ibid.*, para. 79.

³²⁹ Loganathan, Tharani, et al., 'Undocumented: An examination of legal identity and education provision in Malaysia', *Plos One*, vol. 17, no. 1, 2nd February 2022.

³³⁰ Situation of Human Rights of Rohingya Muslims and Other Minorities in Myanmar: Report of the United Nations High Commissioner for Human Rights, A/HRC/32/18, 29 June 2016, para. 31.

³³¹ *Ibid.*

seeking to have their children's births registered.³³² Living without identity documents in Myanmar has created profound challenges, particularly for Rohingya children, including protracted statelessness (see below), the inability to enjoy freedom of movement and to access services, and vulnerability to arbitrary fines, arrest and detention (particularly for those living in border areas of the country where checkpoints and immigration checks are prevalent).³³³

Even where laws relating to birth registration are inclusive, practical challenges remain for migrant children. The United Nations Committee on the Rights of the Child (CRC Committee) and the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW Committee) have noted various obstacles faced by migrants in concluding observations to the reports of several ASEAN Member States, including lack of information, bureaucratic obstacles, language barriers and financial barriers (even where birth registration is free, States sometimes impose penalties for late registration, which can fall more heavily on migrant families who may need more time to understand and complete administrative processes).³³⁴ Research carried out in Sabah State, Malaysia, where there are a large number of migrants from Indonesia and the Philippines, found that migrants face challenges registering the birth of their children due to a lack of knowledge about the process, giving birth outside hospitals (given the high cost to non-Malaysian nationals) and a fear of being reported to immigration officials if they are residing in Malaysia irregularly.³³⁵ As a result, there are high numbers of undocumented children (without birth certificates) in the province (though there are no official figures available).³³⁶

As noted above, **child migrants are at particular risk of being stateless through factors such as the limiting of access to birth registration for migrant children in either countries of origin or destination and restrictive or discriminatory citizenship laws.**³³⁷ Being undocumented is not the same as being stateless; however, lack of birth registration and statelessness are closely connected. Stateless children and families may face challenges in obtaining birth certificates and other forms of documentation even if they are entitled to them. Conversely, lack of birth registration can complicate citizenship claims, as stateless parents may be unable to provide proof of the full circumstances of the birth of their children, or to trace midwives or family members to support their claims.³³⁸ Statelessness can have profoundly negative impacts on children throughout the course of their lives. Stateless persons face challenges accessing public schools and health centres; opening bank accounts; marrying legally; participating politically; and enjoying freedom of movement.³³⁹ If a child is not granted citizenship, this can have a lifelong impact, entrenching lifelong poverty and deprivation by restricting their movement and causing exclusion from formal labour markets and social protection schemes.³⁴⁰

³³² Ibid.

³³³ Equal Rights Trust, 'Equal in name only: The human rights of stateless Rohingya in Thailand', 2014.

³³⁴ Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Concluding observations on the initial report of Indonesia, CMW/C/IDN/CO/1, para. 40; Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Concluding observations on the second periodic report of the Philippines, United Nations, CMW/C/PHL/CO/2, 2 May 2014, para. 34.

³³⁵ Allerton, Catherine, 'Statelessness and the Lives of the Children of Migrants in Sabah, East Malaysia', *Tilburg Law Review*, vol. 19, nos. 1–2, 2014, pp. 26–32.

³³⁶ United Nations Children's Fund, *Back to School for Undocumented Children in Sabah*, UNICEF Malaysia, 2012.

³³⁷ *Asia-Pacific Migration Report 2020*, p. 48.

³³⁸ DHRRA Malaysia, 2019, in UNICEF Malaysia, *Situation Analysis of Women and Children in Malaysia*, 2020, p. 80.

³³⁹ UNHCR, *I Am Here, I Belong: The urgent need to address childhood statelessness*, UNHCR, 2015, p. 19.

³⁴⁰ Ibid.

3.2 Child trafficking

A proportion of internal and cross-border movements among children in Southeast Asia involves human trafficking, though data are limited. Most trafficking is estimated to occur *within the Southeast Asian region*: According to the United Nations Office on Drugs and Crime (UNODC), 88 per cent of trafficking in Southeast Asia and the Pacific is intraregional/domestic (though 24 per cent was to Eastern and South-Eastern Europe and 18 per cent was to the Middle East).³⁴¹ Table 2 below summarizes the number of reported child trafficking victims according to the most recent available administrative data in Cambodia, Indonesia, Lao PDR, the Philippines, Thailand and Viet Nam.³⁴² However, these data are likely to represent only the very tip of the iceberg in terms of the trafficking of children, as most cases of trafficking go undetected.

Table 2: Reported cases of child trafficking victims in ASEAN Member States

Number of reported trafficking cases involving child victims	
Cambodia	47 (January 2020 – June 2020).
Indonesia	404 (January 2021 – December 2021).
Lao PDR	56 (January 2020 – September 2021).
Philippines	312 (2020 and 2021).
Thailand	201 (2020 and 2021).
Viet Nam	46 (December 2019 – November 2021).

Source: Administrative data provided to authors. See section 4.6 for detailed sources of data.

Estimates and other studies have placed the number of child trafficking victims much higher. According to IOM, roughly 200,000–225,000 women and children are trafficked each year from Southeast Asia. A study carried out in Viet Nam in 2019 found that the prevalence of child trafficking may be much higher than official estimates suggest, with an estimated 5.6 per cent of children in Viet Nam having experienced coercion, violence or exploitation in relation to independent migration. The majority of cases (92.3 per cent) were identified in the context of internal migration; overall it was estimated that 0.4 per cent, or 1 in every 250 children in Viet Nam, may have experiences indicative of trafficking in the context of cross-border migration.³⁴³

Children are trafficked for diverse reasons and in varied contexts across ASEAN Member States, with exploitation occurring in a range of different industries and situations. The data and literature on child trafficking in the ASEAN region focus on cases connected to sexual exploitation – a profoundly harmful form of exploitation that accounts for the majority of detected cases.³⁴⁴ However, it is likely that other forms of trafficking which may be more prevalent (e.g., trafficking for the purposes of labour exploitation) have been more ‘hidden’, given that they are unlikely to be detected and result in reported cases (it is noted that many cases of sexual exploitation are also unlikely to be detected/reported). Human trafficking in Thailand (at least in terms of identified cases) is often linked to the sex industry, with

³⁴¹ United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons*, United Nations, New York, 2020, p. 152.

³⁴² See section 5.6.3 below for a detailed summary of administrative data sources on trafficking.

³⁴³ Apland and Yarrow, *Casting Light in the Shadows*.

³⁴⁴ United Nations office of Drugs and Crime, *Global Report on Trafficking in Persons*, United Nations, New York, 2020, p. 151. In 2018, trafficking for sexual exploitation accounted for 64 per cent of reported cases.

trafficking victims primarily from different regions within Thailand and other Southeast Asian countries, but also from Sri Lanka, the Russian Federation, Uzbekistan and some African countries.³⁴⁵ Traffickers often use Thailand as a transit country for victims from China, Democratic People's Republic of Korea, Viet Nam, Bangladesh, India and Myanmar, who are subjected to sex trafficking and forced labour in countries such as Malaysia, Indonesia, Singapore, the Russian Federation, the Republic of Korea, the United States of America and countries in Western Europe.³⁴⁶ Children who have been trafficked into Thailand have been exploited in brothels, massage parlours, bars, hotels and private residences. In many cases, young Thai girls and boys are exploited and induced to perform sex acts online, sometimes through blackmailing victims with explicit images.³⁴⁷

Along with Thailand, cases of child trafficking for sexual exploitation have been reported in other ASEAN Member States. For example, in Cambodia, the sex industry has undergone unprecedented growth over the past few decades, reportedly to meet the growing demand from Asian tourists and migrant and expatriate workers for sexual services from children, with particular vulnerabilities notable within Special Economic Zones, such as Poipet.³⁴⁸ Children are internally trafficked within Cambodia itself but also from Viet Nam and other countries in the region.³⁴⁹ In Indonesia, sex traffickers often use debt or job offers to coerce and deceive girls into commercial sex, specifically in Batam and Jakarta, as well as close to mining operations in Maluku, Papua and Jambi provinces. Child sex tourism is particularly prevalent in the Riau Islands bordering Singapore as well as in Bali.³⁵⁰ In Viet Nam, child trafficking victims are often trafficked to brothels in China, Cambodia, Lao PDR and elsewhere in Asia.³⁵¹ Traffickers tend to be parents, relatives or members of criminal networks. Children with low socioeconomic status as well as street children and children with disabilities are thought to be particularly vulnerable.³⁵²

Children are trafficked in ASEAN for exploitation in other ways, including for labour. In Cambodia, according to the United States Department of State,³⁵³ 66 victims of "non-sexual trafficking" were identified in 2019 involving 20 children. Children were exploited in various ways, including through domestic servitude, forced labour on fishing boats, illegal logging, in karaoke bars and on cassava plantations.³⁵⁴ In Indonesia, identified trafficking victims are also forced to engage in the sale and transportation of illicit drugs or to work in fishing, construction or on palm oil and other plantations as well as mining and manufacturing.³⁵⁵ A recent report highlighted the trafficking of young women and girls for domestic servitude in the region, noting that it is often unregulated or poorly regulated and occurs in private spaces and that authorities may not consider this a form of trafficking, as domestic workers 'consent' to their migration, including through signing contracts and other agreements.³⁵⁶

³⁴⁵ United States Department of State, '2020 Trafficking in Persons Report', 2020, <<https://www.state.gov/reports/2020-trafficking-in-persons-report/thailand/>>, accessed 19 December 2022.

³⁴⁶ Ibid.

³⁴⁷ Ibid.

³⁴⁸ ECPAT International, *Regional Overview: Sexual exploitation of children in Southeast Asia*, 2017, p. 45.

³⁴⁹ International Organization for Migration, *Combatting Trafficking in South-East Asia*, 2020.

³⁵⁰ Ibid.

³⁵¹ United States Department of State, *2020 Trafficking in Persons Report: Vietnam*, <www.state.gov/reports/2020-trafficking-in-persons-report/VietNam>

³⁵² Ibid.

³⁵³ United States Department of State, *2020 Trafficking in Persons Report: Cambodia*, <www.state.gov/reports/2020-trafficking-in-persons-report/cambodia>, accessed on 19 December 2022.

³⁵⁴ Ibid.

³⁵⁵ United States Department of State, *2020 Trafficking in Persons Report: Indonesia*, <www.state.gov/reports/2020-trafficking-in-persons-report/indonesia>, accessed 19 December 2022.

³⁵⁶ *Supporting Brighter Futures*.

Another form of trafficking occurs in the context of child marriage. There are very limited data on the scale of marriage trafficking,³⁵⁷ largely because family members often work alongside marriage agencies and brokers to agree on a marriage for their child for financial gain, driving the problem underground.³⁵⁸ In addition, children who are trafficked frequently do not have a lawful migration status and as a result, are missing from official immigration records. This leaves girls particularly vulnerable to abuse and exploitation. Indeed, there are many reports of children facing sexual, physical and psychological violence at the hands of their new families but being unable to leave or return home.³⁵⁹ Trafficking for child marriage is considered to be a matter of concern for displaced Rohingya communities. In many Rohingya refugee communities, such as in Cox's Bazar, Bangladesh, high numbers of orphans and single girls means refugee camps are a hotspot for trafficking.³⁶⁰ Families, too, are often driven to agreeing to a marriage for their daughter(s) in the hope that they will have a better life and greater economic opportunities outside the camps.³⁶¹ For many religious and community leaders, child marriage is seen as an obvious and acceptable response to their protracted displacement.³⁶² Marriage trafficking is also facilitated by already established migration routes, such as boat travel between Bangladesh and Thailand, Indonesia and Malaysia, that help to conceal the trafficking of children.³⁶³

Businesses operating within Special Economic Zones, which offer more lenient regulatory environments in order to attract foreign investment, are a particular cause for concern. These zones include the 'casino towns' along the borders of Thailand, Lao PDR, Cambodia and, more recently, Myanmar, which have been described as "*conduits of human trafficking on a massive scale*."³⁶⁴ There are reports of individuals, including children as young as 13, being recruited under false pretences into situations of forced labour or debt bondage for businesses operating online scams from within the Special Economic Zones, which proliferated during the COVID-19 pandemic.³⁶⁵ Children (as well as women) are also reported to be trafficked for sexual purposes, for example, for the purposes of prostitution operated by businesses within the Special Economic Zones.³⁶⁶ The victims are reported to have their passports and other identity documentation confiscated and to experience physical and sexual abuse.³⁶⁷ As part of the research undertaken in Lao PDR on the Lao-China railways development project, several respondents gave examples of children being trafficked for economic purposes to Special Economic Zones which have flourished due to the increased number of construction workers transiting through these areas (see highlight 1, below). There is also a risk of children being trafficked for sexual purposes to communities surrounding large-scale business development projects, which are populated by workers. Authorities reportedly exert minimal authority in these zones, turning either a blind eye to the issue or being powerless to take on the private security firms operating within the zones, some of which are run by businesses established in other countries such as China.³⁶⁸ Some reports also refer to collusion or corruption between local law enforcement and gangs operating businesses in the Special Economic Zones.³⁶⁹

³⁵⁷ The ASEAN Post Team, 'ASEAN's Human Trafficking Plague', 16 December 2019, <<https://theaseanpost.com/article/aseans-human-trafficking-plague>>, accessed 12 December 2022.

³⁵⁸ Remón, Inés Crosas, 'Migrant Brides in the Matchmaking Industry: Blurring the binaries', United Nations University, 18 May 2016, <<https://unu.edu/publications/articles/migrant-brides-in-the-matchmaking-industry-blurring-the-binaries.html>> accessed 12 December 2022.

³⁵⁹ Robinson, Courtland, Casey Branchini et al, *Estimating Trafficking of Myanmar Women for Forced Marriage and Childbearing in China*, Johns Hopkins Bloomberg School of Public Health and Kachin Women's Association Thailand, Baltimore, USA, December 2018, p. 9.

³⁶⁰ *Ibid.*, p. 22.

³⁶¹ Rohingya in Bangladesh are not allowed to seek employment, and living conditions in the camps are congested and difficult according to: United Nations Children's Fund, *Lives in Limbo: No end in sight to the threats facing Rohingya children*, New York, 2018, <www.unicef.org/reports/lives-limbo>.

³⁶² Penang Stop Human Trafficking Campaign (PSHTC), *Child Marriage in the Rohingya Community in Penang*, December 2020, p. 7.

³⁶³ Beech, Hannah, 'For Young Rohingya Brides, Marriage Means a Perilous, Deadly Crossing', *New York Times*, 17 October 2020, <<https://www.nytimes.com/2020/10/17/world/asia/rohingya-child-brides.html>>, accessed 12 December 2022.

³⁶⁴ Kennedy, Lindsey, and Nathan Paul Southern, 'Inside Southeast Asia's Casino Scam Archipelago – Special Economic Zones and self-governing Statelets across the Mekong Region have become conduits for human trafficking on a massive scale', *The Diplomat*, 2 August 2022, <www.thediplomat.com/2022/08/inside-southeast-asias-casino-scam-archipelago>, accessed 13 December 2022.

³⁶⁵ *Ibid.*

³⁶⁶ *Ibid.*

³⁶⁷ *Ibid.*

³⁶⁸ *Ibid.*

³⁶⁹ *Ibid.*; Bonanno, G., 'Special Economic Zones: Areas of social exclusion', Torino World Affairs Institute, RISE series No. 29, November 2021.

Highlight 1: Protection risks for child and family migration associated with large-scale construction projects

Unpublished research carried out in 2022 in Lao PDR on children affected by migration associated with the Lao-China railway construction sites found that they were exposed to a range of risks, including exploitation in child labour and child trafficking. The research, which was qualitative, involved a series of in-depth interviews with 44 government, NGO and United Nations stakeholders working closely with children at the national level and also at the provincial, district and village levels in Vientiane province and in Luang Namtha, Luang Prabang.

The research found that the economic opportunities offered by the construction of the railway resulted in families with children migrating internally within Lao PDR in search of employment. While adult migrant workers were mostly employed as day labourers on construction sites, many of their children found work in informal positions supporting industries and businesses, particularly in hospitality and domestic work. Findings suggest that small numbers of children, including children of migrant workers, were also able to circumvent controls in place to prevent child labour and find work as day labourers themselves.

Children migrating alone were typically from low-income families in search of employment to support their families back home. The evidence suggests that many of these children were from ethnic minority backgrounds which are disproportionately likely to experience poverty such as the Khmu, Hmong and Phounoy.

Protection risks

Child migration connected to the railway construction was found to have resulted in a range of protection risks. Children, including internal migrant children, were particularly vulnerable to being engaged in work which is likely to be considered harmful to their health and well-being, such as carrying and breaking rocks. While villages closest to the railway were more likely to have protections in place to prevent child labour within communities (i.e., family ties, access to education and support services), children who had migrated from other provinces did not appear to be similarly protected.

Research participants also reported instances of girls from rural areas being married to Chinese men working on the railway and trafficked across the border to China, where some may go on to suffer other forms of abuse. Children from these rural communities often lack official documentation in the province in which they are working, such as a record in the family register book, making them 'invisible' to officials.

Key informant: *"Some victims were misled that they would have a job, but then they were prostituted. Some were married with Chinese men, but they eventually were traded to others.... Most of the victims were 'illegal migrants'. Some victims were forced by their parents to marry with a Chinese man and smuggled out to China without any documentation."*

Participants reported that some internal migrant families struggled to access basic services on their arrival in new communities near to the railway:

Key Informant: *"...some families migrated with their children, especially in the north. When they relocated to work in Chinese companies...their children aged 8–10 years went with them. Their children do not have the opportunity to go to school and do not [have] access to any services."*



Two sex workers sit holding some condoms at a prostitution area at Pisangan near railway track in Jatinegara, East Jakarta, Indonesia on May 20, 2010. © UNICEF/UNI93654/Edy Purnomo

3.3 Child labour and economic exploitation

Child migrants work across a range of industries, often outside formal labour registration systems, making it challenging to ascertain the true scale of the phenomenon. However, a number of country-level studies and surveys suggest a high incidence of child labour among internal and international child migrant populations, particularly in Viet Nam, Myanmar and Thailand. Children may also be exposed to harmful child labour as a result of child trafficking. The sectors in which children work tend to vary according to the country context as well as the child's gender, with boys more likely to work in the construction, agriculture or fishing industries, and women and girls more likely to undertake domestic or factory work, or work in manufacturing or fish processing. Underage (migrant) child labour is found predominantly in the informal sector and in industries with large numbers of contractors and towards the end of supply chains where there is less regulation and weaker enforcement of laws, regulations and inspection protocols.³⁷⁰ These industries include electronics, textiles, agriculture and work in cotton fields where there is less transparency as "some functions are taken at home," making the identification of child labourers in such situations difficult.³⁷¹ This, along with the irregular status of migrant children, increases their risk of being engaged in exploitative or hazardous labour and exposes them to a number of serious protection risks.³⁷² Children affected by migration in ASEAN Member States are also exposed to forced labour, which has been defined as a form of slavery or practice similar to slavery under the ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182 of 2000).³⁷³

³⁷⁰ Individual interview, Human Resources Manager, construction company in Thailand, 27 June 2022; Online key informant interview, international agency in ASEAN, 30 November 2021; Smith, A., and C. Hamilton, *Child Trafficking and Exploitation in the Context of Migration in Viet Nam: Drivers beyond poverty and the role of businesses in driving and providing protection against exploitation amongst migrant children*, United Nations Children's Fund and Coram International, 2023.

³⁷¹ Online key informant interview, NGO, 9 November 2021.

³⁷² CRC Committee, Consideration of reports submitted by States parties under article 44 of the Convention, Committee on the Rights of the Child Fifty-ninth session 16 January – 3 February 2012, CRC/C/THA/CO/3–4, 17 February 2012, para. 74.

³⁷³ International Labour Organisation, Convention No. 182: Convention for the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, ILO, Geneva 1999, Article 3.

Table 3: Documented child labour dynamics across ASEAN Member States



³⁷⁴ Ibid., pp. 309–310.

³⁷⁵ United States Department of State, et al., 'Cambodia Business Advisory on High-Risk Investments and Interactions', 10 November 2021.

³⁷⁶ United Nations Population Fund and Lao People's Revolutionary Youth Union, *Adolescent and Youth Situation Analysis Lao People's Democratic Republic, Investing in young people is investing in the future*, Vientiane, 2014, pp. 42–43.

³⁷⁷ Ibid.

³⁷⁸ *Palm Oil and Children in Indonesia: Exploring the Sector's Impact on Children's Rights*, Jakarta, UNICEF Indonesia, 2016 p. 12; Aplan Kara and Rosalie Lord, *Malaysia Case Study: A deep-dive examination of child labour and other protection risks faced by migrant children living on palm oil plantations in Sabah*, UNICEF and Coram International, 2023.

³⁷⁹ Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Concluding observations on the initial report of Indonesia, United Nations, CMW/C/IDN/CO/1, 9 October 2017, para. 32.

³⁸⁰ Ibid.

³⁸¹ United States Department of Labour, '2021 Findings on Worst Forms of Child Labour', Bureau of International Labor Affairs, p. 11.

³⁸² *Building Futures in Thailand: Support to children living in construction site camps*, p. 42.

³⁸³ United States Department of Labour, 2021 Findings on Worst Forms of Child Labour, Bureau of International Labor Affairs, pp. 1182–1183.

³⁸⁴ West, A., *Children on the Move in South-east Asia: Why child protection systems are needed*, Save the Children, 2008, p. 9.

³⁸⁵ Srakaew, S., et al., *A Report on Migrant Children & Child Labourers in Thailand's Fishing and Seafood Processing Industry*, Labour Rights Promotion Network Foundation (LPN) and Terre des Hommes Germany, Bangkok, 2015, p. 45.

³⁸⁶ The Asia Foundation and International Labour Organization, *Migrant and Child Labor in Thailand's Shrimp and Other Seafood Supply Chain – Labor conditions and the decision to study or work, final report*, September 2015, p. 17.

³⁸⁷ Ibid. While evidence indicates that there has been a reduction in the number of children working in official seafood processing plants largely due to an increase in monitoring activities by labour inspectors, children continue to work in smaller informal processing plants, see *Assessment of Child Protection Services for Migrant Children in Thailand*, p. 42.

³⁸⁸ West, Andy, *Children on the Move in South-east Asia: Why child protection systems are needed*, Save the Children UK, 2008, p. 9.

³⁸⁹ *The Apparel and Footwear Sector and Children in Viet Nam*, p. 5.

³⁹⁰ Ibid.

³⁹¹ Aplan and Yarrow, *Casting Light in the Shadows*.

Some reports indicate that businesses, particularly small- and medium-sized businesses, exercised less due diligence and responsible conduct during the COVID-19 pandemic in order to address the sharp decline in demand from consumers and disruptions to supply chains amid the lockdown measures and economic downturn.³⁹² This resulted in families, particularly undocumented migrant families, experiencing increased job insecurity, food insecurity, poverty and reduced access to social protection, which, in turn, increased the risk of children affected by migration engaging in underage or hazardous work.³⁹³

Business employment policies and practices can indirectly contribute to labour and economic exploitation of children affected by migration. Businesses which do not provide adequate wages or support to working parents (for example, to enable them afford adequate childcare or so that their children can access education) drive migrant parents to taking their children with them to work, potentially exposing the child to hazardous conditions and/or eventually leading to the child undertaking underage or hazardous work themselves.³⁹⁴ The ways in which labour contracts are structured can also drive child labour even though it is not always recognised as such, such as the ‘piece-rate’ system on palm oil plantations in Indonesia and Malaysia.³⁹⁵ Other contextual factors intersect with businesses policies and practices to place children at heightened risk of economic exploitation. For instance, in Viet Nam, there was a growing demand for irregular migrant labour during the Covid-19 pandemic as businesses increasingly outsourced work to the informal sector due to a shortage of regular migrant workers.³⁹⁶

3.4 Arrest and detention

Children affected by migration, particularly in ASEAN destination countries, continue to face a real risk of arrest and detention on account of their irregular status despite a number of important policy commitments made by governments in the region in recent years.³⁹⁷ The laws and practices under which children are held in immigration detention are discussed in section 4.3. This section will focus on the risks and harms caused by detention in ASEAN Member States. Evidence of the detention of children on immigration grounds in Indonesia, Malaysia, Myanmar and Thailand is set out in Table 4. There are no publicly available data on immigration detention of children in Brunei Darussalam, Cambodia, Lao PDR, the Philippines,³⁹⁸ Singapore and Viet Nam.

³⁹² United Nations Children's Fund, *Child Labour and Responsible Business Conduct: A guidance note for action*, 2022, p. 12.

³⁹³ Ibid.

³⁹⁴ UNICEF, *Palm Oil and Children in Indonesia: Exploring the Sector's Impact on Children's Rights*, 2016, Jakarta, Indonesia, p. 6.

³⁹⁵ UNICEF, *Palm Oil and Children in Indonesia: Exploring the Sector's Impact on Children's Rights*, 2016, Jakarta, Indonesia, p. 12; Aplan, K., and Lord, R., *Malaysia Case Study: A deep-dive examination of child labour and other protection risks faced by migrant children living on palm oil plantations in Sabah*, UNICEF and Coram International, 2023.

³⁹⁶ Smith, A and Hamilton, C., *Child Trafficking and Exploitation in the Context of Migration in Viet Nam Drivers beyond poverty and the role of businesses in driving and providing protection against exploitation amongst migrant children*, UNICEF and Coram International, 2023.

³⁹⁷ Please note that laws, policies and bilateral agreements related to immigration detention and alternatives to detention are analysed in depth in the legal and policy review, presented in a separate report.

³⁹⁸ It is noted that, as a signatory to the Refugee Convention 1951, the Philippines does not detain refugees and asylum seekers on account of their asylum status (individuals will only be detained if they are found liable for a criminal or immigration offense).

Table 4: Detention of children on immigration grounds in Indonesia, Malaysia, Myanmar and Thailand

Number of children in detention on immigration grounds	
Indonesia	Figures from UNHCR's Global Strategy on Detention 2014–2019 indicate that the number of refugees and asylum seekers in detention decreased incrementally from a high of 1,284 persons to zero between 2013 and 2019. While Indonesia now exempts refugees and asylum seekers from immigration detention, they may still be detained if they are found to be working (which is prohibited in Indonesian law). To the knowledge of UNICEF in Indonesia, there are no children in detention. ³⁹⁹
Malaysia	The Home Ministry reported that there were 1,179 children detained in immigration detention centres as of 29 January 2023. ⁴⁰⁰ While a breakdown is not available, based on previous data (from October 2020), it was reported that over half of the children were detained without their guardians and the large majority of these unaccompanied children were of Myanmar nationality, with the others from Viet Nam, Indonesia, Cambodia, Thailand, the Philippines, China, Pakistan and Bangladesh. ⁴⁰¹ However, it is unclear whether these figures include children over the age of 12. The Immigration Department in Malaysia defines a 'child' as being a person under 12 years of age, ⁴⁰² in contrast to child protection legislation that defines a child as under 18. This has previously resulted in the exclusion of 12–17-year-olds from statistics relating to the detention of children for reasons of unlawful immigration.
Myanmar	<p>While Myanmar is not a destination country for cross-border migrants, Rohingya children will be detained if they are discovered by the authorities in any part of the country other than Rakhine State, in contravention of movement restriction orders,⁴⁰³ or by failing to produce the requisite documentation enabling them to travel within the country (which the Rohingya tend not to possess). As Rohingya children often lack identification documents, they face a challenge in proving their age, causing some to be placed in adult detention facilities.⁴⁰⁴</p> <p>A recent assessment of the juvenile justice system in Myanmar documented instances of children from Rakhine State who were intercepted by authorities in Myanmar during the course of being trafficked into Malaysia for the purposes of labour exploitation. Rather than recognizing the children as victims of trafficking, there are reports that the Myanmar police arrest and detain the children on account of a failure to produce the necessary identity cards.⁴⁰⁵</p>

³⁹⁹ Key informant interview, UNICEF Indonesia, 26 February 2021.

⁴⁰⁰ According to a written Parliamentary reply from the Malaysian Home Ministry, 3 November 2020; Pemberitahuan Pertanyaan Jawab Lisan Dewan Rakyat Mesyuarat Ke Tiga, Penggal Ke Tiga, Parlimen Keempat Belas, Soalan No: 45, <<https://pardocs.sinarproject.org/documents/2020-november-december-parliamentary-session/oral-questions-soalan-lisan/2020-11-03-parliamentary-replies/2020-11-03-par14p3m3-soalan-lisan-45.pdf/view>>; The Star 'Home Ministry: 756 children held at immigration detention centres nationwide as of Oct 26', Wednesday, 04 Nov 2020; Human Rights Watch, Press Release, 'Malaysia: End Abusive Immigration Detention, Release Children; Allow UN Refugee Agency Access to Detained Migrants', November 20, 2020.

⁴⁰¹ Pemberitahuan Pertanyaan Jawab Lisan Dewan Rakyat Mesyuarat Ke Tiga, Penggal Ke Tiga, Parlimen Keempat Belas, Soalan No: 45, <<https://pardocs.sinarproject.org/documents/2020-november-december-parliamentary-session/oral-questions-soalan-lisan/2020-11-03-parliamentary-replies/2020-11-03-par14p3m3-soalan-lisan-45.pdf/view>>, 'Home Ministry: 756 children held at immigration detention centres nationwide as of Oct 26', *The Star*, 4 November 2020; Human Rights Watch, 'Malaysia: End abusive immigration detention, release children, allow UN refugee agency access to detained migrants', Press release, 20 November 2020.

⁴⁰² Regulation 11 of the Immigration (Administration and Management of Immigration Depots) Regulations 2003.

⁴⁰³ Davy Deanna, *Analysis of Protection Frameworks, Referral Pathways and Service Availability for Myanmar Migrant Children*, UNICEF, Myanmar, 2019.

⁴⁰⁴ Ibid.

⁴⁰⁵ International Legal Foundation and United Nations Children's Fund, *Assessment of the Juvenile Justice System in Myanmar*, 2020, p. 19.

Number of children in detention on immigration grounds

Thailand

Thailand has been heralded for its progress in removing children from detention and implementing Alternatives to Detention (ATD) over the last two years, however, it appears that some children are still at risk of being placed in detention. In January 2019, seven Ministries of the Royal Thai Government⁴⁰⁶ co-signed a MOU on the Determination of Measures and Approaches Alternative to Detention of Children in Immigration Detention Centres (MOU ATD), which provides that foreign children⁴⁰⁷ should not be detained at Immigration Detention Centres except in “*necessary and unavoidable circumstances*,” as a measure of last resort and for the briefest period of time possible.⁴⁰⁸ Prior to the MOU, adults and children over the age of 10 (now 12) could be arrested, charged and prosecuted for an immigration offence related to their irregular presence, for which they would be fined or imprisoned, before being transferred to the immigration detention centre. Between October 2018 and September 2021, 259 children were reported to be released from immigration detention with many referred to community-based alternatives.⁴⁰⁹ However, it is not clear how many children, if any, remain detained for immigration purposes. According to a recent report, however, children continue to be arrested and detained for immigration offences, and the MOU ATD in Thailand appears to apply once a child is in detention, rather than preventing a child from being arrested and detained in the first place.⁴¹⁰

Children in government shelters are not permitted to leave the shelters and are still de facto detained despite not being held in a formal detention setting.⁴¹¹

⁴⁰⁶ Countersigning government agencies were: Royal Thai Police; Ministry of Social Development and Human Security; Permanent Secretary, Ministry of Foreign Affairs; Ministry of Interior; Ministry of Public Health; Ministry of Education; Ministry of Labour.

⁴⁰⁷ Article 3, Royal Thai Government, The Memorandum of Understanding on the Determination of Measures and Approaches Alternative to Detention of Children in Immigration Detention Centers B.E. 2562 of 2018.

⁴⁰⁸ Article 4.1, Royal Thai Government, Memorandum of Understanding on The Determination of Measures and Approaches Alternative to Detention of Children in Immigration Detention Centers B.E. 2562 of 2018.

⁴⁰⁹ UN Network on Migration, International Detention Coalition, Immigration Detention and Alternatives to Detention in the Asia-Pacific Region, *Alternatives to Detention Working Group of the UN Network on Migration*, 2022, p. 14.

⁴¹⁰ UN Network on Migration, International Detention Coalition, Immigration Detention and Alternatives to Detention in the Asia-Pacific Region, *Alternatives to Detention Working Group of the UN Network on Migration*, 2022, p. 22.

⁴¹¹ Ibid.



A toddler sits on her mother's lap during a check-up at a health facility in the Baan Mai Nai Soi refugee camp in Thailand's Mae Hong Son province, near the Myanmar border. © UNICEF/UNI45818/Robert Few

Immigration detention is in itself harmful to children. It is harmful to children's physical and mental health, has a negative impact on their development and exposes children to a heightened risk of exploitation and abuse.⁴¹² These harmful effects are recognized to occur regardless of the conditions of detention⁴¹³ or the period of time for which children are detained.⁴¹⁴ However, the lack of safeguards for children in detention along with unsuitable conditions in some States have exacerbated these harms. For instance, in Malaysia, there are 21 immigration centres in operation including three temporary immigration depots,⁴¹⁵ none of which have separate facilities for children, meaning children are held together with adults. Children affected by migration may also be held on remand at police stations for immigration reasons, in prisons if they have been sentenced under the Immigration Act, or in temporary detention centres.⁴¹⁶ Women and children under 12 years of age are housed separately from adult males and male children over 12, causing family separation.⁴¹⁷ There have been reports of boys as young as 7 years old being placed in the adult male facility and less recent reports of babies being separated from both of their parents in detention.⁴¹⁸ Age assessment and family reunification procedures in detention are reported to be insufficient,⁴¹⁹ with poor record-keeping exacerbating challenges related to family reunion.

The conditions in immigration detention centres in some States also cause significant harm to children. Conditions in Malaysian detention centres have been reported to be "*appalling*",⁴²⁰ with reports of physical punishment inflicted by officers against detainees.⁴²¹ The Child Rights Coalition Malaysia also noted in 2019 that children in detention suffer from poor physical and mental health and are exposed to abuse by adult detainees.⁴²² A report released in October 2020 following interviews with 43 Indonesian ex-detainees (including two children) revealed highly concerning conditions and treatment faced by detainees in two detention centres in Sabah, including reports of "*routine and systematic abuse*,

⁴¹² United Nations General Assembly, Global Study on Children Deprived of Liberty, Note by the Secretary-General, A/74/136, 11 July 2019, para. 60;

⁴¹³ *Ibid.*, para. 20.

⁴¹⁴ Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, CMW/C/GC/4-CRC/C/GC/23, 16 November 2017, para. 9.

⁴¹⁵ Information shared by immigration authorities.

⁴¹⁶ *Ibid.*

⁴¹⁷ Save the Children, *Unlocking Childhood: Current immigration detention practices and alternatives for child asylum seekers and refugees in Asia and the Pacific*, May 2017, p. 38.

⁴¹⁸ *Ibid.*

⁴¹⁹ *Ibid.*

⁴²⁰ *Ibid.*, p. 37.

⁴²¹ *Ibid.*

⁴²² *Status Report on Child Rights in Malaysia 2019*, p. 81.

child labour, obstruction of justice, widespread skin disease and appalling sanitation facilities."⁴²³ Deaths in immigration detention in Malaysia are concerning high, which is likely to be linked to the poor conditions. In 2022, 150 deaths were documented in detention, including the death of seven children.⁴²⁴ In April 2022, it was reported that six detainees, including two children, had died while attempting to cross a six-lane highway following riots and a mass breakout in a detention centre in the northern State of Kedah.⁴²⁵

The COVID-19 pandemic likely increased the risk of detention for children in Malaysia and exacerbated protection risks in Malaysia and other States. In Malaysia, there were reports of large-scale arrests of undocumented migrants, including children, couched as containment measures to stop the spread of COVID-19.⁴²⁶ Immigration operations have increased in frequency in 'Movement Control Order' areas brought in to curb the spread of the virus, with children among those arrested and detained.⁴²⁷ Numerous Rohingya were reported to have been detained during raids carried out during Ramadan in 2020,⁴²⁸ in addition to the unknown number of Rohingya (including women and children) who were arrested after disembarking from boats arriving during the first wave of the pandemic.⁴²⁹ The increase in immigration operations exacerbated the challenge of maintaining physical distancing measures in overcrowded detention facilities and placed children at heightened risk of contracting the virus.⁴³⁰ In Thailand, border closures in 2020 and 2021 prevented deportations from occurring, meaning that children and families, particularly those from Myanmar, were stuck in detention with no option for release or repatriation.⁴³¹

Detention is not only harmful in itself; it also creates fear and mistrust in authorities among migrants who lack documentation or legal status, resulting in other protection risks. On the one hand, the constant fear of arrest impacts negatively upon children's well-being and feelings of safety and security. On the other hand, children and their families may choose to enter or remain in unsafe or exploitative situations on account of the fear of arrest or, more broadly, a belief that they will not receive help from authorities on account of their migration status. For example, young people with experiences of trafficking interviewed for a report on Viet Nam were discouraged from seeking help due to a fear of immigration authorities.⁴³² This inadvertently increased the power the traffickers had over the young people and kept them stuck in situations of exploitation, while the perpetrators enjoyed immunity. A report on child marriage in the Rohingya community in Penang, Malaysia, also suggests that the constant threat of arrest and detention encourages some refugee parents to arrange marriages for their daughters, often under the age of 18, as a strategy for their protection.⁴³³

⁴²³ Ibid., although in a Parliamentary session, the Prime Minister's Department questioned the findings in the report and claimed that the "*allegations are completely untrue*," Dewan Rakyat, Lower House of Parliament, 2 November to 17 December 2020.

⁴²⁴ Malaysia Now, 'Government pressed to probe deaths of 150 foreigners in detention last year,' 23 February 2023, available at: <<https://www.malaysianow.com/news/2023/02/23/govt-pressed-to-probe-deaths-of-150-foreigners-in-detention-last-year>>

⁴²⁵ Strangio, Sebastian, 'Report Reveals Inhumane Conditions in Malaysia's Immigration Detention Centres', *The Diplomat*, 28 June 2022, <<https://thediplomat.com/2022/06/report-reveals-inhumane-conditions-in-malysias-immigration-detention-centers>>, accessed 30 January 2023.

⁴²⁶ United Nations Malaysia, Singapore and Brunei Darussalam, 'Use Alternatives to Detention in the Fight Against COVID-19', 2 May 2020, <<https://malaysia.un.org/index.php/en/98719-use-alternatives-detention-fight-against-covid-19>>; Hamid, A., et al., *Human Rights and Covid-19: What now for the Rohingya?*, 2020; Ahmed, K., and agencies, 'Malaysia Cites Covid-19 for rounding up hundreds of migrants', *The Guardian*, 2 May 2020, <www.theguardian.com/global-development/2020/may/02/malaysia-cites-covid-19-for-rounding-up-hundreds-of-migrants>.

⁴²⁷ *Status Report on Child Rights in Malaysia 2019*, p. 110; United Nations Children's Fund, *Avoiding a Child Welfare Crisis: Mitigating the impact of COVID-19 through social service workforce strengthening*, October 2020, p. 2.

⁴²⁸ Hamid, A., et al., *Human Rights and Covid-19: What now for the Rohingya?*, Institute of Statelessness and Inclusion, 2020.

⁴²⁹ Ibid.; *Status Report on Child Rights in Malaysia 2019*, p. 109.

⁴³⁰ Ibid., p. 111.

⁴³¹ Key informant interview, UNICEF Thailand, 11 February 2021.

⁴³² Aplan Kara and Elizabeth Yarrow, *Casting Light in the Shadows*, – Child and Youth Migration, Exploitation and Trafficking in Viet Nam', Coram International, 2019, p. 54.

⁴³³ Penang Stop Human Trafficking Campaign (PSHTC)/ASPIRE Penang Briefing Series, 'Child Marriage in the Rohingya Community', December 2020, p. 12.

3.5 Deportation and refoulement

States in ASEAN have been criticized for undertaking deportations without assessing the international protection needs of deportees, thus providing insufficient protection against non-refoulement. The fundamental principle of non-refoulement prohibits States from returning refugees to any country or territory where they are likely to face persecution. Originally codified in Article 33 of the Refugee Convention 1951,⁴³⁴ the principle has since been recognized as a principle of customary international law,⁴³⁵ requiring adherence to the principle by all States, even those who are not a party to the Convention. The CRC Committee and the Committee against Torture have both expressed concern in relation to cases in Cambodia⁴³⁶ and Thailand⁴³⁷, but the question of refoulement was most starkly played out in the context of Rohingya stranded at sea.

In 2015, in what is referred to as the “*Andaman Sea Crisis*”, 5,000 refugees and migrants from Myanmar and Bangladesh were left stranded by smugglers at sea with no access to food or water. At least 70 people, including children,⁴³⁸ perished from starvation, dehydration, disease and abuse.⁴³⁹ The crisis occurred after Thai officials discovered mass graves on the Thai-Myanmar border and ordered an investigation into smuggling and trafficking networks.⁴⁴⁰ Authorities from Thailand, Malaysia and Indonesia began to intercept and tow away boats, prompting smugglers to abandon vessels on the high seas.⁴⁴¹ On 19 May 2015, United Nations organizations released a joint statement urging ASEAN Member States to allow safe disembarkation of the boats, to cease “*push-backs*” and ensure “*strict accordance with the principle of non-refoulement*”.⁴⁴² On 20 May 2015, ministers from Indonesia and Malaysia agreed to stop push-backs and allow disembarkation on the condition that the international community take responsibility to resettle or repatriate the ‘irregular migrants’ within one year.⁴⁴³ Though the total number of children on board and the number of child deaths are unknown, children made up 55 per cent of the arrivals registered by UNHCR upon disembarkation in Indonesia.⁴⁴⁴

In events reminiscent of the 2015 crisis, **boats full of Rohingya refugees were stranded at sea throughout 2020 and into 2021.** In September 2020, more than 300 Rohingya arrived in Indonesia after seven months at sea, over half of whom were girls aged 18 and under.⁴⁴⁵ Malaysian authorities were reported to have intercepted and pushed back at least 22 boats, at least one of which was known to be carrying women and children, into international waters.⁴⁴⁶ The Malaysian air force cited containment of COVID-19 as justification for escorting boats out of Malaysian waters.⁴⁴⁷ Where boats were permitted to disembark, passengers, including children, were charged with violation of immigration offences and

⁴³⁴ United Nations, Convention related to the Status of Refugees, *Treaty Series*, vol. 189, Geneva, 28 July 1951, p. 137.

⁴³⁵ See, for example, UNHCR, Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, 26 January 2007, para. 15.

⁴³⁶ CRC Committee, Consideration of reports submitted by States parties under article 44 of the Convention, Cambodia, CRC/C/KHM/CO/2–3, 3 August 2011, para. 75.

⁴³⁷ United Nations International Covenant on Civil and Political Rights, Human Rights Committee, Concluding observations on the second periodic report of Thailand, United Nations, CCPR/C/THA/CO/2, 25 April 2017, para. 27.

⁴³⁸ UNHCR, ‘Abandoned at Sea: Smugglers cast 5,000 desperate souls adrift on the Andaman Sea. Survivors spoke to UNHCR about their terrifying ordeal’, 26 August 2015, <www.unhcr.org/uk/news/stories/2015/8/56ec1eabd/abandoned-at-sea.html>, accessed 20 March 2022

⁴³⁹ UNHCR, Regional Office for South-East Asia, ‘South-East Asia, Mixed Maritime Movements, April-June 2015, Highlights’.

⁴⁴⁰ ‘The Andaman Sea Refugee Crisis a Year On: What happened and how did the region respond?’, *The Conversation*, 25 May 2016; UNHCR, Regional Office for South-East Asia, South-East Asia, Mixed Maritime Movements, April-June 2015, Highlights’.

⁴⁴¹ *Ibid.*

⁴⁴² UNHCR, ‘Joint Statement by UNHCR, OHCHR, IOM and SRSG for Migration and Development, Search and Rescue at Sea, Disembarkation, and Protection of the Human Rights of Refugees and Migrants Now Imperative to Save Lives in the Bay of Bengal and Andaman Sea’, 19 May 2015, <www.unhcr.org/555aee739.html>, accessed 19 December 2022.

⁴⁴³ Governments of Indonesia, Malaysia and Thailand, ‘Joint Statement: Ministerial meeting on irregular movement of people in Southeast Asia’, News release, 20 May 2015, <<https://reliefweb.int/report/myanmar/joint-statement-ministerial-meeting-irregular-movement-people-southeast-asia>>, accessed 20 March 2022.

⁴⁴⁴ UNHCR, ‘South-East Asia, Mixed Maritime Movements, April-June 2015, Highlights’.

⁴⁴⁵ Mahla, Deepmala, and Hassan Noor, ‘Rohingya are Being Left to Die at Sea. Who cares?’, 17 September 2020, Save the Children, <www.savethechildren.net/blog/rohingya-are-being-left-die-sea-who-cares>, accessed 19 December 2022.

⁴⁴⁶ *Status Report on Child Rights in Malaysia 2019*, p. 109.

⁴⁴⁷ Ratcliffe, Rebecca, ‘Hundreds of Rohingya Refugees Stuck at Sea, Say Rights Groups’, *The Guardian*, 17 April 2020, <www.theguardian.com/global/2020/apr/17/malaysia-and-thailand-urged-to-help-stranded-rohingya-refugees>, accessed 19 December 2022.

sentenced to imprisonment.⁴⁴⁸ The total number of children among those stranded at sea is not known, but one boat that “*washed up*” in Bangladesh was carrying over 150 unaccompanied children.⁴⁴⁹ United Nations agencies and international NGOs issued multiple appeals and joint statements expressing deep concern over the events and have encouraged regional cooperation in search, rescue and disembarkation efforts and in addressing maritime movements more broadly.⁴⁵⁰ More recently, the UNHCR has reported that more than 3,500 Rohingya attempted to cross the Andaman Sea and the Bay of Bengal in 2022, which represented a 360 per cent increase on the year before.⁴⁵¹

High profile deportations, particularly from Malaysia, have attracted international attention.

Interviewees explained that despite being described as ‘deportations’, in reality these were bilateral agreements negotiated between embassies for the repatriation of migrants from detention, whereby countries send empty ships or planes to collect their citizens from Malaysian detention centres. The Malaysian Government has stated that it will not deport Rohingya back to Myanmar.⁴⁵² Despite this, in February 2021, 1,086 Myanmar citizens were reportedly returned to Myanmar on board navy ships provided by the military, in contravention of a court order suspending the deportation.⁴⁵³ The Malaysian immigration department maintains that no Rohingya refugees or asylum seekers were among those returned, though this is disputed by refugee organizations.⁴⁵⁴

3.6 Family separation and emotional harm

Family separation may occur prior to migration, during migration, post-migration or due to children remaining behind when parents or caregivers migrate.

Refugee families in particular may become separated in the country of persecution due to conflict or violence, or during the course of the family’s migratory journey towards a place of safety. These instances of separation often occur in the context of traumatic circumstances and for some children, are likely to have a lasting psychological impact. This is particularly true for Rohingya refugee families, thousands of whom became separated while fleeing violent persecution in Myanmar in 2017⁴⁵⁵ and during the course of boat journeys across the Andaman Sea in 2015.⁴⁵⁶ Involuntary family separation may also occur once the destination country is reached, as a result of detention and deportation policies and practices across the region that fail to keep families together.

Business policies and operations can contribute to family separation in the context of migration.

Parents and guardians working in seasonal employment, such as the construction industry in Thailand, are likely to migrate without their children due to the need for mobility and flexibility in finding work and moving from one project to another.⁴⁵⁷ The availability of social protection benefits and access to quality services, including education, healthcare and childcare facilities for employees and their families,

⁴⁴⁸ *Status Report on Child Rights in Malaysia 2019*, p. 109.

⁴⁴⁹ Mahla, Deepmala, and Hassan Noor, ‘Rohingya are Being Left to Die at Sea. Who Cares?’, 17 September 2020, Save the Children, <www.savethechildren.net/blog/rohingya-are-being-left-die-sea-who-cares>, accessed 19 December 2022.

⁴⁵⁰ UNHCR, ‘Joint Statement by UNHCR, IOM and UNODC on Protection at Sea in the Bay of Bengal and Andaman Sea’, Press release, 6 May 2020, <www.unhcr.org/uk/news/press/2020/5/5eb15b804/joint-statement-unhcr-iom-unodc-protection-sea-bay-bengal-andaman-sea.html>, accessed 19 December 2022; Save the Children, ‘Call to Save Lives of Rohingya Refugees Reportedly Adrift on a Vessel in the Andaman Sea’, Press release, 22 February 2021, <<https://reliefweb.int/report/myanmar/call-save-lives-rohingya-refugees-reportedly-adrift-vessel-andaman-sea>>; UN News, ‘Rohingya Refugees: UN agency urges immediate rescue to prevent ‘tragedy’ on Andaman Sea’, 22 February 2021, <<https://news.un.org/en/story/2021/02/1085342>>.

⁴⁵¹ UNHCR, Briefing Note, 17 January 2023, <<https://www.unhcr.org/news/briefing/2023/1/63c66c3c4/unhcr-seeks-comprehensive-regional-response-address-rise-deadly-south-east.html>>

⁴⁵² ‘Rights Groups Seek Malaysian Court Order to Stop Deportation of Myanmar Detainees’, *Reuters*, 22nd February 2021; Key informant interview, UNICEF Malaysia, 18 February 2021.

⁴⁵³ Ananthalakshmi, Anantha, ‘Defying Court Order, Malaysia Depports more than 1,000 Myanmar Nationals’, *Reuters*, 23rd February 2021, <reuters.com/article/us-myanmar-politics-malaysia-idUSKBN2AN09M>, accessed 20 March 2022.

⁴⁵⁴ *Ibid.*

⁴⁵⁵ ACTED, ‘Rohingya Family Reunited after Separation by Conflict’, www.acted.org/en/rohingya-family-reunited-after-separation-by-conflict, accessed 12 December 2022.

⁴⁵⁶ UNHCR, ‘Separated by the Sea: Hundreds, if not thousands, of refugee families in South-East Asia were separated by perilous sea journeys in 2015. Meet four of them’, 23 February 2016, <www.unhcr.org/uk/news/stories/2016/2/574446f54/separated-by-the-sea.html>, accessed 19 December 2022.

⁴⁵⁷ Baan Dek Foundation and UNICEF, *Building Futures in Thailand: Support to children living in construction site camps*, Bangkok, Thailand, 2018, p. 36.

can also significantly influence decision-making by parents/guardians on whether or not to migrate with their children. For example, in Indonesia, where internal migrants comprise a large percentage of the workforce on palm oil plantations, parents often do not have family near the plantation to help with childcare, resulting in the child(ren) remaining in their place of origin and only seeing their parents once a year. Similarly, in Viet Nam, children of internal migrants in Ho Chi Minh City (which comprise approximately 80 per cent of the workforce in the apparel and footwear factories)⁴⁵⁸ often remain in their hometowns due to high living costs, the absence of child-friendly accommodation, a lack of childcare and limited access to schools and healthcare services in the city.⁴⁵⁹

Research has focused on the impacts of family separation on children remaining behind when parents migrate; however, the findings have been mixed. While these children may reap the economic benefits of remittances sent home by their parents, they may also potentially experience emotional harm as a result of separation from one or both parents, often for considerable periods of time, during their formative years. According to the evidence, the impact on the emotional well-being of children left behind varies, with contradictory patterns emerging across the region. Even if the assumption that family separation inflicts emotional harm on a child is accepted, it is still difficult to measure this harm against the comparative economic benefits associated with parental migration, which can lead to material gains and improved access to services and opportunities for children.⁴⁶⁰ For instance, a 2011 study focused on children aged 12 years and under of overseas workers in Indonesia, the Philippines, Thailand, and Viet Nam,⁴⁶¹ and found mixed results across the four countries. It found that even where the children were left in the care of their mother, they were more likely to have poor psychological well-being than children living with both parents (in Indonesia).⁴⁶² However, in Viet Nam and Thailand, no significant differences were observed between children who remained behind and their counterparts from non-migrant households. In the Philippines, it was observed that children who remained behind with mothers or fathers were less likely to have conduct disorders and were no more likely to have emotional disorders than children living with both parents.⁴⁶³

Other studies, on the other hand, have identified an association between remaining behind and negative impacts to resilience and the well-being of children. A 2019 study by IOM Cambodia on the impact of migration on children left behind (aged 12–17 years) found a negative correlation between parental migration, in particular mother-migration, and children’s resilience score.⁴⁶⁴ A small, qualitative study in An Giang Province in Viet Nam in 2014 also noted the negative impact on children, with the “largest threat,” from the perspectives of the left-behind children, being “their hearts hurt because they miss their parents so much.”⁴⁶⁵ Another qualitative study involving a small sample of children left behind by overseas Filipino workers found 81 per cent to “be feeling deeply sad and longing for the physical presence of their parents.”⁴⁶⁶ A further key threat facing a cohort of children who remain behind is that of poverty. A 2017 study in Viet Nam found that remittances sent home by migrant parents were used for “survival” rather than “upward mobility,” and that financial difficulties made it hard for caregivers, who were usually elderly grandparents, to provide sufficient care to children, particularly those left with multiple grandchildren to feed.⁴⁶⁷

⁴⁵⁸ United Nations Children’s Fund, *The Apparel and Footwear Sector and Children in Viet Nam*, UNICEF Vietnam, p. 2.

⁴⁵⁹ United Nations Children’s Fund, ‘Internal Migration into Ho Chi Minh City and the Situation for Children’, Policy brief, undated, p. 4; *The Apparel and Footwear Sector and Children in Viet Nam*, pp. 2, 5.

⁴⁶⁰ Jordan, L., and E. Graham, ‘Resilience and Wellbeing Amongst Children of Migrant Parents in Southeast Asia’, *Child Development*, vol. 83, no. 5, September–October 2012, pp. 1672–1688.

⁴⁶¹ Ibid.

⁴⁶² Ibid.

⁴⁶³ Ibid.

⁴⁶⁴ International Organization for Migration Cambodia, *Migration Impacts on Cambodian Children and Families Left Behind*, IOM, 2019.

⁴⁶⁵ Jones, Nicola, et al., *Falling Between the Cracks: How poverty and migration are resulting in inadequate care for children living in Viet Nam’s Mekong Delta*, ODI, 2014, p. 45.

⁴⁶⁶ Rendeza, Karen, ‘Hearts Apart: The impact of parental migration on the life of left-behind Filipino adolescents’, *People: International Journal of Social Sciences*, vol. 3, no. 3, 2017, pp. 301–318.

⁴⁶⁷ Jones, Nicola, et al., *Falling Between the Cracks: How poverty and migration are resulting in inadequate care for children living in Viet Nam’s Mekong Delta*, ODI, 2014.

Highlight 2: Needs, challenges and access to services for children remaining behind in Battambang, Cambodia

Research carried out in 2022 with children who remained behind in Battambang found that they were exposed to a range of risks, including child labour, neglect and physical and sexual violence. The research used a mixed-methods design and involved 26 quantitative telephone surveys with migrant parents returning from Thailand to Cambodia who had children who had remained behind in Cambodia; a series of in-depth interviews with 21 children (aged 11–15 years) remaining behind and 18 in-depth interviews with their caregivers. Twelve key informant interviews were also carried out with local service providers, policymakers and community leaders providing protection, care and support to children remaining behind.

Drivers of decision-making associated with children remaining behind

According to the survey and qualitative data, the primary driver for parents migrating to Thailand was to be able to earn money to support their families. The decision was often triggered by families experiencing financial difficulties (including falling into debt) prior to migrating, along with the unstable and limited economic opportunities locally. The working conditions in the destination country of the parent(s), which can involve long hours with limited flexibility and few safe and affordable day-care options, was found to be a barrier to children migrating with their parents, as was the belief that children would have a better life in Cambodia where they would have access to education. Another key driver of the decision for children to be left behind were the rules set by employers. In some cases, migrants live in accommodation provided by employers, and employers are often responsible for obtaining the necessary documentation for employees. For parents who migrate irregularly, due to the conditions of irregular migration (which often takes several days and requires migrants to sleep in harsh conditions), brokers generally do not allow children to migrate with parents.

Cambodian migrant parent: *“At first, we brought our children with us. They were there for about a week but the [company] did not allow us to keep children there because the workplace was dangerous for children. So, we brought our children back here to keep them with my mother.”*⁴⁶⁸

Cambodian caregiver: *“She [the mother] does not want to take her children with her because there is no one to take care of them in Thailand. If her children were there, her husband and she would not be able to do any work. The children would become their burden.”*⁴⁶⁹

Key informant: *“They are uneducated, so they do not want their children to follow their footprint. They prefer to leave their children and let them pursue their education even though they do not want to be separated.”*⁴⁷⁰

Risks and challenges for children who remain behind

In the sample, children who remained behind were typically living with their grandmothers. Often, grandmothers were looking after multiple grandchildren, particularly when more than one of their own adult children had migrated. Children involved in the research were typically socioeconomically disadvantaged. Despite the reason for the parent’s migration being to support the family financially, the amount and regularity of remittances varied among participants.

⁴⁶⁸ In-depth interview with parent, Battambang, February 2022.

⁴⁶⁹ In-depth interview with caregiver, Battambang, February 2022.

⁴⁷⁰ Key informant interview, February 2022 (KI 6).

According to the study's participants, children who remained behind in Battambang were exposed to a range of risks which often arose as a result of inadequate caregiving. Risks included neglect, physical, emotional and sexual abuse, and caregiving burdens.

Cambodian parent: *"When my children lived with my mother, she did not treat them well. My older daughter was tasked to wash clothes, dishes, and other cooking tools. She needed to get up at 5 a.m. to do household chores before she went to school. When I returned from Phnom Penh and met my daughter, my heart was so broken...She was skinnier. She could not attend school regularly. She had no nice clothes to wear. She cried. My mother used her as if she was a servant who was supposed to serve everyone in the house."*⁴⁷¹

Cambodian child: *"I teach my 11-year-old brother, help him to read and write when I am not going to school at night. I also take care of my siblings in the daytime and tell them not to go far from home as my youngest brother experienced drowning. So, I need to take care of them!"*⁴⁷²

Cambodian child: *"My aunty and my grandmother just slapped and insulted me this morning because I got up late. I don't like my aunt."*⁴⁷³

Cambodian caregiver: *"We are struggling. We do not have enough to eat for three meals per day. I am too tired to look after many children as their caregiver since their parents are not around. I beat them too sometimes because I am too tired."*⁴⁷⁴

Other risks include exploitation in child labour and challenges accessing education. It was found that the risk of child labour is linked to poverty; several children (boys and girls) reported that they work to help support their family and provide an additional income. The inability to attend school consistently was also mentioned by research participants, due to the lack of financial resources to cover the costs, including for uniforms, and other resources, or because the child was working.

*Cambodian child: "After school, I always go. [I work] seven days per week and around five hours per day. I don't like [working]. Last time during fishing, I used to fall down into the water. Per day, I can earn around 30,000 to 40,000 riels [US\$7.30–\$9.78] and selling fish [I earn] around 19,500 riels. Some people, they pity me and my brother and sister, they give some money as well."*⁴⁷⁵

While children who remained behind and their caregivers had access to some services and support (e.g., food, material support for educational access, and so forth), this support was typically provided by NGOs and was not specifically tailored to meet the needs of children remaining behind.

⁴⁷¹ In-depth interview with a parent, Battambang, February 2022.

⁴⁷² In-depth interview with a child, February 2022 (Child 2).

⁴⁷³ In-depth interview with a child, Battambang, February 2022.

⁴⁷⁴ In-depth interview with a caregiver, Battambang, February 2022.

⁴⁷⁵ In-depth interview with a child, February 2022 (Child 10).

3.7 Violence and abuse

Child migrants, particularly those who are unaccompanied, stateless or undocumented, are particularly vulnerable to violence throughout the migratory process. They are at risk of “*neglect, abuse, kidnapping, abduction and extortion, trafficking, sexual exploitation, economic exploitation, child labour, begging or involvement in criminal and illegal activities, in countries of origin, transit, destination and return*”.⁴⁷⁶ There is a paucity of representative data on violence against children affected by migration in ASEAN, owing largely to their invisibility in large-scale surveys on violence against children. There is, however, a wealth of smaller-scale research studies which reveal alarming rates of violence experienced by migrant child populations that suggest that important regional commitments towards the elimination of violence against children⁴⁷⁷ have not yet translated into a reduction in the extent or severity of violence experienced by migrant children and families.

Unaccompanied and separated children, including adolescents who migrate independently to seek employment, have been recognized as being particularly vulnerable, as living away from home they lack the protection that family and social support networks provide.⁴⁷⁸ For those who do not have a regular status, job opportunities are limited to the informal sector, which only compounds the risks of violence and abuse. For instance, a study on young migrant workers in Thailand⁴⁷⁹ found between 7 per cent and 9 per cent of workers in fishing, manufacturing and domestic work to have experienced physical abuse at the hands of their employers.⁴⁸⁰ Another risk factor for migrant children, particularly those who are unaccompanied, is their tendency to reside in insecure or unsafe areas or housing or to live or work on the street. A small study examining the situation of street-involved children in Poipet, located in the Special Economic Free Trade Zone on the Thai-Cambodian border, revealed high rates of violence: over half (66 per cent) of respondents reported personally experiencing physical violence on the street and almost one third (31 per cent) reported to have been hurt or threatened with a weapon.⁴⁸¹ An even larger proportion (70 per cent) of respondents had witnessed another child being subject to physical violence (“*being beaten, slapped, choked, or burnt*”) on the street, with 21 per cent of those reporting witnessing such violence daily.⁴⁸² Concerningly, 70 per cent reported that they feared being killed or injured on the street.⁴⁸³

Refugee and asylum-seeking children and families fleeing violence and persecution in their countries of origin continue to face risks of violence upon arrival in host communities. Roughly 12 per cent of refugee and asylum-seeking respondents sampled in a rapid assessment conducted in Thailand in July 2020 had experienced violence or abuse, with verbal and physical violence most commonly reported (by 81 per cent and 19 per cent of respondents respectively).⁴⁸⁴ Interestingly, the respondents who reported experiencing violence were either single parents or had vulnerable family members (elderly persons, persons with medical issues or disabilities, and children), whereas none of

⁴⁷⁶ Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child, *State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return*, CMWJ/C/GC/4-CRC/C/GC/23, 16 November 2017, para. 39.

⁴⁷⁷ ASEAN Declaration on Children Affected by Migration; ASEAN Declaration and Regional Action Plan on the Rights of Children in the Context of Migration 2019.

⁴⁷⁸ United Nations Population Fund, 2015, referenced in United Nations Children’s Fund, *Situation Analysis of Children in Viet Nam 2016*, UNICEF, Ha Noi, 2017, p. 235.

⁴⁷⁹ Not all respondents in this study were children: 5 per cent of migrants were below 15 years of age, 20 per cent were aged 15–17 years and 75 per cent were aged 18–25 years.

⁴⁸⁰ Punpuing, Surreporn. *et al*, Mekong Sub-regional Project to Combat Trafficking in Children and Women, *The Mekong Challenge, Underpaid, Overworked and Overlooked: The realities of young migrant workers in Thailand (Volume one)*, International Labour Organization, Bangkok, 12 June 2006, p. xxii.

⁴⁸¹ Davis, Jarrett, *On the Border: Exploring the perspectives & experiences of street-involved children on the Thai-Cambodian Border*, May 2017, p. 24.

⁴⁸² *Ibid.*, p. 23.

⁴⁸³ Not all respondents in the sample would fall under one of the categories of ‘children affected by migration’, though a sizeable majority would: 63 per cent had migrated to Poipet from either elsewhere in Cambodia (internal migrants) or from Thailand or Viet Nam (international migrants); Davis, Jarrett *et al.*, ‘*On the Border: Exploring the Perspectives & Experiences of Street-Involved Children on the Thai-Cambodian Border*’, May 2017, p. 27.

⁴⁸⁴ UNHCR, *COVID-19 Impact Assessment: Urban refugees and asylum-seekers in Thailand. Multi-sector rapid needs assessment and post-distribution monitoring of cash support*, July 2020, UNHCR Multi-County Office, Thailand, July 2020, p. 18.

the single respondents reported experiencing violence or abuse.⁴⁸⁵ Evidence suggests that the COVID-19 pandemic has triggered an increase in xenophobic and discriminatory attitudes and violence towards migrants, particularly refugees, in multiple ASEAN Member States.

Children who remain behind when parents migrate are also likely to be at an increased risk of violence due to parental absence and, in some cases, the consequent lack of supervision. This is an issue that has been identified by multiple studies on the situation of children left behind by overseas workers in the Philippines.⁴⁸⁶ One systematic review on violence affecting children in the Philippines found migration to be a factor which “increases children’s risk of exposure to sexual violence at home.”⁴⁸⁷ Studies in Cambodia have also demonstrated a strong correlation between parental migration and vulnerability to risk; in one study, 90 per cent of children whose parents had migrated and left the child alone or with a sibling reported experiences of physical violence.⁴⁸⁸ In another, the lack of adult supervision was found to be “the most prevalent concern”⁴⁸⁹ threatening the safety of left-behind children.

Business policies and practices can contribute to putting children affected by migration at risk of violence and abuse. In Indonesia, it has been found that limited maternity protections, lack of childcare opportunities, poor maternal health and nutrition, and limited access to education for children of plantation workers can significantly damage the health and development of child dependents living on the plantation.⁴⁹⁰ In Ho Chi Minh City, Viet Nam, lack of social support for female migrant workers and their children who accompany them can create overcrowded and poor living conditions, placing children, particularly girls, at higher risk of abuse and exploitation.⁴⁹¹ These conditions can also create additional stress which may trigger family violence. For example, a study in 2015 indicated that migrant children in Viet Nam are exposed to a higher rate of all forms of family violence than their non-migrant counterparts: 14.9 per cent of migrant children reported being exposed to ‘any type of violence in the home’ compared to 10.9 per cent of non-migrant children.⁴⁹² Research into the situation of migrants from Myanmar living in Mae Sot, Thailand, found financial problems and alcohol use exacerbated risks of family violence and child abuse in the home.⁴⁹³ In a study on children in construction site camps in Thailand, 90 per cent of child participants reported experiencing some form of physical violence from their parents or guardians.⁴⁹⁴ The absence of childcare also leads to children being left unattended at home while their parent goes to work, exposing the child to further risks of violence and abuse.⁴⁹⁵ For instance, news reports in late 2022 highlighted the case of a seven-year-old child of a migrant worker at a garment factory in Thailand who was raped by a 19-year-old worker as she slept in her room while her mother worked unpaid overtime.⁴⁹⁶ News reports state that the accommodation was ‘insecure’, with the child sleeping in a room adjoining the perpetrator’s with a “scrap of fabric for a door and thin walls that did not reach the ceiling.”⁴⁹⁷

⁴⁸⁵ Ibid.

⁴⁸⁶ *A Systematic Review of the Drivers of Violence Affecting Children in the Philippines*, p. 2; Reyes, Melanie, *Migration and Filipino Children Left Behind: A literature review*, United Nations Children’s Fund, Manila, 2008, p. 11.

⁴⁸⁷ Ibid.

⁴⁸⁸ *On the Border: Exploring the Perspectives & Experiences of Street-Involved Children on the Thai-Cambodian Border*, p. 37.

⁴⁸⁹ United Nations Children’s Fund, *Study on the Impact of Migration on Children in the Capital and Target Provinces, Cambodia (Executive Summary)*, May 2017, p. 10.

⁴⁹⁰ *Palm Oil and Children in Indonesia: Exploring the sector’s impact on children’s rights*, p. 1.

⁴⁹¹ *The Apparel and Footwear Sector and Children in Viet Nam*, p. 6.

⁴⁹² Data are from ISMS, CCIHP and UNFPA (2015), presented in Save the Children and Institute of Social and Medical Studies (ISMS), *Situation Analysis on Physical and Humiliating Punishment and Violence Against Children in Viet Nam*, 2017, p. 12.

⁴⁹³ Committee for the Protection and Promotion of Child Rights, *Feeling Small in Another Person’s Country: The situation of Burmese migrant children in Mae Sot, Thailand*, 2009, p. 44, referenced in Davy Deanna, *Analysis of Protection Frameworks, Referral Pathways and Service Availability for Myanmar Migrant Children*, UNICEF Myanmar, 2019, p. 46.

⁴⁹⁴ Ibid.

⁴⁹⁵ Ibid., p. 6.

⁴⁹⁶ Dugan, Emily, ‘Girl, 7, Raped at Thai factory Supplying Clothes for Tesco While Mother Worked’, *The Guardian*, 19th December 2022, <www.theguardian.com/business/2022/dec/19/girl-7-raped-at-thai-factory-supplying-clothes-for-tesco-while-mother-worked?CMP=Share_iOSApp_Other>, accessed 20 December 2022.

⁴⁹⁷ Ibid.



A young person is seen at a Women and Children Protection Unit in the Southern Philippines Medical Centre in Davao City. © UNICEF/UN0540157/Pau Villanueva

Migrant children and their families may experience community violence, which is sometimes motivated by xenophobic and discriminatory attitudes held by non-migrants in host communities.

According to the 2019 Gallup ‘Acceptability Index’, which measures global attitudes towards migrants, Malaysia and Thailand were eighth and ninth on the list of least-accepting countries for migrants in the world.⁴⁹⁸ In recent years, anti-migrant sentiment has been fuelled by hate speech and rumours circulating in host communities, particularly on social media, blaming migrants for importing and spreading COVID-19.⁴⁹⁹ In Malaysia, online hate speech and xenophobia towards Rohingya refugees has been particularly vitriolic; among a ‘proliferation’ of Facebook comments, groups and online petitions calling for the forced expulsion of all Rohingya, there have been direct threats made towards Rohingya activists and comments that incite violence towards the population as a whole.⁵⁰⁰ There have also been anecdotal reports of ‘offline’ hate speech and discrimination, including reports of banners hanging from apartments reading ‘migrants are not welcome here’ and landlords refusing to rent to foreigners.⁵⁰¹ In an open letter to the Prime Minister of Malaysia dated 11 May 2020, 84 organizations, including Human Rights Watch, criticized the Government for “*fail[ing] to adequately respond to the recent surge in ‘hate speech’ and violent threats being directed at the Rohingya population*” with concerns that “*statements by Malaysian officials, including the Minister of Home Affairs, could heighten tensions and incite violence and discrimination against the Rohingya*”.⁵⁰²

⁴⁹⁸ Esipova, Neli, Julie Ray, and Anita Pugliese, ‘World Grows Less Accepting of Migrants’, Gallup and IOM, 23 September 2020, <<https://news.gallup.com/poll/320678/world-grows-less-accepting-migrants.aspx>>, accessed 20 March 2022.

⁴⁹⁹ See, for example: Theppumpant, Panarat, Shoong Naing, and Matthew Tostevin, ‘Anti-Myanmar Hate Speech Flares in Thailand Over Virus’, Reuters, 24 December 2020, <www.reuters.com/article/uk-health-coronavirus-thailand-myanmar-idUKKBN28Y0KQ>, accessed 20 December 2022.

⁵⁰⁰ Human Rights Watch, ‘Joint Letter Re: Ending Violent Threats and Anti-Rohingya Campaign’, 11 May 2020, <www.hrw.org/news/2020/05/11/joint-letter-re-end-violent-threats-and-anti-rohingya-campaign>; Latiff, Rozanna, and A. Ananthakshmi, ‘Anti-Migrant Sentiment Fanned on Facebook in Malaysia’, Reuters, 14 October 2020, <www.reuters.com/article/uk-facebook-malaysia-rohingya-idUKKBN26Z0BP>, accessed 9 March 2022.

⁵⁰¹ See, for example, Ding, Emily, ‘Malaysia’s Coronavirus Scapegoats: Undocumented migrants and refugees are caught in the crossfire of Malaysia’s coronavirus response and a xenophobic backlash’, *Foreign Policy*, 19 June 2020.

⁵⁰² Human Rights Watch, ‘Joint Letter Re: Ending Violent Threats and Anti-Rohingya Campaign’, 11 May 2020, <www.hrw.org/news/2020/05/11/joint-letter-re-end-violent-threats-and-anti-rohingya-campaign>, accessed 20 March 2022; see also: Latiff, Rozanna, and A. Ananthakshmi, ‘Anti-Migrant Sentiment Fanned on Facebook in Malaysia’, Reuters, 14 October 2020, <www.reuters.com/article/uk-facebook-malaysia-rohingya-idUKKBN26Z0BP>, accessed 20 March 2022.

Physical and social exclusion, sometimes the result of living conditions provided by businesses, can increase feelings of isolation and compound xenophobic attitudes. For example, in Thailand, one study highlighted the physical seclusion and isolation of construction site camps from surrounding communities.⁵⁰³ Migrant children living in the camps reported that they did not have many friends, were unable to speak Thai, were afraid of the police, and felt uncomfortable or ‘out of place’ in Thailand due to their migrant status.⁵⁰⁴ Children also reported instances of experiencing xenophobia and discrimination from locals who they felt viewed them with hostility and suspicion.⁵⁰⁵ Children living on remote palm oil plantations in Indonesia are reported to face similar challenges, being isolated from the community with little access to education and healthcare services.⁵⁰⁶ The short-term nature of seasonal work, such as in the construction industry in Thailand, acts as a further barrier to the child’s integration into the community, as families live temporarily in the camp before moving onto the next project in a new location and community.⁵⁰⁷

Highlight 3: Child trafficking and exploitation in the context of migration in Viet Nam

Qualitative research carried out in 2022 on the drivers and risks of child trafficking and exploitation in the context of migration demonstrates that children sharing certain characteristics or backgrounds may be more vulnerable to exploitation and other protection risks in the context of migration. Understanding predictors of vulnerability to exploitation within child migration is crucial to the development of effective and targeted programmes and policies.

The research employed a mixed-methods design and involved 30 key informant interviews with experts in the field of child trafficking and labour exploitation, and a survey administered to children and young people in Viet Nam on child trafficking.⁵⁰⁸ The survey included a sample of 166 young people who had migrated without a parent or caregiver before the age of 18 and 3,333 young people who had not previously migrated.⁵⁰⁹ Inferential analysis of the survey focused on factors linked to children’s experiences of exploitation in the context of migration without a parent or caregiver and factors linked to children’s and young people’s attitudes towards migration.

Predictors of vulnerability to exploitation

The survey data indicated that certain groups of children are more vulnerable to exploitation in the context of migration. These include children and young people with disabilities, children from lower wealth quintiles (who were found to be more vulnerable to emotional violence), and children from ethnic minority groups (who were more likely to experience physical violence, particularly Hmong children). Children living in rural areas were more likely to experience wage exploitation, and girls experienced more frequent sexual exploitation.

⁵⁰³ *Building Futures in Thailand: Support to children living in construction site camps*, p. 33.

⁵⁰⁴ *Ibid.*, pp. 6, 33–34.

⁵⁰⁵ *Ibid.*

⁵⁰⁶ *Palm Oil and Children in Indonesia: Exploring the sector’s impact on children’s rights*, p. 3.

⁵⁰⁷ *Ibid.*

⁵⁰⁸ Survey data were a secondary dataset from a previous child trafficking project. See Apland and Yarrow, *Casting Light in the Shadows*.

⁵⁰⁹ Apland and Yarrow, *Casting Light in the Shadows*.

Key informants highlighted additional family characteristics that increase children's risk of trafficking and exploitation in the context of migration, including being from a single-parent household, being a child who remains behind when parents migrate, being a child who has migrated with a parent, and living in a household in which family violence is present.

A key factor indicating vulnerability to child trafficking was found to be a lack of knowledge and awareness of the risks of migrating alone without a parent or caregiver among children.⁵¹⁰ All (100 per cent of) children who migrated without a parent/caregiver in the survey experienced some form of abuse or labour exploitation. General patterns showed that younger children and those in rural areas had more positive attitudes towards migration and were less aware of the dangers of lone child migration, putting them at greater risk of exploitation. Ethnic minority groups saw migration as more dangerous and were less likely to want to migrate or consider irregular migration, supporting the narrative that this group of children in particular have little agency in their migration. Children who were already child workers had more positive views towards migration than those who were not working.

NGO service provider 1: *“Children are vulnerable because they don’t have knowledge and skills to protect themselves. Children are easier targets of manipulation and deceit. Children from poor households are under additional pressure for early school drop-out and early working. They start finding employment while having insufficient knowledge to find a decent job.”*

NGO service provider 2: *“Young boys and girls were tricked to Cambodia to work in casinos and gambling centres. Their task was to lure Vietnamese people to come in and play. The traffickers advertised in social media about jobs in online games. Young people did not have enough information and wanted to try. They met with their traffickers and were transported to Cambodia without a passport. As they entered the casino building, they were locked in and forced to work. If they refused because they did not want to cause harm to other Vietnamese, they were beaten and forced to achieve a certain turnover. This is a form of trafficking.”*

Children with low emotional well-being and poor family relationships or experiences of neglect were more likely to consider irregular migration, providing insights into how children seeking to escape difficult home circumstances can be at increased risk of trafficking or exploitation in the context of migration.

⁵¹⁰ Interview with an NGO, 21 February 2022.



The Bajau Laut community in Sabah, East Malaysia, leads a nomadic lifestyle, and lives on the waters of the Coral Triangle between Malaysia, Philippines and Indonesia. They are often stateless. Without any proof of nationality, they are denied access to school and medical care.
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4 Responses to children affected by migration in ASEAN: Law, policy and protection systems

Key points



The ASEAN Declaration on the Rights of Children in the Context of Migration provides a solid framework for the protection of children in the context of migration.








Several ASEAN Member States have also developed bilateral agreements which relate to the protection needs of children affected by migration. However, a notable gap is the absence of any bilateral agreements or guidelines for responding to child protection cases that have a cross-border dimension but do not meet the legal definition of child trafficking (e.g. vulnerable unaccompanied children).



Legal frameworks on migration in ASEAN Member States contain inconsistencies with international child rights standards and at times their application can place children affected by migration at risk. For instance:

- **Immigration laws:** Most ASEAN Member States criminalize aspects of irregular entry and stay of migrant children.
- **Detention:** All ASEAN Member States permit immigration detention of children in some form, with none expressly prohibiting the practice. However, there has been a shift in government policy over the last decade in Thailand and Malaysia towards ending immigration detention of children.
- **Best interests decision-making:** There are no specific provisions in the primary immigration laws of any of the ASEAN Member States (other than the Philippines) explicitly requiring the best interests of the child to be a primary consideration in immigration processes and decision-making (though this principle is contained in child protection laws in most States).
- **Refugee law:** Cambodia and the Philippines are the only two ASEAN Member States which are party to the Refugee Convention 1951 and Refugee Status Protocol 1967, and only Cambodia, the Philippines and Indonesia recognize asylum seekers and refugees as a distinct category of migrants in law. This has greatly limited the legal protections afforded to asylum-seeking and refugee children. However, a process is under way in Thailand to develop a National Screening Mechanism for the determination and granting of refugee status.
- **Child trafficking laws:** Most ASEAN Member States have passed comprehensive anti-trafficking laws, though gaps in these laws limit the protection afforded to child victims of trafficking in some States.

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-  The child protection laws of all ASEAN countries, where they exist, encompass children affected by migration. Despite this, children affected by migration are routinely excluded from protection systems and services. While practical challenges, including language barriers, limited awareness and so on, play a significant part in this, child protection systems, processes and services themselves do not always accommodate the unique needs and interests of children affected by migration.
 -  In many ASEAN Member States, lack of documentation and/or proof of registration also prevents children and families that have migrated irregularly from accessing child protection systems and services. Often, migrants with uncertain status are dissuaded from accessing protective services or seeking help when they are the victim of a crime, owing to fears of arrest, detention and deportation.
 -  Data on children affected by migration are very limited in ASEAN Member States, meaning that legislation, policies and services to support child migrants are often not informed by accurate and up-to-date information.
 -  Thailand, Malaysia, Indonesia and Viet Nam have taken important steps to strengthen their policy frameworks to protect the rights of children from violations by businesses. However, non-implementation of these laws and regulations is a common challenge, particularly among smaller businesses and the informal economy.
 -  There are a number of examples of good practices by businesses taking *voluntary* steps, in partnership with international agencies and civil society, to undertake due diligence and child rights impact assessments, paying particular attention to the rights of children of migrant workers.

ASEAN Member States have developed a range of national, bilateral and regional instruments, policies and laws to respond to the situation of children affected by migration. Some laws and policies apply to particular categories of children, such as child victims of trafficking or refugee and asylum-seeking children, while others, particularly those establishing child protection systems, apply to migrant and non-migrant children alike. Indeed, as required under international and regional standards, ASEAN Member States should ensure that child protection systems adequately accommodate the unique needs of children affected by migration. In addition, it is important to ensure that laws regulating migration and asylum are child-sensitive and do not function to harm children through applying punitive measures, including immigration detention, to children who are in irregular situations. Section 4 begins with an overview of the key international and regional standards, followed by an analysis of the bilateral and domestic legal and policy frameworks and protection systems and their response to children affected by migration. For a comprehensive and detailed analysis of domestic legal frameworks relating to children affected by migration in ASEAN Member States, please see the *Situation Analysis of Children Affected by Migration in ASEAN Member States: Legal Review*.

4.1 International and regional (ASEAN) laws and standards on children affected by migration

4.1.1 International laws and standards

The CRC and supporting international instruments elaborate the rights of children and standards applicable to children affected by migration. These include, most relevantly, the Optional Protocol on the Sale of Children, Child Prostitution and Pornography 2000 (OPSC); the United Nations Guidelines for the Alternative Care of Children 2010; the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice 2014; and the joint general comment (No. 4) of the Committee on the Rights of the Child and of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families published in 2017: (1) on the general principles regarding the human rights of children in the context of migration, and (2) on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return (2017). The CRC Committee has made it clear that the rights contained in the CRC, including those relating to child protection, apply equally to citizens as to non-citizens, including undocumented children, except where explicitly stated otherwise in the CRC.⁵¹¹ The CRC Committee also makes it clear that the needs of migrant children should be identified, assessed and provided for by the child protection and welfare system and that child protection and welfare actors should take primary responsibility for children in the context of international migration.⁵¹² The CRC Committee's general comment No. 23 concerning the rights of children in the context of international migration is the most recent articulation by the Committee on how the CRC's provisions apply in the context of international migration, and includes statements against the deprivation of liberty in the context of migration (in which the CRC Committee states that child and family immigration detention is never in the best interests of the child); access to child-sensitive justice; access to birth registration and safeguards against statelessness; the protection of the right to family life and in particular, non-separation from family and family reunification; and protections from violence, abuse, exploitation and trafficking, among others.⁵¹³

In addition, there are **special rights and standards that apply to unaccompanied and separated migrant children.** The CRC Committee provides that unaccompanied and separated children should be placed in the national or local alternative care system, preferably in family-type care with their own family if possible (kinship care), or otherwise in community care where own-family care is not possible.⁵¹⁴ Decisions on the child's care must be made within a child-sensitive framework which respects the child's right to be heard.⁵¹⁵ The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime⁵¹⁶ (otherwise referred to as the 'Palermo Protocol') contains special provisions that apply to individuals who have been or are exposed to the risk of human trafficking.

The Refugee Convention 1951 and Protocol Relating to the Status of Refugees 1967 establish a framework for providing refugee status and protection to persons fleeing persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, including children. Only two ASEAN Member States (Cambodia and the Philippines) are party to these instruments. Despite this, some of the provisions in these instruments (e.g., the principle of *non-refoulement*, for more details

⁵¹¹ Committee on the Rights of the Child, General comment No. 6, Treatment of unaccompanied and separated children outside their country of origin, 1 September 2005, CRC/GC/2005/6 (CRC Committee GC No. 6 (2005)), para. 12.

⁵¹² Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, 16 November 2017, CMW/C/GC/4-CRC/C/GC/23 (CRC Committee GC No. 23 (2017)), para. 13.

⁵¹³ CRC Committee general comment No. 23 (2017). Other relevant, though less recent, general comments include the Committee on the Rights of the Child's general comment No. 22 on the general principles regarding the human rights of children in the context of international migration (2017) and General comment No. 6 on the treatment of unaccompanied and separated children outside their country of origin, 1 September 2005.

⁵¹⁴ CRC Committee general comment No. 23 (2017), para. 13.

⁵¹⁵ Ibid. See also CRC Committee general comment No. 6 (2005).

⁵¹⁶ Adopted and opened for signature, ratification and accession by General Assembly Resolution 55/25 of 15 November 2000.

on which see section 4.3) are now considered international customary law,⁵¹⁷ and therefore binding for all States, regardless of their ratification of the Refugee Convention and related Protocol. In addition, the CRC provides that States must take appropriate measures to ensure that an asylum seeker or refugee child receives appropriate protection and humanitarian assistance in the enjoyment of the Convention's rights and other international human rights and humanitarian instruments.⁵¹⁸

The New York Declaration for Refugees and Migrants, the Global Compact on Safe, Orderly and Regular Migration (commonly known as the Global Compact for Migration (GCM)) and the Global Compact on Refugees reinforce the international framework for the protection of children affected by migration. The New York Declaration, which was adopted by the General Assembly in 2016, explicitly recognizes the needs of refugees, IDPs and migrants and makes a number of commitments that are intended to ensure “a people-centred, sensitive, humane, dignified, gender-responsive and prompt reception for all persons arriving in a country, and particularly those in large movements, whether refugees or migrants,” with full respect for and protection of their human rights.⁵¹⁹ The GCM, which was formally endorsed by 163 States at the United Nations General Assembly on 19 December 2018,⁵²⁰ aims to improve international cooperation in the governance of safe, orderly migration in a holistic and comprehensive manner. All except two ASEAN Member States (Brunei Darussalam, which was not present, and Singapore, which abstained) voted in favour of the Global Compact for Safe, Orderly and Regular Migration. In March 2021, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Thailand and Viet Nam participated in the first Asia-Pacific Regional Review of Implementation of the GCM.⁵²¹ The Global Compact on Refugees, which was affirmed by the United Nations General Assembly on 17 December 2018, aims to provide a robust and systematic model to improve the lives of refugees in their host communities.⁵²² All ASEAN member States participated in the Global Refugee Forum in 2019.⁵²³ Under these negotiated agreements, States commit to protecting the human rights and fundamental freedoms of refugee and migrant children, regardless of their status, and to give primary consideration at all times to the best interests of the child.⁵²⁴ Importantly, child sensitivity is a guiding principle of the GCM, which emphasizes the importance of ensuring that the domestic child protection system of States covers migrant children, including by “establishing robust procedures for the protection of migrant children in relevant legislative, administrative and judicial proceedings and decisions.”⁵²⁵

4.1.2 ASEAN instruments

ASEAN Member States have taken important steps towards protecting the rights of children affected by migration. These include adopting the ASEAN Declaration on the Rights of Children in the Context of Migration in November 2019, the Regional Plan of Action on implementing the Declaration, as well as more general instruments which are relevant to the protection of the rights of children and

⁵¹⁷ See analysis in UNHCR, ‘Advisory opinion on the extraterritorial application of non-refoulement obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol’, 26 January 2007, <www.unhcr.org/4d9486929.pdf>, accessed 19 December 2022, paras. 14–16.

⁵¹⁸ Convention on the Rights of the child, 1989, Article 22.

⁵¹⁹ Resolution adopted by the United Nations General Assembly, ‘New York Declaration for Refugees and Migrants’, A/71/1, 3rd October 2016, para. 22.

⁵²⁰ Resolution adopted by the United Nations General Assembly, Global Compact for Safe, Orderly and Regular Migration, A/RES/73/195, United Nations, 11 January 2019.

⁵²¹ United Nations Economic and Social Commission for Asia and the Pacific, *Report of the Asia-Pacific Regional Review of Implementation of the Global Compact for Safe, Orderly and Regular Migration*, Bangkok, ESCAP/GCM/2021/3, 10–12 March 2021.

⁵²² Resolution adopted by the United Nations General Assembly, Global Compact on Refugees, A/73/151, 10 January 2019; United Nations, *Global Compact on Refugees*, United Nations, New York, 2018, <www.unhcr.org/5c658aed4>, accessed 28 February 2022.

⁵²³ UNHCR, Global Refugee Forum, List of participants, Geneva, 17–18 December 2019.

⁵²⁴ The Global Compact on Refugees’ programme of action is underpinned by, among other things, ensuring the best interests of the child (para. 13) and affirms the commitment to support the capacity development of relevant authorities to undertake best interests determinations and assessments to inform decisions concerning child refugees (paras. 60 and 76); the Global Compact for Safe, Orderly and Regular Migration explicitly upholds the principle of the best interests of the child at all times “as a primary consideration in all situations concerning children in the context of international migration” (para. 15(h); see also paras. 21(i) and 23); the New York Declaration for Refugees and Migrants also explicitly provides a commitment to give primary consideration at all times to the best interests of the child (para. 32).

⁵²⁵ Resolution adopted by the United Nations General Assembly, The Global Compact for Safe, Orderly and Regular Migration, A/RES/73/195, 11 January 2019, Obj.7(para.23e).



A social worker meets with a young client during a home visit in Cambodia's Battambang province.
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their families in the context of migration. These include the ASEAN Human Rights Declaration,⁵²⁶ ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers,⁵²⁷ the ASEAN Declaration on the Elimination of Violence against Women and Elimination of Violence against Children,⁵²⁸ the ASEAN Convention against Trafficking in Persons, Especially Women and Children⁵²⁹ and the ASEAN Regional Plan of Action on the Elimination of Violence against Children, which recognizes children affected by migration (including child migrants, refugee, asylum-seeking and displaced children and/or trafficked children) as among the groups of children who are particularly vulnerable to violence.⁵³⁰

The ASEAN Declaration on the Rights of Children in the Context of Migration provides a solid framework for the protection of children in the context of migration. The Declaration recognizes the range of ways in which children may be involved in migration: internal and cross-border child migration; voluntary and involuntary migration; children migrating with their families as well as those who are unaccompanied or separated; children born to migrant parents in destination countries; and children who remain in the country of origin while their parent(s) migrate. The Declaration represents a reconfirmation of ASEAN Member States' commitment to the general principles of the CRC as well as the principles of non-refoulement and 'do no harm'.⁵³¹ Under the Declaration, ASEAN Member States commit to enhancing the identification, referral and protection of children affected by migration by ensuring that all protection systems and basic services address the rights and needs of these children;⁵³² providing access to basic services (including health, a clean and safe environment and psychosocial support

⁵²⁶ ASEAN, 'ASEAN Human Rights Declaration', 19 November 2012 <www.asean.org/storage/images/ASEAN_RTK_2014/6_AHRd_Booklet.pdf>, accessed 17 February 2021.

⁵²⁷ ASEAN, 'ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers', <www.asean.org/wp-content/uploads/2017/11/ASEAN-Consensus-on-the-Protection-and-Promotion-of-the-Rights-of-Migrant-Workers1.pdf>, accessed 17 February 2021.

⁵²⁸ ASEAN, ASEAN Convention against Trafficking in Persons, Especially Women and Children, www.asean.org/wp-content/uploads/2015/12/ACTIP.pdf, accessed 17 February 2021.

⁵²⁹ Ibid.

⁵³⁰ ASEAN Regional Plan of Action on the Elimination of Violence Against Children, Part II(d).

⁵³¹ ASEAN Declaration on the Rights of Children in the Context of Migration, Part III.

⁵³² Ibid., Article 4.

services);⁵³³ incorporating case management for children in the context of migration in the social work curriculum and guidance; building the capacity of key professionals to enable them to respond effectively to the needs of children affected by migration;⁵³⁴ developing effective procedures and alternatives to immigration detention; and, where possible, ensuring children are kept together with their families in a non-custodial, clean and safe environment.⁵³⁵ Further, the Declaration requires enhanced cooperation among ASEAN Member States in the implementation of child- and gender-sensitive border governance policies to ensure the protection of children affected by migration,⁵³⁶ and, in particular, the coordination with consular offices/embassies/legal authorities to facilitate the registration of all births of children affected by migration in ASEAN Member States.⁵³⁷ The Declaration also encourages States to share experiences in the protection of children in the context of migration⁵³⁸ and to strengthen the evidence base on children in the context of migration.⁵³⁹

The Regional Plan of Action on Implementing the ASEAN Declaration on the Rights of Children in the Context of Migration covers the period from 2021 to 2030, and focuses on five areas: enhancing the accessibility of child protection systems for all children affected by migration; enhancing accessibility to basic services for children affected by migration; increasing the capacity of stakeholders, including law enforcement, social workers, service providers and civil society to respond, in a multidisciplinary manner, to the rights and needs of children affected by migration; strengthening the evidence on children affected by migration by improving and investing in the collection and analysis of reliable, comparable and disaggregated data; and strengthening multisector networking and partnerships among ASEAN Member States and between other countries to support and assist with the implementation of the Declaration.

Notable among the other key regional instruments is the **ASEAN Convention Against Trafficking in Persons, Especially Women and Children**. This Convention provides a range of protections for victims of human trafficking and places an obligation on States parties to establish national guidelines or procedures for the proper identification of victims of trafficking,⁵⁴⁰ rights to physical protection and protection of privacy and to specific protection and support, including to adequate housing; counselling and information; medical, psychological and material assistance; and employment, educational and training opportunities.⁵⁴¹

4.2 Bilateral agreements on children affected by migration

Several ASEAN Member States have developed bilateral agreements which relate to the protection needs of children affected by migration. Bilateral agreements addressing human trafficking specifically are in place in Thailand/Cambodia,⁵⁴² Thailand/Myanmar⁵⁴³ and Thailand/Lao PDR.⁵⁴⁴ These agreements take the form of MoUs and set out a series of rights and obligations with a particular focus on cross-border working arrangements in the response to cases of human trafficking. The MoUs oblige the States parties to ensure bilateral cooperation among law enforcement and in judicial proceedings, including the exchange of relevant information, evidence and data on trafficking cases and cooperation in

⁵³³ Ibid., Article 7.

⁵³⁴ Ibid., Article 11.

⁵³⁵ Ibid., Article 9.

⁵³⁶ Ibid., Article 5.

⁵³⁷ Ibid., Article 8.

⁵³⁸ Ibid., Article 12.

⁵³⁹ Ibid., Article 10.

⁵⁴⁰ ASEAN Convention Against Trafficking in Persons, Especially Women and Children, 2015.

⁵⁴¹ Ibid., Article 10.

⁵⁴² Memorandum of Understanding between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand on Bilateral Cooperation for the Elimination of Trafficking in Persons and Protection of Victims of Trafficking, 30 October 2014 ["Cambodia-Thailand TIP-MoU"].

⁵⁴³ Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Union of Myanmar on Cooperation to Combat Trafficking in Persons, Especially Women and Children, 24 April 2009 ["Myanmar-Thailand TIP-MoU"].

⁵⁴⁴ Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Lao People's Democratic Republic on Cooperation to Combat Trafficking in Persons, 12 July 2017 ["Laos-Thailand TIP-MoU"].

supporting victims to give evidence in judicial processes.⁵⁴⁵ They also place an obligation on the States to ensure the protection of victims of trafficking, including that they are recognized as such and not subject to detention and that they are provided with age-appropriate and gender-responsive services (education, healthcare, safe shelter, psychosocial support and access to legal assistance).⁵⁴⁶

The MoUs provide some detail on procedures relating to cross-border repatriation and reintegration of victims of trafficking. This includes duties to notify the relevant authorities in the country that the victim is being returned to and cooperation in the organization and implementation of safe and supportive repatriation.⁵⁴⁷ The Thailand/Myanmar MoU explicitly requires the States to develop, implement and follow up on individual reintegration plans and appoints the Department of Social Welfare (Myanmar) and Department of Social Development and Welfare (Thailand) as the focal points for repatriation and reintegration of victims of human trafficking.⁵⁴⁸ All MoUs require the establishment of a cross-border working group mandated to develop and review plans of action in combating trafficking and bilateral guidelines and standard operating procedures, and to carry out meetings in order to combat cross-border human trafficking.⁵⁴⁹

According to a 2019 qualitative assessment⁵⁵⁰ focused on child protection of children affected by migration in four locations in Thailand, **cross-border working arrangements, systems and mechanisms for responding to human trafficking between Myanmar/Thailand and Cambodia/Thailand were found to operate sufficiently**, with clear guidelines, well-established working procedures and effective coordination, though gaps were identified. For instance, the care and protection of child victims in trafficking cases does not appear to be subject to and guided by a best interests determination. This has the effect of allowing other considerations to trump what is best for children. A challenge in the Thailand/Myanmar cross-border working arrangements is that Myanmar and Thailand have different child protection standards and systems. While the Thai system is decentralized, the system in Myanmar is centrally managed and coordinated with limited delegation of responsibilities to the local level, which has created challenges in developing standard procedures for cross-border case management at the province level. The need for permissions and authorization at the central level in Myanmar also causes substantial delays in case processing, with possible negative implications for children.

A notable gap is the absence of any agreements or guidelines, or any established procedures for responding to child protection cases that have a cross-border dimension but do not meet the legal definition of child trafficking (e.g., vulnerable unaccompanied children who are not victims of trafficking and children who are separated from parent/s or carers as a result of immigration or criminal processes, or as a result of risk or harm). As a result, there are no assessment tools or standardized processes, forms or tools to help social workers manage non-trafficking child protection cases that have a cross-border dimension. The 2019 assessment in Thailand found that a lack of cross-border mechanisms for responding to non-trafficking child protection cases contributed to ad hoc service provision, relying on the personal relationships of staff in the relevant agencies. The assessment further found a lack of knowledge on how to deal with migrant children and how to implement returns of migrant children in a way that respects and protects their rights, which was further compounded by the absence of a clear, agreed central mechanism (and budgets) on returns. Another finding was an absence of an effective system for family tracing in non-trafficking cases, resulting in migrant children spending an unnecessarily long time in shelters in Thailand.⁵⁵¹ However, following the above-mentioned assessment, in 2020, Thailand and Myanmar drafted a bilateral agreement applicable to child protection cases with a cross-border dimension, extending the bilateral framework beyond just trafficking cases. This final draft MoU between Thailand and Myanmar on Strengthening Cooperation to Protect Children Affected by Migration 2020 (final draft Thailand-Myanmar MoU) contains important protections concerning the repatriation of children affected by migration. Under Article 3 of the final draft Thailand-Myanmar MoU, the parties undertake to improve

⁵⁴⁵ Laos-Thailand TIP-MoU, articles 9–14; Cambodia-Thailand TIP-MoU, articles Part V; Myanmar-Thailand TIP-MoU, articles 13 – 16.

⁵⁴⁶ Laos-Thailand TIP-MoU, article 17; Cambodia-Thailand TIP-MoU, article 17; Myanmar-Thailand TIP-MoU, part VI.

⁵⁴⁷ Laos-Thailand TIP-MoU, articles 9–14; Cambodia-Thailand TIP-MoU, articles Part V; Myanmar-Thailand TIP-MoU, articles 13–16.

⁵⁴⁸ Myanmar-Thailand TIP-MoU, article 20.

⁵⁴⁹ Laos-Thailand TIP-MoU, article 19; Cambodia-Thailand TIP-MoU, article 19; Myanmar-Thailand TIP-MoU, article 22.

⁵⁵⁰ Anderson, Kirsten, *Assessment of Child Protection Services for Migrant Children in Thailand*, Coram International, UNICEF2019.

⁵⁵¹ Ibid.

access for children affected by migration, including those who are unaccompanied or separated, to their national child protection systems. Among other provisions, the final draft Thailand-Myanmar MoU requires the parties to develop standard operating procedures guided by the best interests of the child, to manage the 'repatriation' of children affected by migration in a safe and timely manner in accordance with domestic laws, and to make the necessary arrangements to train social workers, police, border force and consular staff on child protection, the prevention of family separation and family reunification in line with international standards.⁵⁵²

4.3 Specific national laws, systems and processes for children affected by migration

4.3.1 Application of migration laws and processes

Criminalization of child migrants

Most ASEAN Member States criminalize aspects of irregular entry and stay of migrant children.

This is inconsistent with international standards, which provide that children should not be criminalized or subject to punitive measures because of their or their parents' migration status.⁵⁵³ The rationale for this provision is that irregular entry and stay do not constitute crimes *per se* against persons, property or national security.⁵⁵⁴ Criminalizing irregular entry and stay would therefore exceed the legitimate interest of States parties to control and regulate migration, leading to arbitrary detention.⁵⁵⁵ Nine ASEAN Member States (Brunei Darussalam, Cambodia, Indonesia, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam) criminalize entry without valid documentation (passport or visa where required) and illegal stay,⁵⁵⁶ to which children above the minimum age of criminal responsibility may be held liable (see Table 5, below).⁵⁵⁷ Irregular entry may be punished by a fine and/or imprisonment and result in deportation (Brunei Darussalam, Cambodia, Indonesia, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam).⁵⁵⁸

⁵⁵² Final draft Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Republic of the Union of Myanmar on Strengthening the Cooperation to Protect Children Affected by Migration, adopted on 20 February 2020, Articles 17 and 22.

⁵⁵³ Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, CMW/C/GC/4-CRC/C/GC/23, para. 7 (CRC Committee GC No. 23 (2017)) 16 November 2017. See also Committee on the Rights of the Child, *Report of the 2012 Day of General Discussion*, 2012, para. 78 and United Nations General Assembly, Global Study on Children Deprived of Liberty, Note by the Secretary-General, 11 July 2019, A/74/136, para. 20.

⁵⁵⁴ CRC Committee general comment No. 23 (2017), para. 7.

⁵⁵⁵ Ibid.

⁵⁵⁶ Cambodia Immigration Law 1994, Articles 21, 29 and 30; Indonesia Law on Immigration, 2011, Articles 113 and 119; Malaysia Immigration Act 1959/63, Articles 5–9, 15; Malaysia Passports Act 1966, Articles 2 and 5(1); Thailand Immigration Act 1979 Articles 11, 12, 22, 54, 62 and 81; Viet Nam Criminal Code 2015, Article 347.

⁵⁵⁷ In Cambodia, where the minimum age of criminal responsibility is 18 years, the court may nevertheless impose criminal responsibility on minors aged 14 and above if warranted by the circumstances of the offence or personality of the minor; Cambodia Law on Juvenile Justice 2016, Article 7, Cambodia Penal Code 2011, Article 39.

⁵⁵⁸ Cambodia, Immigration Law 1994, Articles 29, 30 and 35; Indonesia, Law on Immigration, Articles 113 and 119; Malaysia, Immigration Act 1959/63, Articles 5, 6, 15, 32, 33 and 57; Malaysia, Passports Act 1966, Articles 2 and 5(1); Thailand, Immigration Act 1979, Articles 11, 12, 22, 54, 58–59, 62 and 81; Viet Nam, Criminal Code 2015, Article 347; Viet Nam, Law on Foreigner Entry into, Exit from, Transit through and Residence in Viet Nam 2014, Article 30 (deportation for expiry of temporary residence period).

Table 5: Criminalization of children affected by migration in ASEAN Member States

	No criminalization or administrative liability of children for irregular entry/ stay or migration status	Prohibition on child immigration detention	Provision for alternatives to immigration detention
Brunei Darussalam	✗	✗	✗
Cambodia	✓	✗	✗
Indonesia	✗	✗	✗
Lao PDR	✗	✗	✗
Malaysia	✗	✗	✗
Myanmar	✗	✗	✗
Philippines	✓	✗	✗
Singapore	✓	✗	✗
Thailand	✗	✗	✓ ✓
Viet Nam	✗	✗	✗

- ✓ ✓ **Green** denotes legal frameworks that are largely compliant with international standards and which require little or no law reform.
- ✓ **Blue** denotes legal frameworks that are partially compliant with international standards and the need to review, replace or supplement laws.
- ✗ **Red** denotes legal frameworks that are not compliant with international standards and which require significant reform or development of new laws in order to comply with international standards.

In several ASEAN Member States, irregular entry can also result in the application of administrative sanctions, which may even apply to children below the minimum age of criminal responsibility and without the safeguards provided in criminal laws and procedure. In Lao PDR, for instance, although irregular entry is not a criminal offence, the law nevertheless requires administrative sanctions for breaches of migration law. Children are subject to the same administrative legal regime as adults with there being no minimum age of *administrative* responsibility in the law. Potential sanctions include ‘educational⁵⁵⁹ measures’ to be taken against individuals who commit minor breaches of the immigration law (for example, presenting damaged/dirty travel documents);⁵⁶⁰ fines (specified in separate regulations)⁵⁶¹ for more serious crimes, such as entry with invalid travel documents, failure to enter via official border checkpoints, overstaying permitted duration and unauthorized work; civil measures involving compensation of losses by those whose breaches result in the loss of life or damage to the health or property of others (including the Government); and criminal sanctions pursuant to the Penal Code (though no immigration offences are specified in the Penal Code apart from encouragement of unlawful

⁵⁵⁹ This term is undefined in the law.

⁵⁶⁰ Lao PDR, Law on Immigration and Foreigner Management 2014, Article 70.

⁵⁶¹ Ibid., Article 72.

migration or immigration).⁵⁶² In Indonesia, immigration officers are empowered to impose administrative sanctions (including fines, entry bans, obligations to reside in certain places and deportation) on foreign nationals residing in Indonesia without judicial process who (among other things) contravene “applicable legislation.”⁵⁶³ In Viet Nam, children may be held administratively liable from the age of 14 years.⁵⁶⁴ The law provides for a series of administrative offences relating to entry, exit, transit, residence and travel which are punishable with a warning and/or fine. ‘Foreigners’ (as defined in the law) may also be deported.⁵⁶⁵ However, as a general rule, children who have committed an administrative violation which must be sanctioned by a warning and who voluntarily report and honestly repent their violation, may instead be given a verbal reminder on the spot.⁵⁶⁶ In Thailand, pragmatic government policies and arrangements under bilateral agreements with neighbouring countries (Cambodia, Lao PDR, Myanmar and Viet Nam) have resulted in ad hoc amnesties, which have served at times to protect undocumented children from being prosecuted or sanctioned for breaching migration laws. However, the overriding aim of these policies and agreements has been to regularize migration in order to manage migration flows and meet short-term demands in domestic labour markets.

Immigration detention

All ASEAN Member States permit immigration detention of children in some form, with none expressly prohibiting the practice, which is inconsistent with international standards.⁵⁶⁷ In Brunei Darussalam, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines,⁵⁶⁸ Singapore⁵⁶⁹ and Thailand,⁵⁷⁰ immigration detention is permitted as an administrative measure. Grounds for immigration detention include investigation pending the right to enter (Brunei Darussalam⁵⁷¹, Thailand, in so far as the detention is necessary under the circumstances⁵⁷² Malaysia⁵⁷³ and the Philippines⁵⁷⁴); being refused entry and awaiting removal (Brunei Darussalam,⁵⁷⁵ Indonesia,⁵⁷⁶ Malaysia,⁵⁷⁷ Myanmar,⁵⁷⁸ Singapore⁵⁷⁹); illegal stay (Brunei Darussalam,⁵⁸⁰ Indonesia,⁵⁸¹ Singapore⁵⁸²); pending investigation of breaches of immigration regulations more generally (Lao PDR, in cases of necessity);⁵⁸³ and awaiting deportation (Brunei

⁵⁶² Ibid., Articles 70 and 72–74.

⁵⁶³ Indonesia, Law on Immigration 2011, Article 1(31) and Chapter VII.

⁵⁶⁴ Children aged 14 and 15 years may be held liable for ‘intentional violations’ while over 16s may be held liable for all administrative violations, Viet Nam, Law on Handling of Administrative Violations 2012, as amended, Article 5(1)(a).

⁵⁶⁵ Decree on Administrative Penalties for Violations against Regulations on Social Safety, Security, Order; Social Evils, Fire Prevention and Firefighting; Rescue; Domestic Violence Prevention and Control (Vietnam), Articles 2(d) and 18(8)(b); Law on Handling Administrative Offences (Vietnam), Article 39(7).

⁵⁶⁶ Viet Nam, Law on Handling Administrative Violations, Articles 138 to 140.

⁵⁶⁷ E.g., CRC, Article 37(b) provides that a child may only be deprived of her/his liberty as a measure of last resort and for the shortest appropriate period of time.

⁵⁶⁸ Philippines, Commonwealth Act No. 613, The Philippine Immigration Act of 1940, Article 25.

⁵⁶⁹ Singapore, Immigration Act 1959, Sections 34 and 35.

⁵⁷⁰ The immigration legislation reviewed for Cambodia and Viet Nam did not contain provisions on immigration detention.

⁵⁷¹ Brunei Darussalam, Brunei Darussalam, Immigration Act, Revised Edition 2014, Chapter 17, Section 27.

⁵⁷² Thailand, Immigration Act B.E. 2522, 1979, Articles 19 and 20

⁵⁷³ Malaysia, Immigration Act 1959/63, Article 27.

⁵⁷⁴ Philippines, Commonwealth Act No. 613, The Philippine Immigration Act of 1940, Article 25.

⁵⁷⁵ Brunei Darussalam, Immigration Act, Revised Edition 2014, Chapter 17, Section 5.

⁵⁷⁶ Indonesia, Law on Immigration 6/2011, Article 13.

⁵⁷⁷ Malaysia, Immigration Act 1959/63, Article 31.

⁵⁷⁸ Myanmar, Immigration (Emergency Provisions) Act 1947, Sections 3(a) and 7.

⁵⁷⁹ Singapore Immigration Act 1959, Section 31.

⁵⁸⁰ Brunei Darussalam, Immigration Act, Revised Edition 2014, Chapter 17, Sections 15, 33 and 34.

⁵⁸¹ Residing without a valid permit or lawful travel document, Indonesia Law on Immigration 6/2011, Article 83.

⁵⁸² Singapore, Immigration Act 1959, Section 33–34.

⁵⁸³ Lao PDR, Law on Immigration and Foreigner Management 2014, Article 54.

Darussalam⁵⁸⁴, Indonesia,⁵⁸⁵ Malaysia⁵⁸⁶ and Singapore⁵⁸⁷). Though child justice laws in Indonesia⁵⁸⁸, Malaysia⁵⁸⁹, Myanmar⁵⁹⁰ and the Philippines⁵⁹¹ restrict immigration detention in the context of criminal proceedings (i.e., where a child comes into conflict with the law for an immigration offence), these do not limit immigration detention pending inquiries or deportation imposed as an administrative measure as outlined above. While child justice provisions restricting detention exist in Lao PDR,⁵⁹² these are not applicable to breaches of immigration laws, which are administrative offences rather than criminal matters. Further, in Singapore, provisions which may be used to restrict the immigration detention of children in conflict with the law, are not compulsory and do not provide comprehensive protection. Most notably, children aged 16 and 17 are excluded from the child justice provisions in the Children and Young Persons Act, such that the jurisdiction of the Youth Court and corresponding safeguards against detention do not apply to them.⁵⁹³ In Cambodia and Viet Nam, where immigration laws do not contain administrative provisions on detention, children may only be placed in immigration detention in the context of criminal proceedings, such that the special measures and protections in child justice laws should apply.⁵⁹⁴ It should be noted that Brunei Darussalam, Thailand, Malaysia and Myanmar give government officials the power to grant exemptions to immigration detention laws, providing them with discretion to remove children from the scope of these sanctions.⁵⁹⁵ However, the extent to which these provisions are used to prevent immigration-related detention of children is unclear.

While some recent developments have aimed at eliminating the detention of migrant children, including asylum-seeking and refugee children (see below), lack of legal status for these children can lead to criminal sanctions. Brunei Darussalam, Malaysia, Myanmar, Singapore and Thailand do not recognize asylum seekers and refugees as a distinct category of migrant under their domestic law, such that child asylum seekers and refugees are regarded as ‘illegal immigrants’. However, in line with a reported shift in government policy to end immigration detention of child refugees, one study indicates that court rulings in Malaysia and Thailand have permitted the granting of bail to refugee children, breaking away from common practice, on the basis that immigration detention is not in the child’s best interests.⁵⁹⁶ In Indonesia (which, together with Cambodia and the Philippines, are the only countries which recognize refugees under their domestic law), a ‘Circular Note of the Directorate General of Immigration, Ministry of Law and Human Rights on Restoring the Function of Immigration Detention Centres’⁵⁹⁷ reportedly provides that people seeking asylum and refugees are exempt from immigration detention despite having entered the country irregularly,⁵⁹⁸ though this Circular was not available to the authors for review.

⁵⁸⁴ Brunei Darussalam, Immigration Act, Revised Edition 2014, Chapter 17, Sections 33 to 35.

⁵⁸⁵ Indonesia, Law on Immigration 6/2011, Article 83.

⁵⁸⁶ Malaysia, Immigration Act 1959/63, Article 34.

⁵⁸⁷ Singapore, Immigration Act 1959, Section 34.

⁵⁸⁸ In Indonesia, the Law on the Juvenile Justice System 2011 only permits the detention of a child from the age of 14 where the child is suspected of an offence that carries a prison term of at least seven years, thereby excluding offences concerning migration status, the maximum penalty for which is five years; Indonesia, Law on the Juvenile Justice System 2011, Article 32(2); Indonesia, Law on Immigration 6/2011, Chapter XI.

⁵⁸⁹ In relation to immigration offences which do not involve certain serious offences, provisions include time limits for bringing children before a court, release of children on bail, and restrictions on imprisonment (a child under 14 years of age cannot be imprisoned for any offence offence (though they may be detained in facilities managed by the Department of Social Welfare), and a child over 14 should not be imprisoned if he or she can be suitably dealt with in any other way); Malaysia, Child Act 2001 (as amended), Sections 84 and 96.

⁵⁹⁰ For example: Myanmar, Child Rights Law, Sections 80(e), 83(e), 88(a) and 88(e).

⁵⁹¹ The Philippines, Republic Act 9344, Juvenile Justice and Welfare Act 2006, Sections 5, 36 and 37.

⁵⁹² The Penal Code of Lao PDR provides that detention of children shall be used only as a measure of last resort, for serious offences and for the shortest possible period; Lao PDR, Penal Code 2017, Article 83; see also Lao PDR, Law on the Protection of the Rights and Interests of Children 2006, Articles 62, 64, 65 and 72(3).

⁵⁹³ Singapore, Children and Young Persons Act, Revised Edition 2020, sections 2(1) (*Interpretation*), 34 to 52.

⁵⁹⁴ Cambodia, Law on Juvenile Justice 2016, Article 5; Viet Nam, Criminal Code 2015, as amended, Article 91(6); Viet Nam, Child Law 2016, Article 70(9).

⁵⁹⁵ Brunei Darussalam, Immigration Act, Revised Edition 2014, Chapter 17, Section 54; Thailand, Immigration Act B.E. 2522 (1979), Section 17; Malaysia, Immigration Act 1959/63, Section 27(1)(ii), Section 34(1) and Section 55; Myanmar, Immigration (Emergency Provisions) Act 1947, section 7.

⁵⁹⁶ United Nations Children’s Fund, *Closing the Gap: Feasibility review for withdrawal of Thailand’s reservation to Article 22 of the Convention on the Rights of the Child in relation to refugee and asylum-seeking children*, UNICEF, undated, p. 37.

⁵⁹⁷ MIUM 01.01.2827 signed in July 2018.

⁵⁹⁸ United Nations, Immigration Detention and Alternatives to Detention in the Asia Pacific Region, Annex: Country profiles, May 2022, p. 23; News Republica, *Para Pencari Suaka tak Lagi Huni Rudenim Sejak 2018* (Bahasa), 4 July 2019, <https://news.republika.co.id/berita/nasional/umum/19/07/04/4g8f414-para-pencari-suaka-tak-lagi-huni-rudenim-sejak-2018>, accessed 22 March 2023.

National laws in some ASEAN Member States permit excessively long periods of immigration detention:⁵⁹⁹ a maximum of 10 years in Indonesia,⁶⁰⁰ for as long as may be required or is necessary to undertake inquiries, investigation or make arrangements for deportation of the individual in Brunei Darussalam⁶⁰¹, Malaysia⁶⁰², the Philippines and Singapore,⁶⁰³ and for as long as necessary in Thailand, though an individual court order may not exceed 12 days at a time.⁶⁰⁴ However, Thailand's 2019 MoU provides that children placed in immigration detention shall not be detained 'except in necessary and unavoidable circumstances,' whereby they may be detained at the Immigration Detention Centres, as the last resort and for the 'shortest possible duration.'⁶⁰⁵ Similarly, where children are placed in a reception centre for their care as a measure of last resort, this too must be for the shortest possible duration.⁶⁰⁶

The immigration laws of Brunei Darussalam, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Thailand and Singapore permit, or do not provide comprehensive prohibitions to children to be placed in the same types of immigration detention facilities as adults. In Brunei Darussalam, the Immigration Act permits a person, including a child, to be detained at the immigration depot or other designated place.⁶⁰⁷ In Indonesia, a Circular issued in 2018⁶⁰⁸ 'reportedly provides that people seeking asylum and refugees are exempt from immigration detention despite having entered the country irregularly.'⁶⁰⁹ Otherwise, Indonesian law does not prohibit the placement of children in the same types of immigration detention facilities as adults. In Malaysia, children, like adults, may be held in immigration depots, vessels or aircrafts, or other places designated by the Director General.⁶¹⁰ In Lao PDR, Myanmar and the Philippines, immigration laws do not distinguish between adults and children, such that there are no prohibitions or restrictions against the placement of children in immigration detention with adults (outside the context of criminal proceedings). In Singapore, should a removal order be made, children, like adults, may be detained in any prison, police station or immigration depot for as long as is necessary for arrangements to be made for their removal from Singapore.⁶¹¹

It should be noted that there has been an apparent shift in government policy over the past decade in Thailand and Malaysia towards ending the immigration detention of children. In Thailand, in 2016 and 2017, on the occasion of the adoption of the New York Declaration, the Government announced that it would end the practice of immigration detention of children.⁶¹² In 2019, the MoU on Alternative to Detention was adopted.⁶¹³ The standard operating procedures under the MoU require the establishment of a multidisciplinary working group to respond when a child arrives at an immigration centre in order to identify the child's vulnerabilities and provide the child with alternative care.⁶¹⁴ Alternative care arrangements include placing children and their families in their community, arranging for foster care, placing children and their mothers in government institutions under the Ministry of Social Development and Human Security or in registered private shelters.⁶¹⁵ However, there are no requirements in the

⁵⁹⁹ For completeness, immigration detention is permitted for a shorter period of 48 hours in Lao PDR; Lao PDR, Law on Immigration and Foreigner Management 2014, Article 54.

⁶⁰⁰ Indonesia, Law on Immigration 6/2011, Article 85(2).

⁶⁰¹ Brunei Darussalam, Immigration Act, Revised Edition 2014, Chapter 17, Section 34(1).

⁶⁰² Malaysia, Immigration Act 1959/63, Articles 31 and 51(5)(b).

⁶⁰³ Singapore, Immigration Act 1959, Section 34(1) and (5).

⁶⁰⁴ Administrative immigration detention is for up to 48 hours, extendable to seven days, following which it requires a court order; Thailand, Immigration Act B.E. 2522 (1979), Article 20.

⁶⁰⁵ Thailand MOU on Alternatives to Detention 2019, para 4.1.

⁶⁰⁶ Thailand MOU on Alternatives to Detention, para 4.4.

⁶⁰⁷ Brunei Darussalam, Immigration Act, Revised Edition 2014, Chapter 17, Section 31.

⁶⁰⁸ Circular Note of the Directorate General of Immigration, Ministry of Law and Human Rights on Restoring the Function of Immigration Detention Centres' MIUM 01.01.2827, signed in July 2018.

⁶⁰⁹ United Nations, Immigration Detention and Alternatives to Detention in the Asia Pacific Region, Annex: Country profiles, May 2022, p. 23; News Republica, *Para Pencari Suaka tak Lagi Huni Rudenim Sejak 2018* (Bahasa), 4 July 2019, <https://news.republika.co.id/berita/nasional/umum/19/07/04/pu4g8f414-para-pencari-suaka-tak-lagi-huni-rudenim-sejak-2018>, accessed 22 March 2023.

⁶¹⁰ Malaysia, Immigration Act 1959/63, Articles 27, 31 and 34.

⁶¹¹ Section 34(1), (5), Immigration Act 1959.

⁶¹² United Nations Children's Fund, *Situation Analysis on Migrant and Refugee Children in Thailand 2018*, p. 56.

⁶¹³ Thailand MoU on Alternatives to Detention, 2019, para. 4.4.

⁶¹⁴ Standard Operating Procedures Under the MoU on The Determination of Measures and Approaches Alternative to Detention of Children in Immigration Detention Centres B.E.2562 (SOPs under the Thailand MoU on Alternatives to Immigration Detention, 2019), Article 5.

⁶¹⁵ Standard Operating Procedures under the Thailand MoU on Alternatives to Immigration Detention, 2019, Article 6.5.2.

MoU against de facto immigration detention in alternative accommodation, such as a requirement for the institutions or private shelters to operate an open regime. Similarly, there is no such requirement for the reception centres in which children may be placed pending determination of alternative care, though these may only be used as a last resort and for the shortest possible duration.⁶¹⁶ In Malaysia, the Cabinet approved, in October 2020, a small-scale pilot ‘alternatives to detention’ programme (ATD Pilot) for the release of unaccompanied and separated children from immigration detention centres, in collaboration with two civil society organisations. The ATD Pilot, which in Phase 1 is focused on the safe return of children where it is in their best interests, commenced in February 2022 with standard operating procedures finalised by relevant government ministries. However as of March 2022, children have yet to be released from immigration detention into the ATD Pilot.⁶¹⁷

Best interests decision-making

The international obligations of ASEAN Member States to ensure that the child’s best interests are a primary consideration, applies to all decisions relating to children, including on migration processes.⁶¹⁸ This applies to decision-making on individual cases, including granting or refusing applications on entry or residence, and in enforcing migration rules.⁶¹⁹ In order to implement the best interests principle, best interests assessments and determination procedures should be undertaken systematically as part of, or to inform, migration-related and other decisions that affect children.⁶²⁰ With the exception of the Philippines,⁶²¹ there are no specific provisions in the primary immigration laws of ASEAN Member States explicitly requiring that the best interests of the child to be a primary consideration in immigration processes and decision-making. However, general best interests obligations in child protection laws in Lao PDR,⁶²² Thailand⁶²³ and Viet Nam⁶²⁴ have broad application and apply to migration processes.⁶²⁵ In the Philippines, Rule 9 of Department of Justice Circular 024 issued in 2022⁶²⁶ provides that the best interests of the child shall be the primary consideration in all actions concerning children, including those who are unaccompanied and separated. In Thailand, the MoU on the Determination of Measures and Approaches Alternative to Detention of Children in Immigration Detention Centres 2019 confirms that decisions and actions affecting a child shall always take into account the child’s best interests and views.⁶²⁷ The standard operating procedures under this MoU also confirm that the child’s best interests shall be a primary consideration and that “the child’s opinion shall be heard and be considered for any decision-making process that [a]ffects the child.”⁶²⁸

⁶¹⁶ Thailand MoU on Alternatives to Detention, 2019, para. 4.4.

⁶¹⁷ United Nations Network on Migration and International Detention Coalition, *Immigration detention and alternatives to detention in the Asia-Pacific region*, 2022, p. 14.

⁶¹⁸ Convention on the Rights of the Child, Article 3(1); ASEAN Declaration on the Rights of Children in the Context of Migration, para. 1.

⁶¹⁹ CRC Committee general comment No. 22 (2017), paras. 29–30 and 32(a).

⁶²⁰ CRC general comment No. 22 (2017), para. 31.

⁶²¹ Philippines, Department of Justice Circular 024 of 2022.

⁶²² The best interests of the child shall be “the deciding factor in making decisions” about the child; Law on the Protection of the Rights and Interests of Children 2006, Article 4.

⁶²³ In any treatment of the child, the best interests of the child shall be given ‘primary importance’; Thailand, Child Protection Act 2003, Article 22.

⁶²⁴ There is a general principle to ensure children’s best interests when making decisions concerning children; Viet Nam, Child Law 2016, Article 5.

⁶²⁵ In Malaysia, the Child Act 2001 only references the best interests of the child in provisions relating to children regarded as in need of care and protection, which does not specifically include children seeking asylum (section 17). Indonesian law requires the application of the best interests principle only in specific circumstances. These include child protection cases, which refers to acts designed to guarantee and protect children and their rights (Indonesia, Law on Child Protection 2002, as amended, Article 2) and are therefore unlikely to include migration cases that do not involve a child protection referral.

⁶²⁶ The Philippines, Department of Justice Circular 024, ‘Strengthening the Refugees and Stateless Persons Protection Unit, Enhancing the Rules for Refugee and Stateless Status Determination, and for other purposes’, 2022.

⁶²⁷ Thailand MoU on Alternatives to Immigration Detention, 2019, Article 4.2.

⁶²⁸ Ibid.



School children stand in a window of their classroom at an Alternative Learning Centre in a slum settlement in the Malaysian state of Sabah. © UNICEF/UN0248120/Shehzad Noorani

4.3.2 Refugee laws and processes

Cambodia and the Philippines are the only two ASEAN Member States which are party to the Refugee Convention 1951 and Refugee Status Protocol 1967. All ASEAN Member States have, however, ratified the CRC and are therefore bound by the obligations under Article 22 (right of child refugees or child asylum seekers to receive appropriate protection and humanitarian protection in the enjoyment of convention rights), though Brunei Darussalam, Malaysia, Singapore and Thailand have issued reservations and declarations to its CRC obligations. In particular, Singapore has reserved ‘the right to apply such legislation and conditions concerning the entry into, stay in and departure from the Republic of Singapore of those who do not or who no longer have the right under the laws of the Republic of Singapore, to enter and remain in the Republic of Singapore, and to the acquisition and possession of citizenship, as it may deem necessary from time to time and in accordance with the laws of the Republic of Singapore.’ Similarly, Thailand has entered a reservation that Article 22 shall be subject to its “national laws, regulations and prevailing practices” (it is noted that Thailand is currently considering withdrawing this reservation).⁶²⁹ Of all the ASEAN countries, only Cambodia, the Philippines and, following legal developments in 2016, Indonesia, recognize asylum seekers and refugees as a distinct category of migrants in law, even though Indonesia is not a party to the Refugee Convention 1951 or Refugee Status Protocol 1967. In the Philippines, the Department of Justice Circular O24 of 2022 provides specifically for unaccompanied children seeking refugee or stateless status;⁶³⁰ requires that such children should be provided with the right to be heard;⁶³¹ and provides that the best interests of the child are to be the primary consideration.⁶³² In Cambodia and Indonesia, there is no specific legislation dealing with the rights of ‘child’ asylum seekers and refugees. Rather, the State’s obligations are found in legislation addressing refugees in general and in the legislation relating to the protection of children. Regulations in Indonesia detail the process of handling refugee cases from the arrival of a person seeking asylum to final determination of status, though these are limited in scope.⁶³³ Further, under Indonesian law, recognition as a refugee by UNHCR does not grant formal legal status but, rather, a temporary right to stay in the country pending status determination.⁶³⁴

⁶²⁹ UNICEF EAPRO, written communication to Coram International received 11 July 2022.

⁶³⁰ Philippines, Department of Justice Circular O24 of 2022, Rule IX, Section 3.

⁶³¹ Ibid., Rule IX, Section 6.

⁶³² Ibid., Rule IX, Section 2.

⁶³³ The only provision specifically relating to children concerns the discretion to place an asylum seeker or refugee in a location other than an immigration detention facility or centre; Indonesia, Regulation of the Director General of Immigration No. IMI-0352.GR.02.07 (2016) on the Handling of Illegal Migrant Claiming to be Asylum Seeker or Refugee, 2016, Article 4.

⁶³⁴ *Closing the Gap: Feasibility review for withdrawal of Thailand’s reservation to Article 22 of the Convention on the Rights of the Child in relation to refugee and asylum-seeking children*, pp. 36–37.

The laws of Cambodia and Indonesia appear to exclude asylum seekers and refugees from prosecution for migration offences, though this is not explicit in the law. In Indonesia, this is achieved through Presidential Regulation 125/2016 Concerning the Handling of Foreign Refugees, which recognizes the role of UNHCR in cooperating with the Government in handling cases involving refugees, which by law must comply with “generally applied international provisions” as well as national laws.⁶³⁵ In Cambodia, criminal sanctions and deportation for what would otherwise constitute ‘unlawful entry’ are subject to Cambodia’s international treaty obligations, which would include the Refugee Convention 1951 and Refugee Status Protocol 1967.⁶³⁶ Cambodia’s law provides some protection for child asylum seekers, though these are set out in secondary legislation. The Ministry of Social Affairs, Veterans and Youth Rehabilitation is required to provide a representative or legal guardian to child asylum seekers, who must work on behalf of and “for the best interests” of the child, though the appointment of the representative is only required “where necessary” without further elaboration.⁶³⁷

Although **the Constitutions of Lao PDR⁶³⁸ and Viet Nam⁶³⁹ refer to asylum**, the Vietnamese Constitution provides only that Viet Nam “may consider” granting asylum in certain circumstances, and the provisions in the Constitutions of the two States do not adopt the same definition of refugee as the Refugee Convention. No further provisions for granting asylum or refugee status and any associated protection were found in other legislation reviewed for these jurisdictions.

In Brunei Darussalam, Malaysia, Myanmar, Singapore and Thailand, no distinction is made between asylum seekers and refugees and other groups of migrants. This means that asylum seekers and refugees (including children) are treated as undocumented migrants (and thus liable to the sanctions set out further above), and no legal route exists in these countries for asylum seekers to be granted refugee status.⁶⁴⁰ However, in Thailand, reports indicate a shift in policy over the last decade to end the detention of refugee children and establish effective refugee-screening measures and resettlement options.⁶⁴¹ The Ministry of Interior has, as a pragmatic measure, applied its general powers under immigration legislation to allow refugees to remain in the country without prosecution for migration offences⁶⁴² and reportedly issued secondary legislation permitting non-citizens the right to remain in Thailand under certain conditions which may be particularly relevant to asylum seekers (such as return to the country of origin causing a danger to their life or a threat to their freedom due to war or conflict based on politics, race, religion, beliefs, or a risk of forced labour or human trafficking).⁶⁴³ Most recently, in December 2019, the Thai cabinet approved in principle the establishment of a National Screening Mechanism to distinguish persons in need of protection from economic migrants.⁶⁴⁴ A similar shift was observed in Malaysia before the COVID-19 pandemic. Despite these developments, in both Thailand and Malaysia, resettlement in a third country is generally regarded as the preferred long-term response for asylum seekers and refugees, as opposed to local family reunification and integration where this is in the child’s best interests.⁶⁴⁵

⁶³⁵ Indonesia, Presidential Regulation 125/2016 Concerning the Handling of Foreign Refugees 2016, Articles 2–3.

⁶³⁶ Cambodia, Law on Immigration 1994, Articles 29 and 35.

⁶³⁷ Cambodia Sub-decree on Procedure for Recognition as a Refugee or Providing Asylum Rights to Foreigners in the Kingdom of Cambodia 2009, Article 13.

⁶³⁸ Lao PDR, Lao People’s Democratic Republic Constitution 2015 (as amended), Article 51 provides that asylum will be granted to foreigners “who are persecuted for their struggle for freedom, justice, peace and scientific causes”

⁶³⁹ Article 49 of Viet Nam’s Constitution provides that Viet Nam may consider granting asylum to “[f]oreign nationals who are persecuted for taking part in the struggle for freedom and national independence, for socialism, democracy and peace, or for engaging in scientific pursuits”

⁶⁴⁰ It should be noted that, in Malaysia, the National Security Council has issued a Directive which allows individuals registered with UNHCR to stay temporarily in Malaysia on humanitarian grounds (MKN Directive No. 23 (‘Illegal Immigrants Holding UNHCR cards Management Mechanism’). Also, a Circular issued by the Attorney General’s Chambers provides a degree of immunity from prosecution for immigration offences for those refugees and asylum-seekers who are registered with UNHCR.)

⁶⁴¹ *Closing the Gap: Feasibility Review for Withdrawal of Thailand’s Reservation to Article 22 of the Convention on the Rights of the Child in Relation to Refugee and Asylum-Seeking Children*, p. 7.

⁶⁴² Thailand, Immigration Act 1979, Article 17 provides that, ‘in certain special cases’, the Minister of Interior, by Cabinet approval, may permit any alien or group of aliens to stay in the Kingdom under certain conditions or grant exemptions from complying with the Immigration Act; *Closing the Gap: Feasibility Review for Withdrawal of Thailand’s Reservation to Article 22 of the Convention on the Rights of the Child in Relation to Refugee and Asylum-Seeking Children*, p. 7.

⁶⁴³ *Ibid.*, p. 14 and footnote 61.

⁶⁴⁴ UNHCR, ‘UNHCR Welcomes Thai Cabinet Approval of National Screening Mechanism’, 16 December 2019, <www.unhcr.org/th/en/16791-unhcr-welcomes-thai-cabinet-approval-of-national-screening-mechanism.html>, accessed 21 January 2022.

⁶⁴⁵ *Closing the Gap: Feasibility Review for Withdrawal of Thailand’s Reservation to Article 22 of the Convention on the Rights of the Child in Relation to Refugee and Asylum-Seeking Children*, p. 36.

The effect of this policy is that children are left waiting for a durable solution for an unforeseeable period until a placement is found through UNHCR's global resettlement programme, with demand significantly outweighing the numbers of placements available.⁶⁴⁶

4.3.3 Non-refoulement and return

The principle of non-refoulement is well established under international law and applies to all forms of return, including deportation for violating migration laws.⁶⁴⁷ The CRC Committee interprets this principle as prohibiting States parties to the CRC from returning a child to a country “*where there are substantial grounds for believing that there is a real risk of irreparable harm to the child,*” either in the country of return or any other country to which the child may subsequently be removed, or a “reasonable risk” that such return would result in the violation of the child's fundamental human rights.⁶⁴⁸

None of the ASEAN Member States comprehensively prohibit refoulement. The final draft Thailand-Myanmar MoU detailed above (section 4.2) contains important protections concerning the repatriation of child migrants but does not prohibit refoulement.⁶⁴⁹ The domestic laws of Brunei Darussalam, Lao PDR, Malaysia, Myanmar, Singapore and Viet Nam do not contain a provision on non-refoulement. Cambodia, Indonesia, the Philippines and Thailand have specific provisions relating to the return of refugees (although Thailand does not use this term). Cambodia's explicit legal prohibition on refoulement applies only in relation to refugees.⁶⁵⁰ However, its immigration Law is subject to Cambodia's international treaty obligations, thus applying the non-refoulement provisions in the Refugee Convention 1951 and the Convention against Torture (to which Cambodia is a party) to deportations of ‘aliens’ (as defined in the law) more broadly.⁶⁵¹ The Philippines' Department of Justice Circular 024 of 2022 provides that the refugee and stateless status determination procedure shall be governed by the principle of non-refoulement.⁶⁵² Although Indonesia does not expressly prohibit refoulement, it has a requirement under Presidential regulations to ensure that the handling of refugees must “observe generally applied” international law,⁶⁵³ which should be interpreted as incorporating the principle of non-refoulement. In 2022, Thailand passed a new law, the Act to Prevent and Suppress Torture and Enforced Disappearance, Article 13 of which provides that, “*No government organizations or public officials shall expel, deport, or extradite a person to another country where there are substantial grounds for believing that the person would be in danger of torture, cruel, inhuman, or degrading treatment, or enforced disappearance.*”. The Act entered into force in February 2023. However, on February 14, 2023, the Thai government approved a decree to postpone the enforcement of key articles 22 to 25 of the Act.⁶⁵⁴

4.3.4 Anti-trafficking laws and processes

Despite the development of laws to respond to (child) trafficking at the national, bilateral and regional level in ASEAN, considerable gaps remain in these legislative frameworks, which has meant that trafficked children often fall out of the remit of protection provided by the law. Most ASEAN Member States have passed anti-trafficking laws at the national level.⁶⁵⁵ These laws are further complemented by provisions contained within national penal codes. However, **some of the laws contain**

⁶⁴⁶ United Nations Children's Fund, *Situation Analysis on migrant and refugee children in Thailand 2018*, Thailand, p. 55.

⁶⁴⁷ Refugee Convention 1951, and Article 33(1)-(2); Convention against Torture, Article 3; customary international law (*ius cogens*); UNHCR, ‘Note on Non-Refoulement’, EC/SCP/2, 23 August 1977.

⁶⁴⁸ Committee on the Rights of the Child, general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6 (CRC Committee GC No. 6 (2005)), 1 September 2005, paras. 27, 84.

⁶⁴⁹ Final Draft Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Republic of the Union of Myanmar on Strengthening the Cooperation to Protect Children Affected by Migration, adopted on 20 February 2020, Articles 17, 22.

⁶⁵⁰ Cambodia Sub-decree on Procedure for Recognition as a Refugee or Providing Asylum Rights to Foreigners in the Kingdom of Cambodia 2009, Article 23.

⁶⁵¹ Cambodia, Law on Immigration 1994, Articles 3, 29 and 35.

⁶⁵² Philippines, Department of Justice Circular 024 of 2022, Section 3.

⁶⁵³ Indonesia, Presidential Regulation 125/2016 Concerning the Handling of Foreign Refugees 2016, Article 3.

⁶⁵⁴ See: <https://www.hrw.org/news/2023/02/15/thailand-law-torture-disappearance-delayed>

⁶⁵⁵ Cambodia's Law on Suppression of Human Trafficking and Sexual Exploitation 2008; Indonesia's Law on the Eradication of the Criminal Act of Human Trafficking 2007; Lao PDR's Law on Anti-Trafficking in Persons 2016; Malaysia's Anti-Trafficking in Persons and Anti-Smuggling Act 2007; Thailand's Anti-Trafficking in Persons Act 2008; and Viet Nam's Law on Prevention and Suppression of Human Trafficking 2011.

gaps and inconsistencies with international standards. In cases of child trafficking, the Palermo Protocol removes the need to prove that a victim was trafficked through a particular means (i.e., force or coercion). While the laws of Brunei Darussalam, Lao PDR, Malaysia, the Philippines, Singapore and Thailand are compliant with this standard, the laws of other countries are not. In Viet Nam, national child trafficking provisions apply only to children under the age of 16.⁶⁵⁶ Victims of child trafficking from the age of 16 years are instead covered by the generic crime of human trafficking in Article 150 of the Criminal Code, which requires proof of coercive means. In Cambodia, the use of force, threat, deception, abuse of power or enticement is required for a trafficking offence, including for child trafficking.⁶⁵⁷ In Indonesia, the threat/use of force, abduction, incarceration, fraud, deception, abuse of authority or position of vulnerability, debt bondage or the giving of payment or benefit is required.⁶⁵⁸ By mandating that this standard be met in cases of child trafficking, these laws fail to recognize that a child (by virtue of being a child) cannot legally consent to their own exploitation. Any evidence of 'consent' from their side should be negated, and an offence of trafficking found.

Another gap in child trafficking laws evident in Malaysia is **the failure to expressly criminalize secondary liability and the carrying out of some preparatory acts connected to trafficking.** Malaysia's anti-trafficking law fails to explicitly address secondary liability or attempts to traffic children, although the Penal Code criminalises some related acts⁶⁵⁹ and hence has a very narrow conceptualisation of what amounts to a trafficking offence. Trafficking is not a single person activity; it typically involves a group of people working across borders, so the omission of secondary liability means that these frameworks fail to tackle trafficking as a wider enterprise. Furthermore, the failure to criminalize preparatory acts connected to trafficking means that these frameworks are only reactionary and not preventative. Such legislative gaps give perpetrators greater opportunity to evade prosecution. A broader understanding of trafficking thus needs to be enshrined into the law in Malaysia to guarantee prosecution and thus uphold the rights of the victim.

Due to the cross-border nature of trafficking offences, **it is important that the laws addressing child trafficking can apply extraterritorially.** The anti-trafficking provisions of all ASEAN countries, except Indonesia, have extraterritorial application, although the scope varies. In Indonesia, cross-border cases are covered to some extent under the national anti-trafficking law, which criminalizes bringing a person into Indonesia with the intention to exploit (Article 3), the removal of an Indonesian citizen with the intention to exploit (Article 4), and sending a child to another country, leading to their exploitation (Article 6). This is a somewhat limited understanding of extraterritorial jurisdiction as it leaves certain situations out of its scope, i.e., if an Indonesian child is already in another country when they are exploited, or if an Indonesian citizen commits a trafficking offence in another country. In Singapore, the law applies extraterritorially so long as the conduct occurred 'partly' within Singapore's borders, regardless of whether Singapore is the origin, transit or destination country.⁶⁶⁰ Conduct occurring 'partly' in Singapore is not defined, leaving it open to interpretation. The law is silent on the question of liability for persons resident in Singapore who have committed trafficking overseas. Anti-trafficking laws in the other ASEAN Member States are more all-encompassing. For example, Thailand's anti-trafficking law states that "*Whoever commits an offence mentioned in Section 6 outside the Kingdom shall be liable for the punishment stipulated in this Act in the Kingdom.*"⁶⁶¹ By providing greater opportunities for prosecution, extraterritorial jurisdiction creates a wider net of protection for children.

⁶⁵⁶ Viet Nam, Law on Prevention and Suppression of Human Trafficking 2011, Article 3; Viet Nam, Criminal Code, Article 151.

⁶⁵⁷ Cambodia, Law on Suppression of Human Trafficking and Sexual Exploitation, 2008, Articles, 10, 12, 17 and 19.

⁶⁵⁸ Indonesia, Law on the Eradication of the Criminal Act of Human Trafficking, 2007, Article 2.

⁶⁵⁹ This includes the crimes of abetment (Article 107), the conspiracy to (Article 120(a) and (b) and the attempt (Article 511) to commit any criminal offence outlined in the code, which includes some forms of human trafficking i.e. the habitual dealing in slaves (Article 371).

⁶⁶⁰ Singapore, Law on Prevention of Human Trafficking, 2014, Article 3(4).

⁶⁶¹ Thailand, Section 11.

It is imperative that anti-trafficking laws do not criminalize trafficked children for acts they may have committed as a result of their trafficking, as set out in international law and in the United Nations Trafficking Principles and Guidelines⁶⁶² and the ASEAN Declaration Against Trafficking in Persons Especially Women and Children.⁶⁶³ Although this non-liability principle is enshrined in the laws of seven of the ASEAN Member States,⁶⁶⁴ it is notably absent from the laws of Singapore and Viet Nam, which do not contain any explicit immunity for victims of trafficking. In practice, prosecution may be unlikely to occur in these two States due to the support afforded to victims under Article 32 of Viet Nam’s Law on Prevention and Suppression of Human Trafficking and Section 19 of the Prevention of Human Trafficking Act 2014 of Singapore. Myanmar provides partial protection from prosecution for trafficking victims. Article 16 of Myanmar’s Prevention and Suppression of Trafficking in Persons Law states that no action shall be taken against a trafficked victim *for their involvement in the trafficking*, whether it was consented to or not; for illegal entry into, passing through, leaving for, illegally residing in or working in a *foreign country*; or for acquiring or possessing any fraudulent travel documents. However, this exemption does not appear to extend to protecting the victim from prosecution for illegal entry or stay in Myanmar (as opposed to in a foreign country). Indeed, Article 17 states that when a trafficked victim is found guilty of a crime that was committed as a consequence of their trafficking, the prosecuting bodies must seek the approval of the Central Body for the Suppression of Trafficking in Persons to be able to take an action against the trafficked victim, which further reinforces the absence of a blanket exemption from prosecution for the victim for offences arising as a result of the victim’s trafficking. It is crucial that non-punishment is explicitly covered in the law, in order to provide a more protective framework for safeguarding the rights of child victims of trafficking.

International and regional laws also provide that victims of trafficking should not be held within detention facilities.⁶⁶⁵ These prohibitions cover not only penal detention, but also deprivation of liberty on the basis of the child’s welfare, health and protection. They therefore cover detention within immigration centres, shelters and welfare homes. This added layer of protection has been re-emphasized within regional law and policy, with the 2003 MoU between Cambodia and Thailand outlining how trafficked women and children shall not be detained in immigration detention centres while awaiting official repatriation.⁶⁶⁶ However, despite the existence of various laws and policies to prevent the detention of trafficking victims in the ASEAN region, it is evident that it still frequently occurs in practice. A prominent cause of detention is due to the fact that trafficked persons are often wrongfully identified as illegal immigrants and are subsequently imprisoned within jails or immigration detention centres. Such misidentification means that victims do not receive the support or access to rehabilitative services needed for their recovery. Misclassification has been raised as a prevalent issue across ASEAN Member States, especially in Indonesia and Thailand. A 2015 report from the Special Rapporteur on Trafficking in Persons on Malaysia found that there was *“a real danger that victims of trafficking [were] misidentified as irregular migrants, resulting in their arrest, detention and deportation.”*⁶⁶⁷ The report notes that of four persons interviewed at random at an immigration detention centre, two could have been classified as trafficking cases. Trafficking victims should be placed in custody shelters and welfare facilities, as these systems can ensure that victims receive the appropriate support and protection they need. However, it has been found that the restrictive conditions of many welfare facilities mean they essentially function as de facto

⁶⁶² United Nations Office on Drugs and Crime, ‘Recommended Principles and Guidelines on Human Rights and Human Trafficking’, 2003, Article 6. ASEAN, ‘Regional Review on Laws, Policies and Practices within ASEAN relating to the Identification, Management and Treatment of Victims of Trafficking, especially Women and Children’, 2016, Article 14.8; CRC, Article 37 also contains a more general provision restricting the detention of children, which would also apply to prohibit the use of detention for victims of trafficking.

⁶⁶³ Guideline 4 of the Office of the High Commissioner for Human Rights ‘Recommended Principles and Guidelines on Human Rights and Human Trafficking’, in the United Nations Office on Drugs and Crime, ‘The Principle of Non-Criminalization of Victims’, www.unodc.org/e4j/en/tip-and-som/module-8/key-issues/principle-of-non-criminalization-of-victims.html, accessed 22 Feb 2022; ASEAN Declaration, Para. 14.7.

⁶⁶⁴ Brunei Darussalam; Cambodia; Indonesia; Lao PDR; Malaysia; Philippines; and Thailand.

⁶⁶⁵ Article 6, United Nations Office on Drugs and Crime, ‘Recommended Principles and Guidelines on Human Rights and Human Trafficking’, 2003; Article 14.8, ASEAN, *Regional Review on Laws, Policies and Practices within ASEAN relating to the Identification, Management and Treatment of Victims of Trafficking, especially Women and Children*, 2016. Article 37 of the CRC also contains a more general provision restricting the detention of children, which would also apply to prohibit the use of detention for victims of trafficking.

⁶⁶⁶ ASEAN, *Regional Review on Laws, Policies and Practices within ASEAN relating to the Identification, Management and Treatment of Victims of Trafficking, especially Women and Children*, 2016.

⁶⁶⁷ Giammarinaro. Maria., Report of the Special Rapporteur on trafficking in persons, especially women and children: Addendum Mission to Malaysia, Human Rights Council, A/HRC/29/38/Add.1, 1 June 2015.

detention facilities.⁶⁶⁸ A report on the Greater Mekong Sub-Region found that “trafficked persons stayed in closed shelters and were unable to leave the facility,” having very little contact with their families, leading them to experience “stress, frustration and anxiety.”⁶⁶⁹ There have also been many reports that children are frequently held in shelters for extended periods of time, often against their own will or best interests.⁶⁷⁰ Such limitation on a resident’s freedom of movement is a clear violation of international standards. There is a pressing need to strike a better balance between providing the necessary social care, and the unlawful restriction of the victim’s freedom, which could be achieved by placing a child rights approach at the centre of a shelter’s operations and monitoring systems.

4.4 Accessibility and suitability of child protection systems and services for children affected by migration in ASEAN Member States

Given their heightened vulnerability to risk, it is crucial that child migrants and those without legal status have access to child protection systems and services. Yet, across ASEAN, child protection systems are not yet fully inclusive nor responsive to the needs of children affected by migration. In cases where children and families are entitled to services ‘on paper’, a multitude of practical barriers exist which prevent them from accessing the services to which they are entitled. While the focus of this section is on the barriers faced exclusively by children affected by migration, it should be noted that many countries in ASEAN continue to face significant challenges in the delivery of child protection more generally.

4.4.1 Inclusivity of child protection systems, services and processes for children affected by migration

It is well recognized that the needs and interests of children affected by migration should be mainstreamed within national child protection systems.⁶⁷¹ Child protection systems consist of the formal and informal structures, functions and capacities that have been assembled to prevent and respond to violence, abuse, neglect and exploitation of children.⁶⁷² A rights-compliant child protection system requires effective and proactive violence prevention programmes; identification, referral, reporting and follow-up mechanisms to respond to violence against children; and treatment for children who have experienced violence; and judicial involvement where necessary.⁶⁷³ According to the UNHCR-UNICEF Child Protection Blueprint 2021,⁶⁷⁴ inclusive child protection systems require: laws and policies that are non-discriminatory to refugee children; coordination between national and (local) refugee systems; availability of the full range of child protection services to all asylum-seeking and refugee children; appropriateness and affordability of the services (i.e., there are no hidden costs to access them); inclusion

⁶⁶⁸ Rafferty, Yvonne, ‘The Identification, Recovery, and Reintegration of Victims of Child Trafficking within ASEAN: An exploratory study of knowledge gaps and emerging challenges’, *Journal of Human Trafficking*, New York, 2019.

⁶⁶⁹ Surtees, Rebecca, *After Trafficking: Experiences and challenges in the (re)integration of trafficked persons in the Greater Mekong Sub-region*, United Nations Inter-Agency Project on Human Trafficking/NEXUS Institute, Bangkok, 2013.

⁶⁷⁰ ASEAN, *Regional Review on Laws, Policies and Practices within ASEAN relating to the Identification, Management and Treatment of Victims of Trafficking, especially Women and Children*, 2016

⁶⁷¹ ASEAN Declaration on the Rights of Children in the Context of Migration, 2 November 2019; Joint general comment No. 3 of the Committee on the Protection of the Rights of All migrant Workers and Members of Their Families and general comment No. 22 of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration (2017), 16 November 2017, CMW/C/GC/3 – CRC/C/GC/22, para. 14. In its Child Protection Strategy 2021–2030, UNICEF has committed to supporting child protection systems that are inclusive of internally displaced, migrant and refugee children.

⁶⁷² United Nations Children’s Fund, UNHCR, Save the Children and World Vision, *A Better Way to Protect all Children: The theory and practice of child protection systems*, Conference report, 13–16 November 2012, New Delhi, 2013, p.3.

⁶⁷³ Committee on the Rights of the Child, general comment No. 13 (2011), The right of the child to freedom from all forms of violence, 18 April 2011, CRC/C/GC/13 (CRC GC No. 13 (2011)), paras. 46–54.

⁶⁷⁴ UNHCR and United Nations Children’s Fund, ‘Child Protection Blueprint – A fair deal for refugee children’, November 2021, <www.unicef.org/media/115601/file/%20UNHCR-UNICEF-Child-Protection-Blueprint%E2%80%93A-Fair-Deal-for-Refugee-Children.pdf>. The Blueprint is a commitment to accelerate joint efforts under a transformational agenda in line with the Global Compact on Refugees, focused on three key areas: education; water, sanitation and hygiene; and child protection.

of refugee and asylum-seeking children in the data collection and monitoring of services; and awareness of the existence of the services among children and families affected by migration.⁶⁷⁵

The child protection laws of all ASEAN countries, where they exist,⁶⁷⁶ are applicable to all children, including children affected by migration. However, the child protection legislation in Viet Nam only applies to children up to the age of 16. The child protection laws of seven ASEAN Member States prohibit discrimination against children on various grounds,⁶⁷⁷ with some expressly including place of birth (Thailand), origin (Myanmar) ethnicity (Indonesia, Lao PDR, Myanmar, Thailand and Viet Nam), race (Indonesia, Lao PDR, Malaysia and Thailand), colour and caste (Myanmar), nationality (Myanmar and Viet Nam), legal status (Indonesia), citizenship (Myanmar) and personal status (Thailand). The laws of Malaysia, the Philippines and Thailand include non-restrictive language: Malaysia's Child Act (in its preamble) refers to protection of all children *"without regard to distinction of any kind"* and, after listing a number of grounds, includes the wording *"or any other status"*; Article 3 of the Philippines' Child and Youth Welfare Code entitles all children to the rights *"without distinction"*; Article 22 of Thailand's Child Protection Act prohibits *"discrimination of an unfair nature"* and, in ministerial regulations, lists some of the grounds that might be included.⁶⁷⁸ Such language broadens the range of possible grounds of discrimination that are prohibited. While the Constitution of Singapore contains a non-discrimination provision, discrimination on the grounds of religion, race, descent or place or birth is prohibited only in relation to citizens of Singapore.⁶⁷⁹

In addition, some groups of children affected by migration fall within specific legal categories of 'children in need of special protection' under key child protection laws. For example, the Indonesian child protection law includes *'pengungsi'*⁶⁸⁰ in the list of children in *"emergency situations"*⁶⁸¹ which ordinarily translates as 'refugee or internally displaced person' but is not always interpreted to include refugees in practice. In Lao PDR, child victims of trafficking, exploited and displaced children and those who have been abandoned or are without parental care are included within the definition of children in need of special protection.⁶⁸² While Viet Nam's Child Law is comprehensive in addressing the rights and needs of child migrants, protection is only afforded to children up to the age of 16. Article 36 of the Child Law expressly provides for the protection and provision of humanitarian assistance to stateless and refugee children. Children who have been trafficked and *"immigrant and refugee children whose parents are not yet identified"* come within the definition of *"disadvantaged children"*, meaning they require specific support and protection.⁶⁸³

4.4.2 Inclusion of children affected by migration in child protection processes and services

Despite the incorporation of children affected by migration into the majority of child protection laws in ASEAN Member States, **available evidence indicates that children affected by migration are routinely excluded from protection systems and services**, with child protection matters commonly addressed via informal means within the communities themselves. While practical challenges, often related to lack of legal status, play a significant part in this (see below), child protection systems, processes and services themselves do not always accommodate the unique needs and interests of these children.

⁶⁷⁵ Ibid.

⁶⁷⁶ Cambodia does not have a stand-alone child protection law, though a draft law is currently in development.

⁶⁷⁷ Note that in Myanmar, non-discrimination of children is framed as an objective of the Child Rights Law, Myanmar, Sections 3(u) and 4(f).

⁶⁷⁸ Ministerial Regulation to set up guidelines for determining if an act is in the best interests of the child or unfairly discriminatory to the child 2006.

⁶⁷⁹ Article 12(2), Constitution of Singapore (2020 Ed.).

⁶⁸⁰ Indonesia, Law on Child Protection (as amended in 2017), Article 60.

⁶⁸¹ Indonesia, Law on Child Protection 2002, Part 5. Note that the Indonesian Law Concerning Human Rights also provides that members of disadvantaged groups (including children) are entitled to greater protection of human rights and this is applicable to all persons (and not only citizens).

⁶⁸² Lao PDR, Law on the Protection of the Rights and Interests of Children, Article 2.

⁶⁸³ Viet Nam, Child Law, 2016, Article 10.



A 5-year-old ethnic Hmong child attends the Ta Phin Preschool in Viet Nam's Lao Cai province.
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Identification and referral processes

The lack of identification and assessment procedures for children affected by migration can result in these children being arrested, detained and deported back to their country of origin in some instances. In relation to children affected by migration, as soon as the presence of an unaccompanied and separated child is made known in the territory of a country, the CRC Committee requires an assessment to be carried out in order to establish the protection needs of the child and the measures to be applied. The assessment entails prioritized identification of the child as unaccompanied or separated, which should include an age assessment procedure, as well as registration of the child and recording of relevant information related to their identity and protection needs, provision of identity documentation and prompt tracing of the child's family members. After the assessment, a guardian must be appointed to represent the child's best interests and provide a continuum of care for the child.

Very few ASEAN Member States have specific provisions in their child protection laws on comprehensive identification, referral and assessment procedures for children affected by migration (including unaccompanied and separated children)⁶⁸⁴, though there are provisions for the referral of cases involving violence or abuse of children more generally. Thailand has the most comprehensive legal framework for the referral of child migrants identified by immigration authorities as in need of care and protection. All ASEAN Member States, except Indonesia and Singapore, have some referral provisions in respect of victims of trafficking. However, these processes may not extend to other categories of vulnerable children affected by migration, including unaccompanied and separated children. For instance, in Myanmar, while there are multiple pathways through which a child may be identified as a trafficking victim, the procedure for identifying other categories of child migrants where there are no indicators of trafficking is far less organized. Unaccompanied and separated children are ordinarily referred instead to community-based NGOs which provide the child with accommodation and food, or a 'training school' run by the Department of Social Welfare.⁶⁸⁵ Similar situations exist in Thailand, Malaysia and Indonesia, where there are anti-trafficking task forces and procedures to identify children with indicators of trafficking, but

⁶⁸⁴ Noting that, at the time of writing, Cambodia has yet to finalise and adopt its draft child protection legislation.

⁶⁸⁵ Davy, *Analysis of Protection Frameworks, Referral Pathways and Service Availability for Myanmar Migrant Children*, p. 86.

an absence of government procedures for identifying other categories of children affected by migration, including those who are unaccompanied or separated, with UNHCR fulfilling this role in each of these countries instead (for those within their mandate).⁶⁸⁶

While migrant children may fall within State child protection provisions, available evidence suggests that, in practice, children affected by migration who are in need of care and protection are not always identified as such, nor are they provided with adequate protection. Children are routinely dealt with by immigration authorities rather than child protection systems. Such authorities lack knowledge and understanding of the needs of children affected by migration, indicators of vulnerability (i.e., indicators of trafficking) and their responsibility to refer children to the child protection system. There is an inevitable tension between the mandate of immigration personnel in protecting national security and the need to safeguard and protect children, particularly those who are considered to be 'irregular'. In Thailand, while there is a strong legislative framework for responding to violence against children (under which child migrants are also protected), including mandatory reporting obligations and clear identification and referral procedures, child migrants are not always identified and referred into the child protection system in line with Thailand's laws.⁶⁸⁷ This may result from a lack of knowledge of child protection issues on behalf of immigration authorities or other government officials and an absence of guidance on the referral mechanisms. More practically, although there are mandatory reporting obligations for professionals to identify and report cases of violence, child migrants face barriers to accessing schools and healthcare facilities, which is where referrals would often originate from.⁶⁸⁸

In the absence of identity documentation, comprehensive age assessment processes should be in place to ensure that children are afforded the protections to which they are entitled under law. However, evidence suggests that age assessment procedures are not initiated at the appropriate time and, in some ASEAN Member States, are not carried out at all. In Malaysia, as a consequence of the lack of age assessment procedures, older children have been incorrectly classified as adults and placed in detention facilities for adults. Not only is this a violation of international standards on children's rights, but can also result in family separation within the facility and challenges in proving/verifying family relationships upon release.⁶⁸⁹ In Thailand, though age assessment procedures are initiated, they are reported to utilize methods that are inconsistent with international standards and best practice, such as dental or bone density assessments, which carry a significant margin of error, instead of the recommended 'least invasive' multidisciplinary approach.⁶⁹⁰

Family tracing and reunification

Family tracing is an important part of identifying a durable solution for the child and considering the possibility of family reunification. The CRC Committee recommends that family tracing should be prioritized, except where this is not in the best interests of the child.⁶⁹¹ Family tracing and reunification procedures are contained in a number of bilateral agreements between ASEAN Member States, due to the cross-border nature of these procedures. For instance, the Final Draft Thailand-Myanmar MoU on children affected by migration includes an agreement to establish specialized procedures for family reunification in respect of unaccompanied or separated children, and to use such procedures only after a best interests determination has been undertaken, which takes account of the right to family life and family unity. The Lao PDR-Thailand MoU on trafficking includes an agreement to reunite trafficking victims with their families and society safely and effectively, acting in the best interests of the child.

⁶⁸⁶ Institute of Human Rights and Peace Studies, et al., *Mapping and Analysing the Protection Situation of Unaccompanied and Separated Children (UASC) in Indonesia, Malaysia and Thailand: Regional overview and analysis*, 2013.

⁶⁸⁷ *Assessment of Child Protection Services for Migrant Children in Thailand*, pp. 49–50.

⁶⁸⁸ Ibid.

⁶⁸⁹ International Detention Coalition, *Strengthening Alternatives to Immigration Detention for Children: Mapping and Assessment of Residential Care Centres In Peninsular Malaysia*, July 2020, p. 7.

⁶⁹⁰ *Assessment of Child Protection Services for Migrant Children in Thailand*, pp. 53–54.

⁶⁹¹ CRC general comment No. 6 (2005), para. 31.

Thailand and Viet Nam have the most comprehensive provisions on family tracing and reunification that are broadly in line with international standards. Article 23 of the Vietnamese Child Law, for example, provides for the right for the child to “*stay in touch or contact*” with both parents where they or their parent(s) reside(s) in different countries or are detained or expelled. Children also have the right to “*have their immigration facilitated to be united with their parent(s)*”. Stateless children residing in the territory of Viet Nam and refugee children are entitled to search for their parents and families as regulated by the law of Viet Nam and the international agreements to which Viet Nam is a signatory.⁶⁹²

Other ASEAN Member States have provisions that go some way towards meeting international standards on family reunification, but there are some gaps. The child protection laws of Brunei Darussalam, Indonesia, Lao PDR, Myanmar and the Philippines contain some provisions regarding family reunification, as do the anti-trafficking instruments of Indonesia, Lao PDR, Malaysia and Cambodia. The Philippines’ Special Protection of Children in Situations of Armed Conflict Act also contains provisions regarding family reunification.⁶⁹³ These go some way towards meeting international standards but are not comprehensive in terms of the categories of children covered or steps that must be taken.⁶⁹⁴ Despite these laws, evidence suggests that family tracing and reunification is not a routine practice for children who are separated from their parents in ASEAN Member States, particularly where the case involves a cross-border element. Where it does occur, it is usually carried out in an ad hoc and informal manner by community-based organizations and NGOs or by staff at the shelters in which the children are housed.

Services (including alternative care)

In accordance with Article 20 of the CRC, where it would not be in the child’s best interests to remain in his or her family environment, States are required to ensure alternative care for the child. **States are obliged to provide care and accommodation arrangements for children affected by migration**, in accordance with Article 22 of the CRC. As a general rule, such care and accommodation arrangements should not deprive children of their liberty.⁶⁹⁵ States parties should identify a ‘durable solution’ that addresses the child’s protection needs, takes into account the child’s views and “wherever possible, leads to overcoming the situation of a child being unaccompanied or separated”.⁶⁹⁶

Child protection laws in the majority of ASEAN Member States (Brunei Darussalam,⁶⁹⁷ Indonesia,⁶⁹⁸ Lao PDR,⁶⁹⁹ Malaysia,⁷⁰⁰ Myanmar,⁷⁰¹ Philippines,⁷⁰² Singapore,⁷⁰³ Thailand⁷⁰⁴ and Viet Nam⁷⁰⁵) include provisions on alternative care for children, prioritizing the use of family or community-based care over institutional care (although the legislation in Brunei Darussalam, Malaysia and Singapore does not provide for this explicitly). An example of ‘good practice’ is in Indonesia, where the law provides that children whose parents are unable to care for them and children who need special protection (including *pengungsi*⁷⁰⁶ and child trafficking victims)⁷⁰⁷ may be provided with care through guardianship or fostering.⁷⁰⁸ The priority

⁶⁹² Viet Nam Child Law, 2016, Article 36.

⁶⁹³ The Philippines, Republic Law No 111888 (2019), Chapter II, Section 7(m).

⁶⁹⁴ No relevant provisions were found in Singapore’s laws.

⁶⁹⁵ CRC general comment No. 6 (2005), para 40.

⁶⁹⁶ *Ibid.*, para 79.

⁶⁹⁷ Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Section 57(6).

⁶⁹⁸ Indonesia, Government regulation no. 44 year 2017 Concerning Implementation of Child Care, 2017, Article 6.

⁶⁹⁹ Lao PDR, Law on the Protection of the Rights and Interests of Children, 2006, Article 42.

⁷⁰⁰ Malaysia, Child Act 2001, Article 30 (in respect of children in need of care or protection) and Article 40 (in respect of children in need of protection or rehabilitation).

⁷⁰¹ Myanmar, Child Rights Law 2019, Section 33 (a-c).

⁷⁰² Philippines, Special Protection of Children against Abuse, Exploitation and Discrimination Act 1991, Section 3; Child and Welfare Code, Article 68.

⁷⁰³ Singapore, Children and Young Persons Act 1993, Revised Edition 2020, sections 2(1), 4 (b) and 54(1)(b)(i).

⁷⁰⁴ Thailand, Child Protection Act, Article 33 and 56.

⁷⁰⁵ Viet Nam, Child Law, Article 47 (4), 60 and 62.

⁷⁰⁶ *Pengungsi* ordinarily translates as ‘refugee’ or ‘internally displaced person.’ However, interpretations of this term have varied among Government officials, with some interpreting it to refer solely to ‘internally displaced persons’ and not also to ‘refugees’; UNICEF Indonesia Country Office, written comments emailed to Coram International sent on 11 July 2022.

⁷⁰⁷ Indonesia, Government regulation no. 44 year 2017 Concerning Implementation of Child Care, Article 3.

⁷⁰⁸ Indonesia, Law on Child Protection, 2003, Articles 33, 37.

is on providing childcare on a family basis (by relatives or foster parents) and outside institutions, with institutional care being the last resort.⁷⁰⁹

However, across ASEAN Member States, these protective laws have not been fully implemented for children affected by migration. This is largely due to the fact that children are not being placed under the care of child protection authorities, as required by national laws, but instead find themselves being handled by immigration authorities and border force personnel. In the most severe cases, children are held in immigration detention centres, removal centres or prisons (see section 3). Commonly, unaccompanied and separated children remain unknown to authorities and live among the community without access to accommodation, increasing their vulnerability to a host of protection risks.

Even where migrant children are under the care of child protection/social welfare services, their situation can make them more susceptible to being placed in unsuitable or even harmful forms of alternative care that are not family based. While limited family-based care options across the region also impact on non-migrant children, migrant children are more likely to be placed in institutional care largely due to the lack of an extended family network living locally, making kinship care or guardianship a non-viable option. According to a study carried out by UNICEF in Thailand in 2015, the limited alternative care options were a gap in the child protection system more generally, but impacted more heavily on migrant children, who may be more at risk of separation from parent/s or carers.⁷¹⁰ A further study in 2019 found that accommodation options for children at risk, including migrant children, were very limited, with a lack of non-institutional options such as foster care. It was also noted that placing non-Thai children in the limited foster care system was difficult.⁷¹¹ As a result, babies and very young children were being placed in institutional care, including temporary shelters for prolonged periods, where it was not possible to reunify the child with his or her family (e.g., where it is not safe or the family cannot be traced).⁷¹²

Another challenge is that shelters do not always cater to families, causing unnecessary separation of parents, children and siblings. In Thailand, for instance, shelters cater to young children with mothers, while adolescent boys and men (fathers) are accommodated in different shelters. There are no community-based family placements which would allow families to stay together despite guidance that it is generally in the best interests of migrant children to ensure siblings are not separated.⁷¹³ In Malaysia, shelters that house child migrants upon their release from immigration detention will usually only accept children aged 12 years old and younger, with older children accepted only on an exceptional basis. Given that the majority of children released from immigration detention are males over the age of 12, it is of grave concern that there are so few accommodation options available to them.⁷¹⁴

Children who are placed in care institutions are exposed to a range of risks. Many alternative care institutions do not allow residents to leave, meaning children are effectively ‘detained’ and entirely divorced from the community in which they are living. Residential care centres in Malaysia have been reported to struggle with human resource constraints, with a high turnover of staff and limited capacity to carry out case management, leading to gaps in the quality of care provided to children.⁷¹⁵ In many ASEAN Member States, there is very limited knowledge of case management among shelter staff, meaning children’s cases are not handled appropriately and in line with international standards. In addition, there are variations in the child protection policies applied across institutions and insufficient centralized procedures for monitoring the quality of institutions across the country.⁷¹⁶ A study from 2017 noted reports of repeated physical and sexual abuse of children by staff in Cambodian residential care institutions, in addition to a perception among staff that their role at the centre is to ‘control’ rather than ‘care’ for child

⁷⁰⁹ Indonesia, Government regulation no. 44 year 2017 Concerning Implementation of Child Care, Article 6.

⁷¹⁰ United Nations Children’s Fund, *Review of Alternative Care in Thailand*, 2015, Bangkok, p. xiv.

⁷¹¹ *Assessment of Child Protection Services for Migrant Children in Thailand*, p. 57.

⁷¹² *Ibid.*, pp. 57–58.

⁷¹³ *Ibid.*

⁷¹⁴ International Detention Coalition, *Strengthening Alternatives to Immigration Detention for Children: Mapping and assessment of residential care centres In Peninsular Malaysia*, July 2020.

⁷¹⁵ *Ibid.*

⁷¹⁶ *Ibid.*

residents.⁷¹⁷ In some ASEAN Member States, international organizations provide accommodation facilities for unaccompanied and separated child migrants. In Indonesia, for instance, IOM community housing facilities provide accommodation, an allowance of US\$130 per month as well as access to healthcare and, if the child has documents, education. IOM does not provide guardianship for unaccompanied and separated children and the facilities (which are for both adults and children alike, but children are housed separately) are not always suited to the particular needs of 14–17-year-old unaccompanied or separated children.⁷¹⁸

4.4.3 Practical barriers for children affected by migration accessing child protection systems and services

Lack of status (and related impacts)

In many ASEAN Member States, lack of documentation and/or proof of registration prevents children and families who have migrated irregularly from accessing child protection systems and services. In some States, this is due to a concrete requirement that child migrants are unable to meet, such as in Viet Nam, where eligibility to receive government services is tied to proof of registration, meaning that international or even internal migrants who fail to (re)register upon arrival in a new location are precluded from receiving services.⁷¹⁹ In Thailand, some protection services are contingent upon a 13-digit identification number that many categories of children affected by migration and their families are not able to provide.

More commonly, however, it is ancillary factors flowing from the child's lack of domestic legal status that create the barrier. Often, migrants with uncertain status are dissuaded from accessing protective services or seeking help when they are victims of a crime, owing to fears of arrest, detention and deportation. This trend has been repeatedly identified in Thailand.⁷²⁰ A study implemented in 2019 demonstrated that a lack of legal status and a resultant fear of arrest and deportation generated a significant reluctance among migrant families to report violence, abuse or neglect and to access child protection services.⁷²¹ Urban refugees/asylum seekers, owing to their extremely precarious status in Thailand and the constant risk of apprehension and deportation, were found to be particularly unlikely to report violence, abuse or neglect or to access services.⁷²² Children who experience violence at work were also found to be reluctant to report their experiences to the authorities due to the fear of losing their jobs, which would place their ability to remain legally in Thailand in jeopardy, as migration status is linked to continued employment.⁷²³ Another report noted that uncertainty and fears of arrest, exacerbated by circulating rumours among migrant communities, discourages families from sending their children to school and accessing services.⁷²⁴ In Malaysia, a UNHCR study on sexual and gender-based violence among refugee communities found that “*fears of arrest, detention, and police extortion often deter refugee women from reporting violence, leaving them trapped in unsafe situations.*”⁷²⁵ In Myanmar, children without birth registration documents or national identification documents are reported to be reluctant to seek any form of help or assistance from the Government.⁷²⁶

⁷¹⁷ United Nations Children's Fund, *Study on the Impact of Migration on Children in the Capital and Target Provinces, Cambodia (Executive summary)*, May 2017, p. 15.

⁷¹⁸ Institute of Human Rights and Peace Studies, et al., *Mapping and Analysing the Protection Situation of Unaccompanied and Separated Children (UASC) in Indonesia, Malaysia and Thailand: Regional overview and analysis*, 2013, p. 29.

⁷¹⁹ United Nations Children's Fund, *Situation Analysis of Children in Viet Nam*, 2016, p. 235.

⁷²⁰ Davy, *Analysis of Protection Frameworks, Referral Pathways and Service Availability for Myanmar Migrant Children*, p. 91.

⁷²¹ *Assessment of Child Protection Services for Migrant Children in Thailand*, p. 74.

⁷²² *Ibid.*, p. 77.

⁷²³ *Ibid.*, p. 75.

⁷²⁴ UNICEF Thailand, *Situation Analysis on Migrant and Refugee Children in Thailand*, 2018, p. iii.

⁷²⁵ UNHCR and Women's Aid Organisation, 'Sexual and Gender-based violence among Refugee Communities in Malaysia', A Policy Brief by Women's Aid Organisation, January 2021, p. 4.

⁷²⁶ Davy, *Analysis of Protection Frameworks, Referral Pathways and Service Availability for Myanmar Migrant Children*, p. 103.

Beyond direct fears of arrest and detention, **low reporting levels among migrant communities may be fuelled by a more general lack of confidence in the authorities to deliver the required support**, or a desire to steer clear of lengthy and bureaucratic proceedings. A reluctance has been identified on behalf of deported migrants from Myanmar to report exploitation and non-payment of wages in destination countries, given the likelihood that this will result in a requirement to participate in a lengthy court case, interrupting their ability to remigrate as quickly as possible.⁷²⁷ In Malaysia, the 2021 Department of State Trafficking Report identified shortcomings related to the shelters and the services they were able to offer, with many victims choosing to be repatriated to their origin countries immediately rather than remain in the shelters.⁷²⁸

Highlight 4: The impact of lack of domestic legal status on the protection and well-being of migrant, urban refugee and unregistered stateless children in Bangkok, Thailand

Qualitative research carried out in 2022 on the impact of lack of domestic legal status on the protection and well-being of migrant, refugee, asylum-seeking and stateless children in Bangkok found that they were exposed to a range of protection risks, including exploitation, violence and abuse. However, they faced substantial barriers to reporting these risks and accessing services and support. These barriers were found to be compounded by feelings of ‘illegitimacy’ that were driven by their lack of legal status. This had the effect of placing children in very precarious and vulnerable situations.

The research involved 16 focus FGDs with small groups of adolescents/young people (34 in total) with experience of living in Bangkok without domestic legal status, including participants from Myanmar and Cambodia (which were led by trained facilitators from these communities), and groups of asylum-seeking and refugee adolescents and parents/carers. Twenty-four key informant interviews were also carried out with 30 government and NGO stakeholders at the national and subnational levels.

Protection risks and challenges

Children, adolescents and families who participated in the research considered risks from the police and immigration authorities to be the chief risk facing populations without domestic legal status in Bangkok. This is despite recent policy developments in Thailand which have aimed at ending the immigration detention of children.

Refugee adolescent from Pakistan: *“When police arrest you, you go to the immigration detention centre. The situation at the detention centre is not good. So, it’s not safe for refugees without documents.”*⁷²⁹

Exploitation in child labour was another key risk reported by participants. Owing to their lack of status and consequent lack of options for legal employment, migrant children are more likely to seek work in informal sectors, where work arrangements have a tendency to become exploitative. Adolescents reported stories of acquaintances who had experienced exploitative behaviours at the hands of employers, such as the withholding of wages. Employers who are aware of the child’s irregular status reportedly use this to their advantage to pressure the child to work without pay.

⁷²⁷ Ibid.

⁷²⁸ United States Department of State, *Trafficking in Persons Report 2021*, p. 372.

⁷²⁹ FGD with refugee/asylum-seeking adolescents from Pakistan (three males and one female).

Adolescent migrant from Afghanistan: *“I have met a lot of people. They have worked for a restaurant for like two or three months. The restaurant told them, ‘I will not give you your money, your salary.’ Then we couldn’t go to the police and report this case because they are here illegally. So, the restaurant owner knew that and they couldn’t do anything. If they have documents, we can freely contact police and report this problem and then police come to talk with that restaurant owner. But because they’re here illegally, they couldn’t do that.”*⁷³⁰

Identity and well-being

Responses from adolescents indicated that their ability to establish and maintain a strong sense of identity had been impacted by living a precarious and ‘illegal’ existence, made worse by experiences of discrimination, barriers to education and difficulties speaking the Thai language. They routinely commented on the dangers of living in Bangkok without status and considered that children should remain within their diaspora communities in order to keep safe. To mitigate against the risk of crossing paths with police, children and adolescents tend to stay at home where possible and avoid unnecessary journeys. The constant fear of arrest and uncertainty for the future was considered to negatively impact the well-being and mental health of the adolescents and families interviewed for the research.

Undocumented migrant adolescent from Myanmar: *“I don’t have Thai ID. I only have birth registration and a student card. I feel insecure wherever I go. I’m not confident myself dealing with Thai society...For me, I’m not happy. It’s like having to stay in hiding. I can’t buy a motorcycle, a house, land. I can’t do anything. It’s difficult.”*⁷³¹

Adolescent migrant from Cambodia: *“We cannot really go out or do anything for fun since we can get caught with no documents. Therefore, we are just stuck at home... I feel depressed, bored and worried.”*⁷³²

Refugee parent/carer from Afghanistan: *“The main problem of refugees in Bangkok is the lack of identity. If you don’t have identity, you cannot work. You cannot study. You cannot join any activity programme. You cannot do what you like to do. There are many talented in sports, in different activities, but they cannot join because they don’t have proper identity documents. This is the problem.”*⁷³³

Access to protection and other services

Despite Thailand’s progressive policy which states that every child is entitled to 15 years of free education regardless of their legal status or nationality,⁷³⁴ participants appeared to have differing perceptions of whether children without documents could attend school. Some participants cited challenges with meeting the requisite documentary requirements for enrolment, and others considered that only certain schools would accept children without domestic status. Refugee adolescents who were enrolled in school spoke of language barriers impeding their ability to learn and make friends as they had low proficiency in Thai and teachers and peers could speak neither English nor their native language. Some adolescents had experienced xenophobic attitudes and treatment from teachers and students alike.

⁷³⁰ FGD with refugee/asylum-seeking adolescents from Afghanistan (three males and two females).

⁷³¹ FGD with undocumented adolescents from Myanmar (two males and three females) aged 17–18 years, Klong Tan, Bangkok.

⁷³² FGD with adolescent migrants from Cambodia aged 17–18 years (four males, one female), Klong Neung, Pathumwan.

⁷³³ FGD with parents of refugee/asylum-seeking adolescents from Afghanistan (four males).

⁷³⁴ As per the 1999 Education for All Policy and 2005 Cabinet Resolution on Education for Unregistered Persons.

Lack of legal status was also found to be a significant barrier to children's ability to access child protection and other services. Adolescents and parents without legal status demonstrated a tendency to seek support and solutions to protection risks within their own communities, along with a strong reluctance to report to Thai authorities, even in cases involving quite serious exploitation and abuse. A culture of fear also appears to have placed participants in a very vulnerable position; fears of detection, arrest, detention and deportation appear to have created conditions in which participants reported being extremely reluctant to seek help in cases of violence, exploitation or abuse, thereby making it very difficult for them to avoid being in exploitative situations.

Adolescent migrant from Afghanistan: *"We have a big fear in our minds that the police will catch us, and they will send us to immigration or something worse... they will say 'oh, this guy is not a citizen here, and they are illegally living here', so they will not accept us... sometimes the rules are not with us, you know what I mean? It's like, they're saying 'you're living here illegally and if you do anything wrong, we could tell the police'; and we cannot tell the police that we need anything."*⁷³⁵

Attitudes of service providers

Real or perceived xenophobic or discriminatory attitudes on the part of service providers may preclude children affected by migration from receiving services, even when they are entitled to them by law. It has been reported that some service providers tend to harbour negative views towards migrant children, leading to a reluctance to provide them with access to government-funded services.⁷³⁶ In one qualitative study in several locations in Thailand with large populations of migrants, responses from interview participants put forward problematic viewpoints implying *that migrant children are 'outsiders' or 'burdens' and that there is no mandate and insufficient funding to assist them. The view was at times expressed that vulnerable Thai children should be the 'priority' rather than migrant children and families who 'choose' to come to Thailand and do not contribute to the economy.*⁷³⁷ Anecdotal reports from organizations providing services to refugee survivors of sexual and gender-based violence highlight a perception among refugees who are victims of violence that *"no one (including authorities) will believe the word of a refugee over a Malaysian."*⁷³⁸

In other cases, there is a general lack of understanding or confusion on the part of service providers as to the eligibility of migrant children to access services or receive protection services. For example, in Thailand, there appears to be a perception among some service providers that long-term shelters are unable to accept foreign children despite the fact that the child protection legislation is inclusive of child migrants. It is unclear whether this results from a lack of knowledge or understanding of the law, budgetary factors or individual shelter rules.⁷³⁹ A similar perception has been identified among shelter staff in Malaysia, who generally do not accept child migrants older than 12 upon release from detention. Some staff contend this is because they do not have the requisite skills, experience and training to know how to care for older children, particularly those with complex needs as a result of their traumatic experiences in detention. In other cases, shelter staff are unwilling to accept any undocumented children in the shelters due to concerns that this would jeopardize continued funding from the Department of Social Welfare. Challenges related to language barriers, cultural differences and the limited capacity among staff also play a part.⁷⁴⁰

⁷³⁵ FGD with four refugee/asylum-seeking adolescents from Afghanistan, ages (three male, one female), Bangkok, 23 February 2022.

⁷³⁶ *Thailand Migration Report*, p. 100.

⁷³⁷ *Assessment of Child Protection Services for Migrant Children in Thailand*, p. 8.

⁷³⁸ UNHCR, Women's Aid Organisation, *Sexual and Gender-Based Violence Against Refugee Communities in Malaysia*, A Policy Brief by Women's Aid Organisation, January 2021, p. 6.

⁷³⁹ *Assessment of Child Protection Services for Migrant Children in Thailand*, p. 51.

⁷⁴⁰ International Detention Coalition, *Strengthening Alternatives to Immigration Detention for Children: Mapping and assessment of residential care centres in Peninsular Malaysia*, July 2020.

Lack of trust in formal service providers tends to be matched by a correspondingly higher degree of trust in informal or non-state service providers, such as NGOs, faith-based organizations, community networks and social workers. In Myanmar, for example, particularly in remote areas, NGOs fulfil a crucial role, providing the sole source of support for children and families without birth registration or identification documents, “*help[ing] to fill the various gaps in the state child protection system*.”⁷⁴¹ While these informal networks are crucial for children affected by migration and families, particularly in instances where the unavailability of government services (or unwillingness of children affected by migration to approach them) means they are the sole source of protection support, there may also be risks associated with reliance on informal sectors for child protection. For example, studies have documented instances in which child migrants from Myanmar are identified by NGOs as victims of trafficking, exploitation and/or abuse during outreach sessions in Thailand. In these cases, NGOs will organize short-term accommodation in NGO shelters and for repatriation of the child, but governments remain unaware of their existence.

Language barriers

Language barriers and lack of interpretation and translation services are another key barrier to children affected by migration receiving protective services, even where they are entitled to them by law. For example, the “1300” hotline (‘Prachabodi Centre’) – a 24-hour telephone service providing services to victims of abuse and violence in Thailand – is not currently operating a migrant language interpretation service despite how important this is to help children gain access to the child protection system. A 2019 study found that “skills in migrant languages are needed for receiving reports and for case management, including for essential services such as counselling.”⁷⁴² In Malaysian shelters for trafficking victims, a shortage of interpretation services was reported in the United States Department of State’s Trafficking in Persons Report 2021, to lead to a lack of understanding among victims, particularly in relation to “*shelter rules and their rights during the judicial process*,” which “*contributed to stress and reluctance to participate in prosecutions*.” Owing to this and other negative factors related to their experience, many chose to be immediately repatriated to their origin countries rather than remain in the shelters.⁷⁴³ Language barriers can also complicate cross-border family tracing where child migrants who have been living abroad cannot speak the language of their country of origin, as reportedly is the case for some children who have been repatriated from Thailand to Cambodia.

Awareness of services

Children affected by migration and their families are commonly unaware of the child protection services and mechanisms that exist, particularly in remote areas. In Myanmar, for example, knowledge of the services that government agencies provide is reported to be low, especially in remote areas, which is another factor impeding identification and protection of children in need.⁷⁴⁴ One study highlighted instances of families selling children off to brokers due to a lack awareness of state facilities for accommodating children.⁷⁴⁵ In another Thai study, 33 per cent of urban refugees and asylum-seeking respondents reported that they were not aware of any channels for reporting violence and abuse.⁷⁴⁶

Challenges of access in conflict areas

In conflict areas, service providers face challenges accessing children affected by migration who may be in need of care and protection. In Myanmar, in the case where the Anti Trafficking Task Force receives a report about a potential victim of trafficking in a conflict area, the task force must cooperate

⁷⁴¹ Davy, *Analysis of Protection Frameworks, Referral Pathways and Service Availability for Myanmar Migrant Children*, p. 97.

⁷⁴² *Thailand Migration Report*, p. 108.

⁷⁴³ United States Department of State, *Trafficking in Persons Report 2021*, p. 372.

⁷⁴⁴ Davy, *Analysis of Protection Frameworks, Referral Pathways and Service Availability for Myanmar Migrant Children*, p. 103.

⁷⁴⁵ *Ibid.*

⁷⁴⁶ UNHCR, *COVID-19 Impact Assessment: Urban refugees and asylum-seekers in Thailand. Multi-sector rapid needs assessment and post-distribution monitoring of cash support*, UNHCR Multi-County Office, Thailand, July 2020, p. 19.

with the military in order to access the child and provide adequate care.⁷⁴⁷ Similar challenges are faced by the social welfare department when responding to reports of children with protection needs in conflict areas.⁷⁴⁸ Delivery of protection services can be very challenging in the context of displacements, as illustrated in highlight 5.

Highlight 5: Responses to the protection needs of internally displaced children and families in Bangsamoro Autonomous Region in Muslim Mindanao (BARMM), Philippines

Case study research on responses to the protection needs of internally displaced children and families in BARMM, particularly within the 'SPMS Box' (an area within Maguindanao that is characterized by ongoing conflict between government and non-government forces), found that routine and recurring displacements, driven by a mix of conflict, flooding and *rido* (clan-based feuds) have impacted on the ability of families and service providers to ensure a protective environment for children. The case study utilized a qualitative methodology and included a series of 12 FGDs with 22 adolescents, 27 parents/caregivers in displacement and nine service providers, six in-depth interviews with displaced adolescents and parents/caregivers and six key informant interviews with service providers. The findings revealed not only the severe protection risks and challenges experienced by displaced families and children in SPMS Box, but also the challenges in delivering and ensuring access to protection services in a highly volatile and insecure context.

Protection risks and challenges

The SPMS Box is characterized by routine, sudden and typically short-term displacement as a result of conflict between the Government and non-State armed groups, clan-based feuds and natural disasters, typically flooding; all of which can co-occur and serve to compound challenges. In particular, among research participants, it was clear that conflict, flooding and constant evacuations were having a substantial impact on the ability of families to have stable and secure livelihoods, undermining their resilience to these drivers.

Adolescent 1: *"For me, when the conflict and flood arise at the same time, it is very difficult for us when we have that situation. There's a war going on and [it's hard to] go anywhere because of the flood. It is also affecting our livelihood."*

Adolescent 2: *"Same for me: my parents don't know where to get food because we are farming, and we leave our farm when the conflict arises."*⁷⁴⁹

Research participants noted the direct protection risks of conflict-driven displacement, including the risk of injury and even death arising from recurring eruptions of violence, the involvement of children – particularly boys – with armed groups and the risk of separation of children from their parents in sudden-onset conflict as key protection risks to which children were exposed. They also detailed other protection risks arising from displacement, such as exposure to negative coping mechanisms, including child marriage; and, perhaps, to an increased risk of family violence triggered by economic and psychological stress. These risks, which are driven by poverty, restricted access to livelihoods and existing gender norms and beliefs relating to the perceived need to regulate the sexuality of girls, are compounded during routine and constant displacement.

⁷⁴⁷ Davy, *Analysis of Protection Frameworks, Referral Pathways and Service Availability for Myanmar Migrant Children*, p. 91.

⁷⁴⁸ Ibid.

⁷⁴⁹ FGD with five adolescents, aged 16–18 years, Maguindanao, BARMM, 12 March 2022.

Key informant: *“Where life becomes hard during emergencies, especially for [displaced] caregivers to provide for the needs of children, there are negative coping mechanisms and one of these is to marry children to older men, so the family will no longer have to meet the needs of the child... Sometimes parents quarrel because of the problems caused by displacement. They have no money, no food to eat, they are stressed and may abuse their children physically, emotionally, psychologically.”*⁷⁵⁰

Parent: *“Some children [in displacement] work in farming and some are drivers... We cannot blame them since they need to provide for their family. We know that it is not allowed to let them work, but we don’t have a choice.”*⁷⁵¹

Challenges in delivering and accessing protection services

Preventing and responding to child protection risks in a context of recurring and disorganized evacuations within a child protection system that is already experiencing large gaps in capacity was found to be a considerable challenge. Available social workers are routinely being deployed to distribute food and other non-food items, limiting their ability to address child protection needs. Recurring displacement also limits the ability of social workers to provide continuity of child protection case management and other programmes and services and restricts local service delivery where service providers are also displaced. Furthermore, it was noted that at times when whole communities need to evacuate, systems and services are disrupted because local-level service providers are also in displacement, limiting their ability to provide stable service delivery.

Service provider (social worker): *“Sometimes, when you are only just starting with a planned activity, it will be cut short if there is an [armed] encounter; people will hide and evacuate in different places that feel safe and you would wait for them to come back to continue with your planned activity. The activities become fragmented and sometimes you will get a different participant since some of the participants do not return to the area.”*⁷⁵²

Key informant: *“The service providers...are also victims of displacement themselves in emergencies and may no longer be able to function as service providers. This way, the emergencies cause additional risks to children.”*⁷⁵³

⁷⁵⁰ Key informant interview with Child Protection Officer, UNICEF, Cotabato City, 18 March 2022.

⁷⁵¹ FGD with five parents/carers, aged 36–52 years, Datu Salibu, 17 March 2022.

⁷⁵² FGD with four Municipal and Social Welfare Development Office workers in SPMS Box, 12 March 2022.

⁷⁵³ Key informant interview with Child Protection Officer, UNICEF, Cotabato City, 18 March 2022.

Impact of COVID-19

Evidence indicates that COVID-19 impacted upon the ability of children affected by migration and their families to access protective services. In some instances, this was due to practical reasons such as the closure of services provided by NGOs⁷⁵⁴ and containment measures such as orders restricting movement between provinces. A social impact assessment on the impact of COVID-19 in Thailand identified an increase in the number of people seeking support from the One Stop Crisis Centres (in some areas), but many of these centres had to suspend face-to-face service provision, leaving many vulnerable clients, particularly those without access to the equipment for a virtual appointment, without protection and care. The same assessment noted concerns that *Hotline 1300 calls from women and children affected by violence, exploitation and abuse were being overshadowed by callers desperate for information about social assistance, including temporary shelter.*⁷⁵⁵ The pandemic also, in some contexts, intensified pre-existing difficulties in coordination between NGO service providers and government agencies.⁷⁵⁶

4.5 The role of the business sector in addressing the protection needs of children affected by migration

4.5.1 International and regional frameworks

Businesses have a corporate responsibility to respect children's rights wherever they operate, including the rights of children affected by migration.⁷⁵⁷ This responsibility, which is affirmed in the UN Guiding Principles on Business and Human Rights 2011⁷⁵⁸ (UNGPs) and elaborated by the CRC Committee,⁷⁵⁹ applies to the business' relationships, including its value chains,⁷⁶⁰ which are linked to its operations, products and services.⁷⁶¹ It requires businesses to go beyond voluntary, philanthropic endeavours to avoid violating children's rights and to address any adverse impacts on children's rights in which they are involved.⁷⁶² This includes addressing safety and protection risks to children's rights presented by a company's environment, facilities and staff in the course of business activities.⁷⁶³ Addressing violations requires businesses to take 'adequate measures' for their prevention, mitigation and, where appropriate, remediation.⁷⁶⁴ The responsibility to respect applies fully and equally to all businesses regardless of whether they are a global enterprise or national business and regardless of their size or the formality of their operations.⁷⁶⁵ States, including ASEAN Member States, play a vital role in ensuring that businesses comply with these commitments and responsibilities through the creation of an enabling and supporting environment and by ensuring that children have access to effective remedies for any rights violations.⁷⁶⁶

⁷⁵⁴ *Status Report on Child Rights in Malaysia 2019*, p. 110; UNICEF, 'Avoiding a Child Welfare Crisis: Mitigating the Impact of COVID-19 through social service workforce strengthening', Policy brief, October 2020, p. 4.

⁷⁵⁵ United Nations Thailand and Oxford Policy Management, *Social Impact Assessment of COVID-19 in Thailand*, July 2020, p. 124.

⁷⁵⁶ *Status Report on Child Rights in Malaysia 2019*, p. 110; United Nations Children's Fund, 'Avoiding a Child Welfare Crisis: Mitigating the impact of COVID-19 through social service workforce strengthening', Policy brief, October 2020, p. 4.

⁷⁵⁷ United Nations, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework', Principles 1 and 11; United Nations Children's Fund, The Global Compact and Save the Children, 'Children's Rights and Business Principles', Principle 1; CRC general comment No. 16 (2013), para. 8.

⁷⁵⁸ Endorsed by the Human Rights Council in resolution 17/4 on 16 June 2011.

⁷⁵⁹ UN Committee on the Rights of the Child, General Comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights (CRC General Comment No. 16 (2013)), para. 8.

⁷⁶⁰ The value chain includes the 'activities that convert inputs into outputs by adding value.' It is not limited to the business' supply chain and includes entities with which the business has a direct or indirect business relationship and which either supply products or services that contribute to the business's own products or services or receive products or services from the business; defined in UNICEF et al., *Child Rights and Business Principles*, p. 9.

⁷⁶¹ Guiding Principles on Business and Human Rights, principles 13 and 19, commentary; UNICEF et al., *Child Rights and Business Principles*, principle 1.

⁷⁶² 'Guiding Principles on Business and Human Rights', Principle 11; 'Children's Rights and Business Principles', Principle 1.

⁷⁶³ 'Children's Rights and Business Principles', Principle 4.

⁷⁶⁴ 'Guiding Principles on Business and Human Rights', Principles 11 and 14, commentary.

⁷⁶⁵ *Ibid.*, Principle 11, commentary.

⁷⁶⁶ 'Guiding Principles on Business and Human Rights', Principle 11; CRC general comment No. 16 (2013), para. 5.



UNICEF Viet Nam, 2017, A worker of the Hai Dang Construction and Commercial Company based in Binh Chanh District, Ho Chi Minh City, takes his daughter to the Little Sun Kindergarten at the Pou Yuen Factory Compound, a spacious school, which gives priority to receiving children of Pou Yuen workers, helping them to work peacefully. © UNICEF/UN0216000

Box 3: UN Guiding Principles on Business and Human Rights

The UNGPs are a set of principles for States and businesses to prevent, respect and remedy human rights violations, which were endorsed by the UN Human Rights Council in 2011. The UNGPs follow the ‘protect, respect and remedy’ framework developed by the then Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business, John Ruggie.

This framework consists of: the **State’s duty to protect** against human rights violations within their territory and/or jurisdiction by businesses; the **responsibility of businesses to respect** human rights by avoiding their infringement and addressing adverse human rights impacts with which they are involved; and ensuring that individuals whose human rights have been violated by businesses have **access to an effective remedy**.

In General Comment No. 16 of 2013, the UN Committee on the Rights of the Child affirmed that the ‘protect, respect and remedy’ framework in the UNGPs applies to children’s rights, including the right to protection.

Over recent years, there has been a growing emphasis in the international policy arena on the steps that businesses should – or even *must* – take to implement this responsibility. In 2016, the UN Working Group on Business and Human Rights issued recommendations on the development and implementation of National Action Plans on Business and Human Rights based primarily on the human rights due diligence responsibilities in the UNGPs.⁷⁶⁷ In February 2022, the European Commission introduced a draft proposal for a directive which would place ‘corporate sustainability due diligence’ on a mandatory footing for all in-scope companies, regardless of where the negative human rights impacts arise world.⁷⁶⁸ The growing emphasis on human rights due diligence will have implications for how businesses respect the rights of children affected by migration in ASEAN.

⁷⁶⁷ UN Working Group on Business and Human Rights, *Guidance on National Action Plans on Business and Human Rights*, November 2016.

⁷⁶⁸ European Commission, *Corporate sustainability due diligence*, https://commission.europa.eu/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence_en, accessed 15 December 2022; European Commission Press Release, *Just and sustainable economy: Commission lays down rules for companies to respect human rights and environment in global value chains*, Brussels, 23 February 2022, www.ec.europa.eu/commission/presscorner/detail/en/ip_22_1145, accessed 15 December 2022.

Box 4: Proposal of the European Commission for a directive introducing mandatory 'corporate sustainability due diligence'

The European Commission adopted a proposal on 23 February 2022 to introduce a directive on mandatory due diligence for corporate sustainability. If adopted, this directive will require in scope companies⁷⁶⁹ to identify, end, prevent, mitigate and account for negative human rights and environmental impacts of its operations and those of its subsidiaries and in its value chains anywhere in the world.⁷⁷⁰ Corresponding obligations are also imposed on the companies' directors.⁷⁷¹ Negative human rights impacts explicitly include forced labour and child labour, as well as a series of other violations of children's rights detailed in the Annex of the proposal based around the rights in the CRC.⁷⁷² The proposals aim to ensure that the public and private sectors in the EU act '*on the international scene in full respect of its international commitments in terms of protecting human rights and fostering sustainable development, as well as international trade rules.*'⁷⁷³

UNICEF has called upon EU institutions and member states to amend the proposals to (i) contain an explicit recognition that children as well as other groups in vulnerable and marginalized situations require special attention, (ii) expand the scope of the due diligence obligation (including across the whole of the business' supply chain), (iii) include a stronger emphasis for child rights-based approaches to due diligence; and (iv) provide a comprehensive package of supporting measures.⁷⁷⁴

ASEAN Member States and businesses have traditionally used voluntary and philanthropic corporate social responsibility (CSR) projects to address child rights issues, which aligns more with their corporate commitment to support children's rights than their 'responsibility to respect' them. Yet, **ASEAN Member States have demonstrated a commitment to go beyond CSR to mainstream children's rights in their regional frameworks concerning business practices, bringing the frameworks more in line with international standards.** In 2016, ASEAN Member States adopted the Regional Strategy to Promote CSR and Human Rights. The strategy calls for businesses "*to go beyond pre-existing notions of CSR as philanthropic-giving and charity to assessing the human rights, social and environmental impacts connected to their business activities*". The strategy outlines nine actions that businesses should implement towards this aim, including taking "*steps to reduce the risk of adverse social, environmental and human rights effects caused by their business activities*"⁷⁷⁵. National governments within ASEAN are also called upon to 'encourage' corporate social responsibility and human rights and '*foster an enabling environment with respect for national circumstances.*'⁷⁷⁶ ASEAN Member States have a set of nine actions that they need to apply to achieve this goal, including helping "*marginalised, vulnerable and affected peoples and communities (including groups such as women, children, indigenous peoples and persons with disabilities)*".⁷⁷⁷ However, the strategy does not specifically mention 'migrants' or 'migrant

⁷⁶⁹ Large EU limited liability companies and non-EU companies above a certain size which are active and generate a certain turnover in the EU.

⁷⁷⁰ European Commission, *Corporate sustainability due diligence*, <https://commission.europa.eu/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence_en>, accessed 15 December 2022; European Commission Press Release, *Just and sustainable economy: Commission lays down rules for companies to respect human rights and environment in global value chains*, Brussels, 23 February 2022, <www.ec.europa.eu/commission/presscorner/detail/en/ip_22_1145>, accessed 15 December 2022.

⁷⁷¹ Ibid.

⁷⁷² Ibid.

⁷⁷³ Ibid.

⁷⁷⁴ UNICEF, *An EU Corporate Sustainability Due Diligence Directive that Works for Children UNICEF comments on the European Commission proposal [COM(2022) 71 final]*, <www.unicef.org/eu/media/2476/file/An%20EU%20Corporate%20Sustainability%20Due%20Diligence%20Directive%20that%20Works%20for%20Children:%20UNICEF%20comments%20on%20the%20European%20Commission%20proposal.pdf>, accessed 15 December 2022.

⁷⁷⁵ ASEAN Regional Strategy to Promote Corporate Social Responsibility and Human Rights', November 2016, part 6.

⁷⁷⁶ Ibid, part 5.

⁷⁷⁷ Ibid.

children' among the list of marginalized, vulnerable or affected peoples subject to these actions, which is a notable gap.

The adoption by ASEAN of the 'Vientiane Declaration on Transition from Informal Employment to Formal Employment towards Decent Work Promotion in ASEAN' in 2016, and the 'ASEAN Guidelines for CSR on Labour' in 2017, also reflect the commitment of ASEAN Member States to apply international standards on business and human rights. In the Vientiane Declaration, ASEAN Member States commit to transitioning from informal employment to formal employment, with concrete actions including promoting "the elimination of forced labour, child labour, violence at the workplace and all forms of discrimination, including gender inequality".⁷⁷⁸ The ASEAN Guidelines on CSR and Labour contain a section specifically relating to migrant workers, calling upon enterprises/establishments to "treat migrant workers with respect and dignity and without discrimination, exploitation, abuse, or violence" and to protect and promote their human rights, including "employment protection, payment of wages, social security, occupational safety and health, access to decent working and living conditions, and access to information and training".⁷⁷⁹ The ASEAN Guidelines on CSR and Labour also call upon 'enterprises/establishments' not to "engage in, benefit from or support the use of forced labour in any form, including labour trafficking"; to respect the minimum age of employment, to not employ or support underage employment, and to be vigilant in reference to young workers, "especially in the type of work that jeopardizes the health, safety or morals of children".⁷⁸⁰

4.5.2 National laws and policies

Although this study did not involve a primary analysis of domestic laws and policies concerning business operations in ASEAN, **existing studies highlight notable examples of ASEAN Member States incorporating international principles on business and human rights in their legal and policy frameworks, which may contribute to protecting the rights of children affected by migration.** Thailand, Malaysia, Indonesia and Viet Nam have taken important steps to strengthen their policy frameworks to protect the rights of children from violations by businesses. Thailand adopted its First National Action Plan on Business and Human Rights 2019–2022 (see Box 3 below).⁷⁸¹ At the time of writing, Malaysia is expected to launch its First National Action Plan on Business and Human Rights in 2023.⁷⁸² Viet Nam and Indonesia are also in the process of developing their national action plans on business and human rights in Viet Nam, titled the 'National Action Plan on Responsible Business Practices'.⁷⁸³

⁷⁷⁸ Vientiane Declaration on Transition from Informal Employment to Formal Employment towards Decent Work Promotion in ASEAN, 2016, para. 1.

⁷⁷⁹ ASEAN Guidelines on Corporate Social Responsibility and Labour', 2017, para. 16.

⁷⁸⁰ Ibid., para. 11.

⁷⁸¹ Royal Thai Government, *First National Action Plan on Business and Human Rights 2019–2022*, <<https://globalnaps.org/wp-content/uploads/2017/11/nap-thailand-en.pdf>>, accessed 16 January 2023.

⁷⁸² Aziz, Jehan Wan, 'Five Lessons Emerging from Malaysia's First National Conference on Business and Human Rights 2021', United Nations Development Programme, 30 September 2021, <www.undp.org/malaysia/blog/five-lessons-emerging-malysias-first-national-conference-business-and-human-rights-2021>, accessed 16 January 2023.

⁷⁸³ Focusright, 'World Map', <www.focusright.ch/en/rising-expectations#drivers>, accessed 16 January 2023; United Nations Development Programme, 'Viet Nam Takes Next Steps in Developing NAP on Responsible Business', 22 April 2022, <www.undp.org/news/viet-nam-takes-next-steps-developing-nap-responsible-business>, accessed 16 January 2023.

Box 5: Example of good practice: Thailand's First National Action Plan on Business and Human Rights 2019–2022

The development of Thailand's First National Action Plan on Business and Human Rights was aimed at implementing the recommendation of the UN Working Group on Business and Human Rights for States to establish national action plans based on the 'Protect, Respect and Remedy' Framework under the aegis of the UN Guiding Principles on Business and Human Rights.⁷⁸⁴ Though not integrated throughout, the Action Plan includes specific activities relating to protecting the children of migrant workers, as follows:

- Encouraging establishments to organize childcare centres, which will receive tax deductions, and for children of employees and workers to be taken care of with proper development; and
- Protecting children online by consulting with the business sector to develop guidelines for service provision which take children into account, such as organizing staff to supervise a chat line in the mobile phone network; developing a mobile application or channel to receive complaints; referring a child to the relevant agencies if he/she needs help; providing counselling to children bullied in schools; and supporting research studies by working with relevant state agencies and civil society organizations.⁷⁸⁵

The Action Plan also calls on the police, Ministry of Agriculture, Ministry of Labour and Ministry of Industry to use measures or labour laws which are applied to the fishing sector in the supervision of labour conditions in other sectors such as agriculture and construction in which many migrant workers are hired.⁷⁸⁶

The Action Plan further integrates activities which may address some of the broader factors contributing to the protection risks faced by children affected by migration, including providing fair wages and salaries, suitable working conditions and access to health services by workers; inspecting and monitoring entertainment places, businesses, establishments and recruitment agencies; and inspecting business licences, labour contracts, working conditions and work permits (in the case of migrant workers).⁷⁸⁷ Further, the State is called upon to address "*the problem of access to education by children of migrant workers*" by providing basic education, "*both in the public and private system and informal (non-formal education)*".

Importantly, the Action Plan contains specific activities with regard to the governance of Special Economic Zones, in which there are serious protection concerns for children and a gap in accountability. These activities aim to reflect the commitments in the guiding principles on business and human rights.⁷⁸⁸

⁷⁸⁴ Ibid.

⁷⁸⁵ Royal Thai Government, *First National Action Plan on Business and Human Rights 2019–2022*, pp. 48–49, <<https://globalnaps.org/wp-content/uploads/2017/11/nap-thailand-en.pdf>>, accessed 16 January 2023.

⁷⁸⁶ Ibid., p. 50.

⁷⁸⁷ Ibid., pp. 24–52.

⁷⁸⁸ Ibid., p. 84.

There is, nevertheless, a need to undertake comprehensive reviews and assessments of national laws and policies on business operations in ASEAN to inform ongoing legal and policy reforms concerning the protection of children affected by migration. Much of the evidence on legal reforms in the literature relates to CSR generally or to specific protection risks (e.g., child labour or human trafficking) or providing incentives for businesses to support workers and their families, rather than requiring businesses to take adequate measures to prevent, mitigate and remedy child rights violations in which they are involved as a systematic part of their operations. The CRC Committee has issued numerous recommendations to ASEAN Member States to integrate child rights and business principles into their laws and policies. In 2022, the CRC Committee recommended that Viet Nam should establish, implement and monitor regulations, with appropriate sanctions for perpetrators and remedies for child victims, *“to ensure that the business sector, in particular the agriculture, manufacturing and tourism industries, complies with international and national human rights, labour, environmental and other standards, particularly with regard to children’s rights.”*⁷⁸⁹ The CRC Committee issued similar recommendations to Cambodia in 2022 particularly in respect of the manufacturing and tourism industries,⁷⁹⁰ to Singapore in 2019,⁷⁹¹ and to Lao PDR in 2018 concerning the construction, excavation, farming and tourist industries.⁷⁹² In 2016, the CRC Committee called upon Brunei Darussalam to strengthen its legislation by explicitly prohibiting hazardous work by children, including exploitative domestic work, and revising its national laws to outline a list of hazardous work in which children should not be involved.⁷⁹³ In 2012 in respect of Myanmar, the CRC Committee noted the absence of a legislative framework regulating the prevention of, protection against and reparation of the adverse impacts of activities by private and state-owned companies, mainly in the extractive and large-scale energy-related sectors.⁷⁹⁴ The CRC Committee recommended that Myanmar should comply with international principles on business and human rights as well as establishing ‘the necessary regulatory framework and policies for business and industry, in particular with regard to extractive industry (oil and gas) and largescale development projects such as dams and pipelines, to ensure that they respect and protect the rights of children’.⁷⁹⁵

Businesses can play a key role in advocating with governments to change their laws and policies to protect migrant workers and their families, including children affected by migration. Although not specifically related to children affected by migration, in Cambodia, for example, several multinational businesses, including Gap, H&M, Levi’s and Puma, wrote an open letter to the Cambodian Government, manufacturers and union leaders to express great concern at the use of force against garment factory workers who were protesting for increased wages.⁷⁹⁶

Non-implementation of laws and regulations protecting children is a common challenge, particularly among smaller businesses and the informal economy. The reasons for this include limited knowledge and awareness of laws and regulations among senior management and staff, a lack of resources to implement the measures, a lack of capacity of State agents to inspect and identify violations, impunity stemming from gaps in the legal framework and, in extreme cases, alleged corruption.⁷⁹⁷ For example, a recent case study found that in Viet Nam, smaller businesses tend to lack understanding of child labour laws (particularly recent changes in the Labour Code of Minor Workers). They also lack the support that is available to larger businesses with regard to education and training on child labour laws as well as the resources to implement child labour regulations and provide safe working opportunities for 15–18-year-olds.⁷⁹⁸

⁷⁸⁹ CRC Committee, Concluding Observations, Viet Nam, 21 October 2022, para. 14(b).

⁷⁹⁰ CRC Committee, Concluding Observations, Cambodia, 27 June 2022, para. 14(a).

⁷⁹¹ CRC Committee, Concluding Observations, Singapore, 28 June 2019, para. 16(a).

⁷⁹² CRC Committee, Concluding Observations, Lao PDR, 1 November 2018, para. 13(a)-(b).

⁷⁹³ CRC Committee, Concluding Observations, Brunei Darussalam, para. 66(a).

⁷⁹⁴ CRC Committee, Concluding Observations, Myanmar, 14 March 2012, para. 21.

⁷⁹⁵ Ibid, para. 22.

⁷⁹⁶ VOA News, ‘Major Brands Concerned About Cambodia Violence’, 8 January 2014, <www.voanews.com/a/major-brands-express-concern-for-violence-against-striking-cambodians/1826132.html>, accessed 16 January 2023.

⁷⁹⁷ Kennedy, Lindsey, and Nathan Paul Southern, ‘Inside Southeast Asia’s Casino Scam Archipelago – Special Economic Zones and self-governing Statelets across the Mekong region have become conduits for human trafficking on a massive scale’, 2 August 2022, <www.thediplomat.com/2022/08/inside-southeast-asias-casino-scam-archipelago>, accessed 13 December 2022; Online key informant interview, representative of the Business and Human Rights Working Group, 26 October 2021; Smith, A., and C. Hamilton, *Child Trafficking and Exploitation in the Context of Migration in Viet Nam: Drivers beyond poverty and the role of businesses in driving and providing protection against exploitation amongst migrant children*, United Nations Children’s Fund and Coram International, 2023.

⁷⁹⁸ Ibid.

4.5.3 Self-regulation by businesses

The integration of child rights-based approaches in regulatory frameworks developed by business sectors can contribute to addressing the protection risks faced by children affected by migration.

Child protection standards exist for certain key industries in the ASEAN region, including tourism (most notably the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism),⁷⁹⁹ and the palm oil⁸⁰⁰ and construction sectors, among others. The risk of being sanctioned by the ‘industry’ and closed off from certain markets encourages businesses to comply with these standards.⁸⁰¹ However, existing studies suggest that, where such standards do incorporate human rights considerations, they tend to be limited to issues of ‘sustainability’ and the impact on the community, or specific child protection concerns such as sexual exploitation or child labour, as opposed to child protection concerns or children’s rights more generally. More broadly, business standards often focus heavily on monitoring and compliance (such as the number of child labour cases identified and remedied) and corporate commitments rather than on outcomes for children.⁸⁰² Despite this, there is some evidence that suggests increasing recognition by some businesses of the shortcomings of self-regulation and audit processes when addressing human rights issues in their supply chains.⁸⁰³

4.5.4 Due diligence, impact assessments and public reporting

Human rights due diligence, impact assessments and public reporting of the steps taken to address negative impacts are an integral part of a business’ responsibility to respect children’s rights.

Human rights due diligence, which the CRC Committee has stated is required as a matter of law,⁸⁰⁴ is an ongoing process by which a business assesses its impact on human rights, including “*integrating and acting upon its findings, tracking its responses and communicating how its impact is addressed*”⁸⁰⁵ Human rights due diligence should cover any adverse impact that the business may cause or contribute to through its activities or which may be linked directly to its operations, products or services by a business relationship.⁸⁰⁶ This entails an assessment to identify any actual or potential adverse impact on children’s rights (a child rights impact assessment); taking the necessary steps to cease or prevent the activity/contribution; using the business’ leverage to mitigate any remaining negative impacts; monitoring the effectiveness of the action taken; and communicating externally on efforts to address the impact on children’s rights in a form and frequency which reflects the impact and is accessible to its intended audience.⁸⁰⁷ Where there is a high risk of businesses being involved in violations of children’s rights because of the nature of their operations or their operating contexts, States should require a stricter process of due diligence and an effective monitoring system.⁸⁰⁸

There is some evidence that some businesses in ASEAN are undertaking child rights due diligence, impact assessments and public reporting. For example, Thailand’s First Action Plan of Business and Human Rights 2019–2022 required the Ministry of Industry and the Office of the Securities and Exchange Commission to regulate, supervise and require large businesses and publicly listed companies that use migrant labour as their primary production resource to prepare a human rights due diligence report as a

⁷⁹⁹ World Tourism Organization, ‘Global Code of Ethics for Tourism’, 2020, <www.unwto.org/global-code-of-ethics-for-tourism>, accessed 4 January 2023; ‘Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism’, <<https://thecode.org/about>>, accessed 4 January 2023.

⁸⁰⁰ Roundtable on Sustainable Palm Oil, Guidance Documents for Palm Oil Producers, Smallholders and Group Managers, Downstream Supply Chain Actors and Auditors and Certification Bodies, <<https://rspo.org/rspo-launch-new-guidances-to-further-strengthen-child-rights-protection>>, accessed 4 January 2023.

⁸⁰¹ Online key informant interview, international agency in ASEAN, 30 November 2021.

⁸⁰² United Nations Children’s Fund, *Child Labour and Responsible Business Conduct: A guidance note for action*, 2022, p. 31.

⁸⁰³ British Institute of International and Comparative Law and Norton Rose Fulbright, ‘Making Sense of Managing Human Rights Issues in Supply Chains’, Summary Note, 1 January 2018.

⁸⁰⁴ CRC general comment No. 16 (2013), paras. 62–65.

⁸⁰⁵ Children’s Rights and Business Principles, pp. 14–15.

⁸⁰⁶ *Ibid.*

⁸⁰⁷ ‘Children’s Rights and Business Principles’, pp. 14–15; CRC general comment No. 16 (2013), paras. 62–65.

⁸⁰⁸ CRC general comment No. 16 (2013), para. 62.



UNICEF Viet Nam, 2015, Teenage boy from a poor household, whose parents work in manual labor, with unstable income. © UNICEF/UNI304053/Truong Viet Hung

measure to deter labour exploitation.⁸⁰⁹ The Action Plan also requires the report to be disclosed to the public to create awareness and ‘be easy to review.’⁸¹⁰ However, there is a clear need to systematize and enforce these practices across ASEAN Member States and business sectors. Furthermore, even where practiced, there is little evidence on the extent to which the rights of children affected by migration are specifically incorporated within these processes. In 2019, the CRC Committee noted that Singapore had “not taken sufficient steps to provide a framework for national and international enterprises under its jurisdiction to report in all areas that may affect children’s rights.”⁸¹¹ The CRC Committee issued similar recommendations to Viet Nam in 2022 and to Lao PDR in 2018 with regard to assessments, consultations and public disclosure.⁸¹² In 2022, the CRC Committee called upon Cambodia to establish “a child protection framework for companies” operating in Cambodia, including for conducting child rights impact assessments and reporting, investigating and addressing children’s rights violations.⁸¹³ Back in 2012, the CRC Committee called upon Thailand to “promote the inclusion of child rights indicators and parameters for reporting and provide specific assessments of impacts of business and industry on child rights.”⁸¹⁴ Challenges also arise in mainstreaming due diligence practices among smaller, informally run businesses which can have proportionally as large child rights impacts as large corporations. Under international standards, all businesses should undertake due diligence, though the complexity of this practice may vary according to the size of the enterprise, the risk of severe human rights impacts and the nature and context of its operations.⁸¹⁵

⁸⁰⁹ Royal Thai Government, *First National Action Plan on Business and Human Rights 2019–2022*, p. 53, <<https://globalnaps.org/wp-content/uploads/2017/11/nap-thailand-en.pdf>>, accessed 16 January 2023.

⁸¹⁰ Royal Thai Government, *First National Action Plan on Business and Human Rights 2019–2022*, p. 53, <<https://globalnaps.org/wp-content/uploads/2017/11/nap-thailand-en.pdf>>, accessed 16 January 2023.

⁸¹¹ CRC Committee, Concluding Observations, Singapore, 28 June 2019, para. 16.

⁸¹² CRC Committee, Concluding Observations, Viet Nam, 21 October 2022, para. 14(c); CRC Committee, Concluding Observations, Lao PDR, 1 November 2018, para. 13(c).

⁸¹³ CRC Committee, Concluding Observations, Cambodia, 27 June 2022, para. 14(b).

⁸¹⁴ CRC Committee, Concluding Observations, Thailand, 17 February 2012, para. 30(b).

⁸¹⁵ ‘Guiding Principles on Business and Human Rights’, Principle 17(b).

There are examples of good practices by businesses taking *voluntary* steps on due diligence and child rights impact assessments in partnership with international agencies and civil society, paying particular attention to the rights of children of migrant workers. A notable example is the ‘Chiang Mai Framework for Action and Tools’ developed by the Baan Dek Foundation in Thailand in partnership with UNICEF, detailed in below Box.

Box 6: Chiang Mai Framework for Action and Tools, Thailand

In Thailand, eight companies⁸¹⁶ have formally joined a voluntary initiative – the ‘Building Social Impact (BSI) Initiative’ – to improve social standards in the property and construction sector.⁸¹⁷ The BSI Initiative is implemented by the NGO Baan Dek Foundation with support from UNICEF Thailand with the aim of ensuring the safety of an estimated 60,000 children living in construction site camps in Thailand and supporting them to access education and healthcare services.⁸¹⁸ Besides the eight companies that are formally part of the BSI Initiative, the Baan Dek Foundation reports that it has partnered with 39 property developers and construction companies and supports 53 construction site camps under the initiative.⁸¹⁹

To achieve its aim, the BSI Initiative offers a series of tools for property developers and construction companies to use to improve their business strategies. The tools include: the Chiang Mai Framework for Action consisting of 12 recommendations for businesses on improving infrastructure, welfare and services, health and education;⁸²⁰ social impact guidelines on how to implement the Chiang Mai Framework for Action;⁸²¹ a social impact self-assessment tool for camp managers and camp bosses to use to assess the extent to which their camps are in line with the Chiang Mai Framework for Action;⁸²² and a social impact reference pack providing step-by-step processes for operational staff to follow when implementing the action plan generated from the results of the self-assessment toolkit. Baan Dek also provides training camp management on using the BSI tools.⁸²³

Besides positively impacting children’s lives, the Chiang Mai Framework for Action anticipates that businesses will also be able to report other positive results, such as improved staff retention, reduced liability for accidents in the camps, improved reputation through improved social protections for workers and their families, and improved sustainability and environmental impacts, among other things.⁸²⁴

⁸¹⁶ Visavapat, Syntec, Magnolia Quality Development Corporation, Chiangmai Rimdoi, Property Guru, Builk One, Thai Polycons, Artelia and Ritta.

⁸¹⁷ Building Social Impact Initiative website, ‘The Tools for Companies to Adopt’, <www.buildingsocialimpact.org/eng/>, accessed 15 December 2022.

⁸¹⁸ Ibid.

⁸¹⁹ Ibid.

⁸²⁰ Baan Dek Foundation and United Nations Children’s Fund, Building Social Impact Initiative ‘Framework for Action’, <https://static1.squarespace.com/static/5f5f8a9f77fc3c109fb44afa/t/6266c29c1e34f11bd9136e91/1650901685840/FA_Framework+for+Action_2022_English.jpg>, accessed 15 December 2022.

⁸²¹ Ibid.

⁸²² Baan Dek Foundation and United Nations Children’s Fund, Building Social Impact Self-Assessment Tool, <www.buildingsocialimpact.org/contact-us>, accessed 15 December 2022.

⁸²³ Building Social Impact Initiative website, ‘The Tools for Companies to Adopt’, <www.buildingsocialimpact.org/eng/>, accessed 15 December 2022.

⁸²⁴ Baan Dek Foundation and United Nations Children’s Fund, ‘Social Impact Guidelines for Construction Site Camps’, p. 6, <https://static1.squarespace.com/static/5f5f8a9f77fc3c109fb44afa/t/62afed2ba2a5202cec1f654a/1655696708969/FA_BSI_Guidelines_Eng_2022.pdf>, accessed 15 December 2022.

States may make the granting of government approvals or licences for business operations contingent on a comprehensive child rights impact assessment and risk mitigation strategy, with special consideration given to the impact on particularly vulnerable or ‘at risk’ groups of children such as those affected by migration. Analyses undertaken in 2013 indicate that all ASEAN Member States require environmental impact assessments to be conducted before certain approvals or licences will be granted for business operations.⁸²⁵ The rights of children and/or migrants may factor into these analyses.⁸²⁶ However, there are numerous barriers to these processes. There are reports of environmental impact assessments in Cambodia not meeting required conditions and mining companies commencing extractive operations before obtaining the requisite approvals; approvals in Viet Nam being granted despite the environmental impact assessments containing major gaps; and weak implementation or enforcement of approval processes in Lao PDR, Malaysia and Viet Nam.⁸²⁷ Factors contributing to these barriers include slow implementation by subnational authorities of laws and regulations issued by the central Government (Viet Nam); lack of awareness of the laws among officials (Malaysia); companies finding ways to avoid the need to undertake environmental impact assessments (logging companies in Malaysia); weak monitoring mechanisms by the Government (Cambodia, Lao PDR and Viet Nam); and acceptance by government authorities of low compensation rates for land acquisitions in order to attract investment.⁸²⁸ It is possible that these barriers would also apply to child rights impact assessments (where they are carried out).

4.5.5. Voluntary programmes and initiatives

There are several examples of businesses in ASEAN voluntarily providing support and services to migrant workers and their families to address child protection risks and developing child protection policies as part of broader CSR initiatives. This has typically been done in partnership with NGOs. Besides the Chiang Mai Framework for Action mentioned above, leading businesses in the construction sector in Thailand have taken some steps in this area. Sansiri PLC worked with the Baan Dek Foundation and UNICEF Thailand to implement ‘The Good Space’ project in 30 construction camps in order to tackle child labour and overcome the barriers to migrant children accessing public education services.⁸²⁹ Through this project, Sansiri provided the resources to build childcare centres in the camps and pay childcare providers to educate and build the skills of children who were too young or unable to attend local schools.⁸³⁰ Sansiri developed a ‘Child-Friendly Space Guideline Booklet’ which could be used as a blueprint by other, similar businesses.⁸³¹ Similarly, Chiang Mai Rimdoi and the Baan Dek Foundation worked together to improve physical conditions and safety in construction camps, including the establishment of a safe space for children where Baan Dek taught parents essential life skills to enable them to better care for their children.⁸³²

Similar examples of partnerships exist in other ASEAN Member States. In Viet Nam, NGOs and international agencies work with businesses to provide training to staff on supply chains, assessments and audits to eliminate the risk of child trafficking and modern slavery.⁸³³ One such initiative is IOM’s ‘CREST programme’. Some businesses in Viet Nam have even held training sessions for young people to enable them to secure non-exploitative, legal employment.⁸³⁴ In Sabah, Malaysia, palm oil businesses are

⁸²⁵ Human Rights Resource Centre, *Business and Human Rights in ASEAN: A baseline study*, p. 29.

⁸²⁶ For instance, as at 2019, the health and safety of workers and the impact of construction activities on communities living in the vicinity of a construction site were noted as important considerations in gaining approvals based on environmental impact assessments, which were required for major development projects; *Building Futures in Thailand: Support to children living in construction site camps*, Bangkok, pp. 7, 65.

⁸²⁷ Human Rights Resource Centre, *Business and Human Rights in ASEAN: A baseline study*, p. 29.

⁸²⁸ Ibid.

⁸²⁹ *Building Futures in Thailand: Support to children living in construction site camps*, p. 52; Sansiri PLC, ‘Child-Friendly Space Guideline Booklet’, 5 March 2014, <https://issuu.com/sansiriplc/docs/new_manual_eng_12_feb>, accessed 4 January 2023.

⁸³⁰ Ibid., p. 52.

⁸³¹ Sansiri PLC, ‘Child-Friendly Space Guideline Booklet’, 5 March 2014, <https://issuu.com/sansiriplc/docs/new_manual_eng_12_feb>, accessed 4 January 2023.

⁸³² *Building Futures in Thailand: Support to children living in construction site camps*, p. 54.

⁸³³ Smith, A., and C. Hamilton, *Child Trafficking and Exploitation in the Context of Migration in Viet Nam: Drivers beyond poverty and the role of businesses in driving and providing protection against exploitation amongst migrant children*, United Nations Children’s Fund and Coram International, 2023.

⁸³⁴ Ibid.

reported to provide education services for migrant children living on the plantation, though the quality of the education provided varies considerably.⁸³⁵ In Indonesia, a company operating in Central Kalimantan is reported to provide healthcare services at the plantation site after working hours to facilitate access,⁸³⁶ though the extent to which this is extended to the children of working (migrant) parents is unknown. The literature indicates that housing is normally provided for workers on larger plantations in Indonesia, though this is not always available for casual/temporary workers or contractors hired through third party recruiters, which is likely to affect migrants disproportionately.⁸³⁷ The quality of the housing is also reported as a cause for concern.⁸³⁸ In Sumatra, Indonesia, a company which offers education scholarships and discounts for high-performing children of workers is reported to have an average marriage age of above 18,⁸³⁹ though the extent to which the education programme has directly contributed to this positive result is unknown.

Some businesses have gone beyond ad hoc voluntary programmes to systematise responsible business conduct in their operations in ASEAN, though challenges remain. For example, there are reports of businesses in Viet Nam introducing ‘progressive’ policies and practices with regard to maternity leave and working hours for pregnant women.⁸⁴⁰ A company operating in Kalimantan, Indonesia, is reported to apply a regional policy to regulate the working conditions of pregnant and nursing mothers under which they are appointed to undertake low-risk work to avoid contact with potentially harmful chemicals.⁸⁴¹ However, such voluntary initiatives are still often viewed by business leaders as ad hoc philanthropic endeavours rather than as an integral and systematic part of the business’ strategy and approach.⁸⁴² Consequently, in the construction sector in Thailand, for example, business strategies are often inconsistent with their voluntary initiatives which, if they do target children, often do not recognize the protection needs of children affected by migration.⁸⁴³

The view of responsible business conduct as a voluntary undertaking stems in part from a lack of awareness by business leaders and investors of their contribution to the contextual factors driving the protection risks faced by children affected by migration.⁸⁴⁴ As a result, voluntary actions tend to focus on addressing isolated child protection issues, such as child labour or child trafficking, without engaging with the broader structural factors which drive these risks, such as providing parents with a living wage, flexible working arrangements, providing support to ensure that children have access to adequate childcare etc.⁸⁴⁵ This challenge is particularly acute for businesses with long value chains. For example, overseas property developers who use construction companies in Thailand may focus on ‘*price, quality and timeliness*’ with very little knowledge about the protection risks associated with children of migrant workers in the construction camps.⁸⁴⁶ Indeed, investors in and customers of real estate businesses which utilize construction companies in Thailand may also be unaware of the protection issues facing children affected by migration in connection with the business’ operations and relationships. Moreover, businesses may not be aware of the potential benefits that child rights-based approaches can bring to their business, which acts as a further barrier to mainstreaming this approach in the ASEAN region.⁸⁴⁷ It may also be that such voluntary initiatives targeting migrant children are seen as a cost burden.

⁸³⁵ Aplan and Lord, *Malaysia Case Study: A deep-dive examination of child labour and other protection risks faced by migrant children living on palm oil plantations in Sabah*.

⁸³⁶ *Palm Oil and Children in Indonesia*, p. 8.

⁸³⁷ *Ibid.*, p. 9.

⁸³⁸ *Ibid.*

⁸³⁹ *Ibid.*, p. 10.

⁸⁴⁰ United Nations Children’s Fund, ‘Internal Migration into Ho Chi Minh City and the Situation for Children’, Policy brief, (undated), p. 4.

⁸⁴¹ *Palm Oil and Children in Indonesia*, p. 8.

⁸⁴² *Building Futures in Thailand: Support to children living in construction site camps*, p. 60.

⁸⁴³ *Ibid.*

⁸⁴⁴ United Nations Children’s Fund, *Child Labour and Responsible Business Conduct: A guidance note for action*, 2022, p. 12.

⁸⁴⁵ *Ibid.*

⁸⁴⁶ Online key informant interview, focal point from an international agency [details withheld to protect anonymity], 28 April 2022.

⁸⁴⁷ *Building Futures in Thailand: Support to children living in construction site camps*, pp. 60–61, 67.

Although there is limited evidence of child-focused programmes having wider positive results for business, anecdotal evidence from real estate and construction businesses in Thailand, such as Sansiri and Areeya Property, indicate that **such projects targeting migrant children in construction camps can have a positive impact on brand value, labour retention and improved productivity and investment**, particularly from institutional investors.⁸⁴⁸

4.5.6 Right to an effective remedy

Businesses in ASEAN have a responsibility to remedy violations of children’s rights which they have caused or contributed to, including violations of the rights of children affected by migration.

ASEAN Member States, in turn, have an obligation to ensure that children can access their right to an effective remedy for such violations.⁸⁴⁹ States have an obligation to take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction, those affected have access to effective remedy.⁸⁵⁰ Given the challenges that children often face in accessing effective remedies (lack of legal standing;⁸⁵¹ lack of awareness of their rights and grievance mechanisms; capacity, resource and skills limitations; and lack of legal assistance), it is important that operational level grievance mechanisms are accessible to children, their families and those who represent their interests.⁸⁵² This is particularly important for children affected by migration who are often further marginalized from local communities and lack access to services.

There are some examples of State grievance mechanisms in ASEAN for human rights abuses by businesses, as well as non-State grievance mechanisms. State grievance mechanisms include access to courts, tribunals, mediation centres and complaints channels through government agencies, among others and depending on the nature of the violation (e.g., anti-trafficking, land disputes, employment, and so forth).⁸⁵³ The Philippines, for example, is reported to require companies to establish alternative dispute resolution mechanisms to settle disputes with third parties and committees to investigate sexual harassment complaints.⁸⁵⁴ Myanmar also reportedly requires companies to establish workplace coordinating bodies to receive complaints from employers and workers.⁸⁵⁵ Furthermore, national human rights institutions in Indonesia, Malaysia, the Philippines and Thailand are reportedly empowered to receive and address complaints concerning business-related human rights abuses.⁸⁵⁶ However, there is a clear need to review national laws to ensure that children affected by migration have legal rights to access an effective remedy for violations of their rights by businesses. In Cambodia, for example, the Council for the Development of Cambodia and the Cambodian Special Economic Zones Board, which are public entities responsible for overseeing and managing the operations of Special Economic Zones, appear not to provide any effective grievance or reporting mechanisms for individuals affected by the operations of such zones.⁸⁵⁷ The lack of transparency and publicity of the laws and processes governing the Special Economic Zones acts as a further barrier to accessing an effective remedy.⁸⁵⁸ More broadly, alleged corruption and the impunity of businesses for human rights abuses committed in the ‘Golden Triangle’ Special Economic Zones, not only in Cambodia but also in Lao PDR and Myanmar, is a cause for great concern.⁸⁵⁹

⁸⁴⁸ Ibid.

⁸⁴⁹ ‘Children’s Rights and Business Principles’, p. 16.

⁸⁵⁰ United Nations, ‘Guiding Principles on Business and Human Rights’, Principle 25; CRC general comment No. 16 (2013), paras. 5(c) and 44.

⁸⁵¹ For example, the law may only permit individuals of a certain age to file a complaint or initiate legal proceedings.

⁸⁵² ‘Children’s Rights and Business Principles’, p. 16.

⁸⁵³ Human Rights Resource Centre, *Business and Human Rights in ASEAN: A baseline study*, 2013, p. 22.

⁸⁵⁴ Ibid.

⁸⁵⁵ Ibid.

⁸⁵⁶ Ibid.

⁸⁵⁷ Cambodian Centre for Human Rights, ‘Fact Sheet: Cambodia’s Special Economic Zones and human rights’, September 2018, p. 3.

⁸⁵⁸ Ibid.

⁸⁵⁹ Kennedy, Lindsey, and Nathan Paul Southern, ‘Inside Southeast Asia’s Casino Scam Archipelago Special Economic Zones and self-governing Statelets across the Mekong region have become conduits for human trafficking on a massive scale’, *The Diplomat*, 2 August 2022, <www.thediplomat.com/2022/08/inside-southeast-asias-casino-scam-archipelago>, accessed 13 December 2022.

There are isolated examples of migrant communities seeking legal remedies through bringing class actions against businesses for human rights abuses in ASEAN. Most relevant to this study is the ongoing case of VK Garment in Thailand, mentioned above (see section 3.7 for details). The seven-year-old girl and her mother are two of 130 Burmese claimants and former factory workers who are suing the British multinational company in the United Kingdom for alleged negligence and unjust enrichment.⁸⁶⁰ More generally, in 2018, the first cross-border litigation for human rights abuses by a business was launched in Thailand by a group of approximately 700 individuals from Samrong district, Oddar Meanchey province, Cambodia, against the Thai sugar company, Mitr Phol. It is alleged that, following Mitr Phol's large-scale land concession from the Cambodian Government in 2008, the business grabbed the claimants' land, forcibly displaced its inhabitants, destroyed their homes, crops and property, and caused the inhabitants to become homeless and impoverished to make way for the company's sugar plantations – all without redress and affecting both adults and children.⁸⁶¹ On 31 July 2020, the Bangkok South Civil Court recognized the class action litigation, which, at the time of writing this study, was ongoing.⁸⁶² Despite these examples, it should be noted that legal and logistical hurdles to accessing an effective remedy are likely to arise where the violation is caused by a multinational business acting extraterritorially.

Concerningly, there are examples of businesses initiating strategic lawsuits against public participation to discourage, intimidate or silence children affected by migration, their parents and legal representatives from seeking redress for rights violations. The international NGO, ARTICLE 19, notes that journalists and human rights defenders in Thailand “*are routinely targeted with criminal defamation charges initiated by private actors as well as civil lawsuits*”⁸⁶³ For example, Thammakaset Limited, a Thai poultry company, is reported to have sued at least 31 people in Thailand, including migrant workers, activists and journalists who raised allegations about labour rights abuses by the company.⁸⁶⁴ These include a civil defamation lawsuit against a human rights defender for sharing a campaign video online detailing the working conditions of 14 migrant workers from Myanmar on the company's farm.⁸⁶⁵ Recognizing this barrier, Thailand's First Action Plan on Business and Human Rights contains a section dedicated to addressing the risks faced by human rights defenders. Activities in the Action Plan include strengthening access to an effective remedy and establishing or reviewing policies, mechanisms and protection measures to protect human right defenders, including training for law enforcement agencies.⁸⁶⁶

⁸⁶⁰ It is noted that the facts of this case are subject to court proceedings; ‘Girl, 7, Raped at Thai Factory Supplying Clothes for Tesco While Mother Worked’, *The Guardian*, <https://www.theguardian.com/business/2022/dec/19/girl-7-raped-at-thai-factory-supplying-clothes-for-tesco-while-mother-worked?CMP=Share_iOSApp_Other>, accessed 20 December 2022.

⁸⁶¹ Business & Human Rights Resource Centre, ‘Case Brief: Class action lawsuit by Cambodian villagers against Mitr Phol Sugar Corporation’, 2 April 2018, <www.business-humanrights.org/en/latest-news/case-brief-class-action-lawsuit-by-cambodian-villagers-against-mitr-phol-sugar-corporation>, accessed 23 November 2022; Inclusive Development International, ‘Cambodia: Challenging Mitr Phol land grab’, <www.inclusivedevelopment.net/cases/mitr-phol>, accessed 23 November 2022.

⁸⁶² Business & Human Rights Resource Centre, ‘Thai Appeal Court Decision on Mitr Pohl Paves the Way for Asia's First Transboundary Class Action on Human Rights Abuses’, <www.business-humanrights.org/en/latest-news/thai-appeal-court-decision-on-mitr-pohl-paves-the-way-for-asias-first-transboundary-class-action-on-human-rights-abuses>, accessed 23 November 2022.

⁸⁶³ ARTICLE 19, ‘Thailand: Act to prevent spurious lawsuits against human rights defenders’, 12 June 2020, <www.article19.org/resources/thailand-act-to-prevent-spurious-lawsuits-against-human-rights-defenders>, accessed 16 January 2023.

⁸⁶⁴ Business & Human Rights Resource Centre, *SLAPPEd but not Silenced: Defending human rights in the face of legal risks*, June 2021, p. 17, <https://media.business-humanrights.org/media/documents/2021_SLAPPs_Briefing_EN_v51.pdf>, accessed 16 January 2023.

⁸⁶⁵ Ibid.

⁸⁶⁶ Royal Thai Government, *First National Action Plan on Business and Human Rights 2019–2022*, pp. 109–115, <<https://globalnaps.org/wp-content/uploads/2017/11/nap-thailand-en.pdf>>, accessed 16 January 2023.

Highlight 6: A deep-dive examination of child labour and other protection risks faced by migrant children living on palm oil plantations in Sabah State, Malaysia

Qualitative research was carried out in 2022 in Sabah on child labour and other protection risks faced by migrant children (including children of undocumented migrant parents) living on palm oil plantations, and the systems and services to support children. The research focused on the role of the business sector in preventing child protection risks and supporting children living with parents on the plantations. The research involved a series of in-depth interviews with 25 government stakeholders (national and Sabah State level); representatives of palm oil companies and their business partners and subsidiaries; international organizations and NGOs concerned with child labour and the rights of child migrants; and informants with first-hand experience of working with migrant children in the palm oil plantations, including those involved in the direct provision of services.

Child labour and other protection risks

In line with previous evidence, the results from the case study suggest a large number of children of Filipino and Indonesian migrant workers live with their families in and around plantation sites in Sabah. The involvement of children in work on the plantations was recognized to be widespread and normalized as a practice, usually occurring in the context of providing informal assistance to their parents rather than their being hired openly or directly by plantations. Research participants identified a number of underlying factors that together, contribute to children's involvement in child labour. While limited access to quality education and childcare facilities available on site were acknowledged as being significant drivers, the economic vulnerability of families, the low wages provided on plantations and the piece-rate system of pay combine to create incentives for engaging children in work to achieve higher yields. The children of migrant workers face numerous barriers, including a lack of documentation, discrimination and isolation as well as limited access to education. In this context, as a number of informants explained, working on the plantation may seem like the best option.

In addition to child labour, a number of serious child protection concerns were identified on the plantations, including arrest and detention by immigration authorities, violence, trafficking and exploitation. Their irregular status was often identified as the root cause of children's heightened vulnerability to risk. Inadequate parental supervision and natural and human-made hazards and risks present in the physical environment of the plantations were among other protection concerns highlighted by respondents.

Teacher in Lahad Datu: *“The work is definitely dangerous especially for children because they can easily injure themselves. The surrounding environment at the work site is dangerous... Once they have started work, it definitely affects their schooling because they become too tired to do homework or concentrate. And of course work becomes a distraction... Once they are injured while helping their parents work, it will affect their schooling. They may miss some schooling days. The only benefit I see from these kids working is adding to the monthly family income. That is all.”⁸⁶⁷*

⁸⁶⁷ Group interview, teachers in Lahad Datu, 12 March 2022.

Business sector responses

In addition to a comprehensive and protective legal framework, a number of industry initiatives have attempted to address child protection risks in the palm oil sector. The Roundtable on Sustainable Palm Oil (RSPO) is a global non-profit consortium of stakeholders in the palm oil industry who have agreed on a set of criteria for the production of sustainable palm oil at all stages of the supply chain, one of which is to ensure “*Children are not employed or exploited*” (criteria 6.4).⁸⁶⁸ Another industry initiative is Malaysian Sustainable Palm Oil (MSPO), which is a certification standard for palm oil production based on sustainability, responsible cultivation and minimization of negative human and environmental impacts.⁸⁶⁹ In order to become certified, organizations must go through an audit process by an accredited certification body that has been vetted by the Department of Standards Malaysia (DSM).⁸⁷⁰

Despite these welcome initiatives and the comprehensive legal framework, monitoring and enforcement appears limited in practice. Research participants offered varied opinions about the ability for RSPO and MSPO to address child labour in plantations and the impact both have had on sustainability within the sector more generally. While some considered that both schemes have led to improvements in workers’ rights and living conditions for children over the past decade, others were more sceptical about these initiatives and the ability of the certification process to accurately assess plantations. In general, respondents were of the opinion that the bigger plantations and companies took the guidelines seriously and attempted to address challenges, for instance through the provision of day-care and schools on site, and publicizing the standards throughout the plantation. On the other hand, respondents indicated that mid-size and smaller companies had lower rates of compliance with RPSO/MSPO. It was suggested during interviews that corruption may be hindering the monitoring and enforcement of child labour standards, with anecdotal evidence that police have accepted bribes from plantations in response for turning a blind eye to reports of child labour violations and tip-offs reaching plantations before police raids.

The complexity of palm oil supply chains also exacerbates challenges for companies performing due diligence to ensure that child labour and other violations are not occurring in different tiers of the chain. Refineries are not able to monitor mills and ascertain their compliance with RSPO standards easily. While many independent plantations have strict entry requirements for non-workers, this contributes to a lack of accountability.

⁸⁶⁸ ‘RSPO Standards’, <<https://rspo.org/standards>>, accessed 12 December 2022.

⁸⁶⁹ Control Union, Malaysia Sustainable Palm Oil, <<https://certifications.controlunion.com/en/certification-programs/certification-programs/mspo-malaysia-sustainable-palm-oil>> accessed 12 December 2022.

⁸⁷⁰ Malaysian Palm Oil Certification Council/Malaysian Palm Oil Board/Malaysian Sustainable Palm Oil/ FAQs, <<https://www.mpocc.org.my/faqs>> accessed 12 December 2022.

4.6 Data and information management

A lack of reliable data on child migration remains a key barrier to understanding global migration trends. Given the increase in the number of children affected by migration in recent years, it is more important than ever that decision-makers understand their migration experiences and the protection risks children face to ensure that they can develop evidenced-based law, policies and programmes. It is particularly important in resource-constrained contexts that resources are leveraged effectively towards well-informed and evidenced-based initiatives aimed at ensuring the protection of children affected by migration.⁸⁷¹

International standards provide a clear mandate for the need to urgently collect and analyse data on children affected by migration. Article 17 of the Global Compact for Safe, Orderly and Regular Migration sets out a strong message on the need for data to help “*strengthen the global evidence base on international migration by improving and investing in the collection, analysis and dissemination of accurate, reliable, comparable data, disaggregated by sex, age, migration status and other characteristics relevant in national contexts*”.⁸⁷² Additionally, the Global Compact on Refugees recommends that States develop ‘harmonized’ data collection standards for sharing information on refugees and returnees, recognizing that forced migrants often remain missing from host countries’ data and statistical collection processes.⁸⁷³ At the regional level, the ASEAN Declaration on the Rights of Children in the Context of Migration also encourages States to develop a robust evidence base on the situation of children affected by migration.⁸⁷⁴

4.6.1 Availability of data on children affected by migration and their protection needs in ASEAN Member States

To gain an understanding of the availability of child migration data, with the assistance of UNICEF Country Offices, administrative statistics were requested from relevant government departments in seven selected ASEAN countries: Cambodia, Lao PDR, Viet Nam, Malaysia, Thailand, the Philippines and Indonesia. Researchers were unable to obtain data from Singapore, Myanmar and Brunei Darussalam as a part of this study. This was largely due to delays in accessing data, and, in the case of Myanmar, a change in Government and internal conflict meant that no research was able to be undertaken.

Table 2 provides a breakdown of the availability of selected administrative statistics. Green indicates a full dataset is available, amber indicates that partial data are available, red indicates that data were not provided by governments (but are collected), and purple indicates that no data are available. As Table 2 shows, there are very limited complete data capturing the prevalence of issues relating to children affected by migration across these ASEAN countries.

⁸⁷¹ International Data Alliance for Children on the Move, ‘Missing From the Story: The urgent need for better data to protect children on the move’, November 2021, p. 5.

⁸⁷² Resolution adopted by the United Nations General Assembly, ‘Global Compact for Safe, Orderly and Regular Migration’, A/RES/73/195, 11 January 2019, Article 17.

⁸⁷³ Resolution adopted by the United Nations General Assembly, ‘Global Compact on Refugees’, A/73/151, 10 January 2019, para 46.

⁸⁷⁴ ASEAN, ‘Declaration on the Rights of Children in the Context of Migration’, 2 November 2019, para. 10.

Table 6: Available government data in seven selected ASEAN Member States provided to Coram International research team from September to February 2022⁸⁷⁵

	Cambodia	Lao PDR	Viet Nam	Malaysia	Thailand	Philippines	Indonesia
The number of identified child trafficking cases with details on the resolution of cases	—	—	—	×	✓	✓	—
The number of child migrants who have accessed/been referred to child protection services	?	—	?	×	×	✓	?
Extent of birth registration among children affected by migration	?	?	—	×	×	—	×
The number of children affected by migration who have been: arrested; charged and detained on immigration grounds, along with the details of detention	—	?	?	✓	—	?	×
Children affected by migration who have been involved in exploitative child labour	✓	?	?	—	×	—	?
The number of children who are stateless	?	?	?	×	×	✓	?

4.6.2 Understanding the data gaps

Limitations in nationally representative surveys

Across ASEAN Member States, substantial gaps exist in data that are typically captured by national statistical authorities. Estimates of children on the move are often based on census data. However, established administrative data collection methods such as census, labour force or household surveys often fail to capture data on migration status. Censuses are expensive to conduct and are usually carried out every 10 years.⁸⁷⁶ As such, even when States do ask questions relating to migration status in a census, the data quickly become outdated and fail to capture short-term migration flows. Household and labour force surveys – which often form the backbone of evidence-led policymaking and service provision – are also often unable to capture the mobile nature of migrant populations.⁸⁷⁷ This is particularly true in locations where migrant populations are diffuse and therefore difficult to capture within the small sample sizes of such surveys.⁸⁷⁸

⁸⁷⁵ In the table green indicates a full dataset; orange indicates a partial dataset; red indicates that no data were provided and purple indicates that no data are available.

⁸⁷⁶ IDAC., 'Missing from the Story: The urgent need for better data to protect children on the move', UNICEF, November 2021, p. 22.

⁸⁷⁷ Ngan, D. V. T., et al., *Migration, Employment and Child Welfare in Ho Chi Minh City and the Surrounding Provinces*, Fulbright Economics Teaching Programme, June, 2012, ch. 2.

⁸⁷⁸ IDAC., 'Missing from the story: The urgent need for better data to protect children on the move', UNICEF, November 2021. p22.

Many countries do not have fully functioning registration systems in place to record migrants and refugees. Instead, much of the information governments and civil society rely on to understand migration flows is gathered through immigration departments through processes such as the issuing of visas or exit clearance statistics. However, such sources of data are often limited as they have not been designed to capture the full picture of migration flows.

Additionally, **data privacy remains a concern across the region.** Ensuring that the right to privacy of children and parents/caregivers is respected, protected and fulfilled in the collection, processing and storage of data is essential. This is particularly true in cases where data are sensitive and relate to a person's migration status. The 2016 ASEAN Framework on Personal Data Protection sets out the standards related to data protection, including the key principles of consent, notification of persons about whom data are held and that all data collected must be done so purposefully; protections to ensure the accuracy of personal data; security safeguards; access to data and correction of data; regulation of transfers to another country or territory; and data retention and accountability.⁸⁷⁹

Lack of standardization in definitions of issues relating to migration

How issues are defined directly impacts how data are categorized and, in turn, how they can be disaggregated during analysis to provide a picture of the situation of children affected by migration and enable data comparisons. Inconsistent categorization and disaggregation within and between countries creates a problem for data-sharing between different government departments and between international organizations and national governments. In some instances, data are not disaggregated at all, or are disaggregated in a very limited way, for example, in a way that uses large age-bands (e.g., by five-year groups),⁸⁸⁰ which limits the effectiveness of the data for understanding the situation and needs of different groups or categories of children affected by migration.

Lack of interdepartmental coordination at the local and national level and a lack of data-sharing with international partners

Administrative data collection in ASEAN Member States is often managed in silos by specific government ministries and departments with no oversight by national statistical authorities. Data on the situation of child migrants may be simultaneously captured in some form by professionals working across the health, education, child protection, housing, immigration, civil registration and justice sectors. However, minimal collaboration between departments weakens the quality and accessibility of data.

When data are not collected centrally by national statistical authorities, the burden of data storage and analysis is felt by individual agencies. Constrained budgets and limited technical knowledge on statistical analysis often mean capacity is limited at the departmental level to analyse data effectively. Without the ability to analyse all available data across all departments, statisticians are unable to fully understand the 'birds eye view' of children's migration experiences. Also, without interdepartmental coordination, States face challenges in ensuring that policy makers have access to information relating to children's migration (including emerging issues) to allow for evidence-led decision-making. More could also be done in the region to share data between different States in order to better understand migration flows between neighbouring States.

Data are not publicly available

Data that are collected in the region are often not made widely available by governments. Where data are available, the process of accessing the data is often complex, as data are not widely published in accessible formats and can take an extensive amount of time and resources to access. This limits the ability to develop evidenced-informed programmes and services.

⁸⁷⁹ ASEAN Telecommunications and Information Technology Ministers Meeting (TELMIN), 'Framework On Personal Data Protection', 16 November 2016, <<https://asean.org/wp-content/uploads/2012/05/10-ASEAN-Framework-on-PDP.pdf>>, accessed 21 December 2022.

⁸⁸⁰ IDAC., 'Missing from the story: The urgent need for better data to protect children on the move', UNICEF, November 2021, p. 24.



Displaced residents of Dapa Municipality in Siargao Island express their need for shelter, food and water while being interviewed by the UN assessment team, 28 December 2021. © UNICEF/UN0571953/Margaretha Francia

5 Conclusion

Migration has long played a central role in the lives of many children in ASEAN Member States. While the literature has, until recently, focused on the drivers of adult migration, it is important that the unique experiences of children affected by migration and the risks and challenges to which they are exposed, are better understood. This report has attempted to contribute to a more comprehensive understanding of these challenges and needs in examining the situation of children affected by migration across ASEAN Member States. The research has found that children are impacted by migration in diverse and, at times, complex ways.

Children who migrate with their parent(s) or independently within the region to pursue economic or educational opportunities as a solution to poverty, or to escape exploitation, abuse, persecution, conflict or natural disasters are often made more vulnerable through State laws and policies that make lawful entry into destination countries extremely difficult. **This has placed children in situations in which they do not have legal status in their host countries, which in turn can expose them to a range of protection risks,** including the risk of arrest, detention and deportation; family separation; child labour and economic exploitation, including in informal or clandestine contexts and industries; sexual exploitation and trafficking; and limited access to services, including birth registration (for children who are born abroad), education or affordable health services.

While many children migrate with their parents or caregivers, many more remain behind at home. The limited opportunities for children to migrate in a lawful way with their parent(s) can be a strong deterrent to parents taking children with them, as is the often very limited access to education and other services for undocumented children in destination countries. Working conditions in the destination country, which can involve long hours with limited flexibility and limited safe and affordable day-care options, can also be a barrier to children migrating with their parents. While children remaining behind were found, at times, to benefit from improved living conditions and access to education and other services due to remittances sent home by migrating parents, they can also face a range of risks and harms to their welfare and safety as a result of being separated from their parents.

Conversely, where States facilitate safe and orderly forms of movement, and where children who remain at home are provided with adequate care and support, migration can have a positive impact on individual children and families, providing crucial access to economic opportunities, resources and services, or by providing a safe place to flee persecution or conflict. Migration has also helped to fill critical labour market gaps in destination countries. **It is therefore crucial that ASEAN Member States take action to support safe and orderly forms of movement and to ensure that children and families have access to protective laws and comprehensive services that are necessary to support their well-being and development.**

While ASEAN Member States have adopted a range of global, regional and national laws and policies that aim to protect children affected by migration, legal frameworks nonetheless contain considerable inconsistencies vis-à-vis international child rights standards and at times their application can place children affected by migration at risk, including through criminalization of irregular entry and stay of migrant children, and lack of protection from arrest, detention and deportation, even in harmful circumstances. **Children affected by migration are also routinely excluded from protection systems and services,** with child protection matters commonly addressed through informal means within the communities themselves. While practical challenges, including language barriers and limited awareness of systems and services play a significant role in this, child protection systems, processes and services themselves do not always accommodate the unique needs and interests of children affected by migration.

Thus, it is important that the key commitments made by States, including the ASEAN Declaration on Children Affected by Migration and the Regional Action Plan on the Rights of Children in the Context of Migration, are fully realized.



A counselor walks hand-on-hand with two girls outside the Marillac Hills Centre dormitory in the city of Muntinlupa in Metro Manila, Philippines. © UNICEF/UN014935/Joshua Estey

6 Policy and programming recommendations

The findings of the Situation Analysis have been used to inform a range of recommendations for ASEAN Member States. This section includes general, overarching recommendations. For more specific recommendations, please refer to the background country case studies and the legal review. The recommendations below are presented in accordance with the Regional Plan of Action on Implementing the ASEAN Declaration on the Rights of Children in the Context of Migration:

6.1 Strengthen legal and policy frameworks relating to children affected by migration (Regional Action Plan Focus Area 1)

It is important to ensure that children affected by migration and their families have effective, safe and accessible migration routes and access to durable solutions for their future. Having a comprehensive and inclusive legal and operational framework for the delivery of child protection systems and services is also crucial, and this includes cross-border mechanisms aimed at addressing protection needs that have a transnational element. It is recommended that ASEAN Member States:

Review (and address) the legal and procedural gaps in the child protection system and barriers to the identification, referral and protection of and assistance to all children in the context of migration (Regional Action Plan Activity 1.1):

- ➔ Ensure that all ASEAN Member States are parties to the key international conventions relating to children affected by migration, including the Refugee Convention 1951 and Refugee Protocol 1967 (*all ASEAN Member States except Cambodia and the Philippines*);
- ➔ Ensure that reservations to general treaties that deny protection to children affected by migration are removed, including Article 37 of the CRC (*Malaysia and Singapore*) and Article 22 of the CRC (*Thailand*);
- ➔ Create legal routes to grant legal status to asylum-seeking and refugee children and families in line with international standards (*Brunei Darussalam, Lao PDR, Malaysia, Myanmar, Singapore, Thailand and Viet Nam*);
- ➔ Amend anti-trafficking laws to remove gaps and ensure consistency with international law by expanding the definition to include children up to 18 years of age (*Viet Nam*), by removing the requirement for a particular means (such as a demonstration of force, fraud or coercion) to be used for child trafficking offences (*Cambodia and Indonesia*), and by comprehensively criminalizing all forms of sexual exploitation (*Myanmar*);
- ➔ Ensure that there is express provision in anti-trafficking legislation granting immunity from criminal prosecution to victims of trafficking for offences committed in connection with their trafficking situation, particularly immigration offences (*Brunei Darussalam, Singapore and Viet Nam*);
- ➔ Ensure that specific human/child trafficking laws have extraterritorial application (*Indonesia and Singapore*) and that they expressly criminalize attempt and secondary liability (*Malaysia and Viet Nam*);

- ➔ Include provisions prioritizing family tracing and reunification (where this is in the best interests of the child) for unaccompanied or separated children in all contexts (*Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines and Singapore*);
- ➔ Include express prohibition on refoulement and prohibition on return where there is risk of irreparable harm or that the return will result in the violation of the rights of the child, in respect of all children, including children affected by migration (*all ASEAN Member States*);
- ➔ Amend immigration legislation to remove criminal and administrative liability for children for migration-related offences or based on the migration status of the child or her/his parents/guardians (*all ASEAN Member States*).

Review and strengthen legislative policy frameworks and allocate the necessary resources, including the development and integration of specialized protection procedures to cases and determining the best interests of the child in the context of migration through trained personnel (Regional Action Plan Activity 1.2). In particular:

- ➔ Ensure that laws relating to immigration include a requirement, in all decisions affecting children, including at all stages of the immigration process, that their best interests are the primary consideration (*all States except the Philippines*);
- ➔ Introduce an overarching provision in child protection laws requiring the best interests of the child to be a primary consideration in **all** actions concerning children (*Brunei Darussalam, Cambodia, Malaysia, Myanmar and Singapore*).

Identify and address legal and policy gaps and practical barriers in facilitating the registration of births and issuance of birth certificates and other identity documentation (Regional Action Plan Activity 1.3):

- ➔ Consider including express provisions requiring the registration of births of all children born in the territory, *irrespective of migration status or that of their parents* (*all ASEAN Member States*);
- ➔ Include express provisions regarding the issuance of official birth certificates for all registered births free of charge and consider removing fines or fees for late registration by parents where this applies (*Brunei Darussalam, Cambodia, Lao PDR, Malaysia, the Philippines, Singapore, Thailand and Viet Nam*).

Systematically involve ministries responsible for child protection and social welfare in migration systems and procedures (Regional Action Plan Activity 1.4):

- ➔ Include provisions specifically in immigration laws/regulations requiring child protection referrals for children in need of care and protection (*Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Singapore and Viet Nam*);
- ➔ Incorporate into law provisions for screening by immigration officials to identify children as separated or unaccompanied and their referral to the child protection system (*all ASEAN Member States*).

Support existing mechanisms or establish mechanisms to monitor access of children affected by migration to national child protection systems (Regional Action Plan Activity 1.5):

- ➔ Ensure that migration status is captured in social welfare/child protection administrative data collection systems (*all ASEAN Member States*).



An official from the Ministry of Labour and Social Welfare in the southern province of Savannakhet reviews a logbook of migrant workers and victims of trafficking who have returned to Lao PDR through official channels. © UNICEF/UNI40700/Jim Holmes

Encourage ASEAN Member States to establish regional and bilateral child protection networks on case management and cross-border collaboration on children in the context of migration, including for family tracing and unaccompanied children (Regional Action Plan Activity 1.6). In particular:

- ➔ Adopt comprehensive and child-rights compliant cross-border protocols setting out how cases of child trafficking and other transnational child protection cases are to be addressed, including responsibilities, mandates, roles, budgets, and so forth (*all ASEAN Member States*).

Make available safe, non-custodial, community-based alternatives to immigration detention that promote the best interests of the child, ensuring adequate provision of alternative family-based care for unaccompanied or separated children (Regional Action Plan Activity 1.7). In particular:

- ➔ Expressly prohibit in primary legislation the use of immigration detention of children, specifying that this includes any placement of a child in a public or private custodial setting from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority, and covering all stages of the immigration process including initial 'investigation' and pending repatriation (*all ASEAN Member States*);
- ➔ Include provisions explicitly prioritizing family-based or community-based options, such as foster care services, according to the child's best interests as a primary consideration (*all ASEAN Member States except Thailand and the Philippines*).

Establish or improve existing mechanisms for the meaningful participation of children in the context of migration in decisions that affect them (Regional Action Plan Activity 1.8):

- ➔ Include provisions explicitly including the requirement to take into account the views of children in best interests decision-making in immigration and child protection decisions (*all ASEAN Member States*);
- ➔ Support the use of advocates/guardians to assist children to have their views heard in child protection and immigration decision-making (*all ASEAN Member States*).

Ensure the law enables children to acquire nationality and avoid statelessness (additional):

- ➔ Consider removing the reservation to Article 7 of the CRC on the right of the child to acquire a nationality (*Malaysia*);
- ➔ Include an express provision in the law affirming the right of all children to acquire nationality from birth without discrimination (*Brunei Darussalam, Cambodia, Malaysia, Myanmar, Singapore and Thailand*);
- ➔ Consider automatic conferral of nationality on children born in the relevant territory (irrespective of parents' migrant status) and ensure automatic conferral where the child would otherwise be stateless (*all ASEAN Member States*);
- ➔ Amend legislation to enable either parent to pass on citizenship to their child (*Brunei Darussalam and Malaysia*);
- ➔ Amend laws/introduce provisions to ensure that deprivation of parents' citizenship does not automatically lead to loss of the child's citizenship (particularly if this would render the child stateless) (*Brunei Darussalam, Cambodia, Myanmar, Singapore and Thailand*).

6.2 Build the capacity of duty bearers to respond effectively to the protection needs of children affected by migration in a multidisciplinary manner (Regional Action Plan Focus Area 3)

It is crucial that key duty bearers who are responsible for identifying the protection needs of children affected by migration and responding to these needs have the necessary knowledge and skills. It is recommended that ASEAN Member States:

Gain enhanced understanding of the capacity gaps and needs of key duty bearers in relation to children affected by migration (Regional Action Plan Activity 3.1):

- ➔ Conduct an in-depth analysis of the gaps in skills, knowledge and beliefs relating to children affected by migration among key duty bearers, including: a) social workers; b) law enforcers; c) teachers/educators; d) service providers; e) civil society organizations and other relevant actors in responding to the rights and needs of children in the context of migration, including for determining the best interests of the child in the context of migration (*all ASEAN Member States*).

Incorporate the specific needs of children in the context of migration into a standardized curriculum for duty bearers (Regional Action Plan Activity 3.2):

- ➔ Incorporate in-depth training on the needs and responses to children affected by migration, including case management, into a standardized social work curriculum and in other capacity-building of law enforcers, social workers and para social workers, teachers/educators, service providers, civil society organizations and other relevant actors (*all ASEAN Member States*).

Conduct capacity-building programmes for key duty bearers on the needs of and responses to children affected by migration (Regional Action Plan Activity 3.3):

- ➔ Develop and implement in-service capacity-building programmes for key duty bearers on the needs of and responses to children affected by migration, including: social workers; law enforcers; immigration officials; teachers/educators; and other service providers (*all ASEAN Member States*).

6.3 Build the capacity of duty bearers to respond effectively to the protection needs of children affected by migration in a multidisciplinary manner (additional area of need)

It is important to ensure that a range of targeted services are available to children who are affected by migration. It is also crucial to ensure that a strong workforce and skilled service providers are in place to support these children and that barriers to accessing these services are addressed. It is recommended that ASEAN Member States:

- ➔ Ensure that children and families understand the risks relating to migration and that they can identify risky movement through existing community awareness-raising initiatives, life skills education, parenting skills training and so on *(all ASEAN Member States)*;
- ➔ Raise awareness of the risk of online recruitment of children for the purposes of trafficking and supporting the development of programmes to educate and build resilience among children and communities with regard to the risks and best practices for social media use for the prevention of child trafficking through online recruitment *(all ASEAN Member States)*;
- ➔ Support household income-generating initiatives in areas in which children and families are exposed to risky migration, to ensure that they have viable alternatives to undertaking unsafe migration *(all ASEAN Member States)*;
- ➔ Support the development of child and family friendly alternatives to immigration detention, and tailored and supportive community-based alternative care placements for child migrants who are unaccompanied or separated *(all ASEAN Member States, especially Malaysia and Thailand)*;
- ➔ Ensure that children affected by migration and their parents/caregivers have access to existing child protection and social welfare programmes, including identification and referral services, case management services, therapeutic interventions, suitable alternative care arrangements and parenting skills and other family strengthening programmes, including child migrants, refugee and asylum-seeking children and children who remain behind *(all ASEAN Member States)*;
- ➔ Develop or strengthen existing tailored programmes to support children affected by migration, including children who remain behind, through direct service delivery of mandated government service providers and/or partnerships with quality non-government service providers *(all ASEAN Member States)*.

6.4 Strengthen the evidence base on the situation of children in the context of migration (Regional Action Plan Focus Area 4)

Gaining a robust and comprehensive understanding of the scale, profile and needs of children affected by migration is crucial to the development of effective, targeted policies and programmes. It is recommended that ASEAN Member States:

Collect migration-related, non-personal data on indicators relating to children that are accurate, reliable and comparable, disaggregated by sex, age, migration status and other characteristics relevant in national contexts (Regional Action Plan Activity 4.1):

- ➔ Ensure that data on migration status are collected through routine household surveys, including the Census, Demographic and Health Surveys, Labour Force Surveys and Household Income and Economic Surveys, and that key findings are published (*all ASEAN Member States*);
- ➔ Ensure that age and migration status are captured in administrative data sets, including education, health, child protection and child justice data and that data are made available to the public when requested (*all ASEAN Member States*).

Share good practices and national experiences in improving and investing in the collection and analysis of data on children in the context of migration (Regional Action Plan Activity 4.2):

- ➔ Develop a regional programme to build and enhance national capacities in data collection, analysis and dissemination to share data, address data gaps and assess key migration trends, and ensure that non-personal migration data are interoperable and comparable across ASEAN Member States (*ASEAN*);
- ➔ Develop and implement a strategy for improving data collection at the national and subnational levels (*all ASEAN Member States*);
- ➔ Enhance collaboration between government departments responsible for migration data and national statistical authorities to produce migration-related statistics (*all ASEAN Member States*).

Conduct research, where necessary, to enhance understanding of the drivers of unsafe migration and the risks and barriers to children accessing services in the context of migration (Regional Action Plan Activity 4.3):

- ➔ Collect and survey administrative data identifying patterns and access to services for children affected by migration, disaggregated by age, gender, location, ethnicity, socioeconomic condition, disability and so forth (*all ASEAN Member States*);
- ➔ Commission in-depth research on the drivers of unsafe migration in the international and internal migration of children and families (*all ASEAN Member States*) and the impacts of migration on children remaining behind following parental internal or international migration (*all ASEAN Member States, especially Cambodia, Indonesia, Lao PDR, the Philippines and Viet Nam*);
- ➔ Commission in-depth research on the experiences of children affected by migration on access to services and experiences in the child protection system (*all ASEAN Member States*).

Conduct research, where necessary, to enhance understanding of the rights of children in the context of migration, including a gender analysis of the specific impacts of policies and programmes on children (Regional Action Plan Activity 4.4):

- ➔ Carry out routine data collection and research, including a gender analysis on the impacts of migration policies on children (*all ASEAN Member States*).

6.5 Enhance the role of the business sector in supporting children affected by migration (additional area of need)

States have a clear international obligation to protect children against rights violations by businesses within their jurisdiction, create an enabling and supportive environment for businesses to respect children's rights, and ensure that children have access to effective remedies for rights violations by businesses. The increasing emphasis on responsible business conduct and the implementation of human rights due diligence in the international policy sphere, reinforces the importance and urgency of fulfilling these obligations now more than ever. To fulfil these obligations in respect of children affected by migration, key recommendations for States include:

Amend national laws, policies and regulations (*all ASEAN Member States*) to:

- ➔ Explicitly integrate children's rights and the rights of children affected by migration into national strategies and action plans on business and human rights;
- ➔ Set clear expectations for businesses domiciled within their jurisdiction to respect the rights of children, specifically including the right of children affected by migration to protection, wherever they operate and regardless of the child's migration status or statelessness;
- ➔ Place the human rights due diligence responsibilities of businesses on a mandatory footing, particularly in high-risk industries. Such obligations should require businesses to give special consideration to the rights of children, specifically including children affected by migration, and this should apply to the whole of a business' supply chain. Such responsibilities should vary according to the business' size, the risk of severe human rights impacts, and the nature and context of its operations;⁸⁸¹
- ➔ Make the granting of business licences, permits or access to domestic markets conditional upon the business providing a comprehensive human rights impact assessment of its operations which integrates children's rights and gives specific attention to the rights of particularly marginalized children, including children affected by migration, and a commitment to implement appropriate safeguards and risk mitigation strategies for any negative impacts identified;
- ➔ Ensure that children affected by migration, their parents and representatives have equal access to formal and informal grievance mechanisms for violations caused or contributed to by businesses, including legal standing and access to legal aid;
- ➔ Ensure that the law provides a range of civil and, where appropriate, criminal sanctions for businesses and/or their leaders for failure to comply with their legal obligations, including when acting extraterritorially;
- ➔ Prevent strategic lawsuits against public participation and to protect human rights defenders.

Integrate a 'business lens' in system-strengthening efforts across all sectors, including child protection, access to justice, education, health and social protection, to ensure coherence in the prevention and effective response to child protection risks linked to businesses operations (*all ASEAN Member States*). These include:

- ➔ Sustained knowledge and skills-based trainings for civil servants, professionals and practitioners on the rights of children affected by migration, the Guiding Principles on Business and Human Rights, the Child Rights and Business Principles, and identifying and responding to child protection risks in which businesses are involved, including labour monitoring and inspection;
- ➔ Where relevant, sustained efforts to combat corruption and impunity for rights violations by businesses.

⁸⁸¹ 'Guiding Principles on Business and Human Rights', Principle 17(b).

To implement their corporate responsibility to respect and their commitment to support the rights of children affected by migration to protection, key recommendations to businesses in ASEAN include:

- ➔ Specifically integrating children's rights and the rights of children affected by migration in their internal policies and procedures including:
 - A policy commitment to meet their responsibility to respect children's rights;
 - Human rights due diligence processes which integrate children's rights and identify, prevent, mitigate and account for their impacts on human (including children's) rights;
 - Child rights-based impact assessments throughout the business' supply chain;
 - Child-friendly remediation processes for alleged violations;
 - Safeguarding policies and child protection referral protocols linked to state child protection mechanisms.

- ➔ Investing in and delivering sustained knowledge and skills-based training for staff on the responsibility to respect children's rights, including the right of children affected by migration to protection, and implementation of its child rights policies and procedures;

- ➔ Participating in system-strengthening efforts to address broader contextual factors driving child protection risks facing children affected by migration;

- ➔ Using the business' leverage to inspire reforms, including advocating for improved services for children affected by migration, legal and policy reforms, galvanizing support from other businesses to address the root causes of child protection risks, and influencing the development of child rights-based industry standards and accountability mechanisms.

Civil society stakeholders are recommended to:

- ➔ Work with businesses, State agencies and other stakeholders to systematise child rights-based approaches to business operations and relationships with a specific focus on the rights of children affected by migration;

- ➔ Generate and disseminate evidence on the impact of business activities and relationships on children affected by migration with the participation of the children themselves and their families;

- ➔ Advocate for and provide expertise to implement system-strengthening reforms and develop industry standards to address child protection risks facing children affected by migration linked to business operations;

- ➔ Deliver programmes and training targeting children affected by migration and their parents or carers on their rights, access to services and, where relevant, grievance mechanisms.

International agencies are recommended to:

- ➔ Integrate a 'business lens' in programme priorities, targets and activities with a focus on addressing the needs of particularly marginalised groups of children, including children affected by migration;

- ➔ Contribute evidence and expertise rooted in the UN Convention on the Rights of the Child to inform multi-stakeholder dialogue and support reform initiatives to address child protection risks linked to business operations and migration;

- ➔ Supporting State agencies to operationalise the UNGPs and General Comment No. 16 of the CRC Committee with a specific focus on the rights of children affected by migration, including technical and financial support to address structural drivers and causes of child protection risks through system-wide reforms.



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