

Migrant children left behind: A legal and policy analysis to address migrant child labour in Thailand

Ananya Ramani and Evie van Uden

INTRODUCTION

With an approximate population of 4.9 million migrants living in Thailand as of 2019, a majority of the population of 3.9 million constitute migrant workers from the countries of Cambodia, Lao People's Democratic Republic (PDR) and Myanmar.¹ Many of these migrant workers are accompanied by their families, including their children. Although contributing greatly to the economic growth of Thailand, migrant workers and their families lack sufficient protection and face barriers in accessing human rights in opposition to existing domestic law and policy. Dependent on employers for their legal status and sustenance in the country, these individuals are also vulnerable to abuse and exploitation. Others enter the country illegally and thus remain outside any system of rights and protection that they can otherwise be entitled to.

Despite the obligations of the Royal Thai government under international and regional human rights and labour laws to protect all children even migrant children from child labour including its worst forms, in reality this practice continues. This is caused by several factors including the marginalisation of migrant children, their poverty, the poor protection they are granted, and the denial of basic rights to them such as education.² To illustrate, the magnitude of the challenge posed, a survey conducted by the National Statistical Office (NSO) with the Ministry of Labour and the International Labour Organisation (ILO) in 2018 demonstrated that of 409,000 working children in Thailand, 133,000 of them were employed in hazardous conditions.³ However, these figures are expected to be much higher, as they may not include all groups of children, particularly undocumented migrant children, who form a significant part of child labour with most of them facing exploitation in hazardous working conditions and innumerable rights violations⁴.

Migrant child labour is particularly prevalent in the fishing and seafood processing industry, mostly in small enterprises that do not require skilled workers.⁵ In this sector, children are engaged in various activities such as sorting and peeling of shrimps, as well as on docks, in markets and aquamarine farms, and in larger packing and processing factories. Other sectors in which child labour is prevalent include agriculture, manufacturing, service industry, construction, domestic work,⁶ and in the entertainment as well tourism sectors with trafficking and commercial sexual exploitation of children being rampant.

With such a wide distribution of migrant child labour throughout various sectors in Thailand with various gaps and challenges of their own, this paper studies a group that is often overlooked societally, and in law, policy, and its implementation. To begin, a quick insight is provided on the numerous barriers that migrant children face in accessing their rights, which lead to children being forced into work. Barriers include social stigma and discrimination faced by migrant children, lack of access to social services such as healthcare and education, and

the need for migrant children to earn additional income to supplement their families' income so they may afford their basic necessities. With these conditions having been exacerbated by the onset of the coronavirus pandemic, their negative impact on migrant children is further brought into focus. Following this, using a legal and policy analysis of labour and human rights frameworks at the international, regional as well as domestic levels as a basis; this paper investigates their drafting and implementation to determine the efficacy of these framework in preventing and protecting migrant children who are victims of child labour.

BARRIERS FACED BY MIGRANT CHILDREN IN ACCESSING THEIR RIGHTS & PROTECTIONS, CONTRIBUTING TO CHILD LABOUR

In this section, a quick snapshot is provided on the main barriers faced by migrant children in accessing their rights and protections due to various factors occurring on the ground in Thailand. These barriers are responsible for or contribute to the marginalisation of migrant children making them vulnerable to exploitation, harassment, and other forms of cruel, inhuman or degrading treatment through child labour.

Social stigma and discrimination faced by migrant children

Owing to their ethnicity and nationality, migrant children along with their families face discrimination and social stigma. Despite the important contribution made to the Thai economy by migrant workers, where they often take up jobs that the local population is unable or unwilling to do; the general public attitude in the country towards migrant workers and their families has not been one of support. To illustrate, in a 2019 survey carried out to determine public support for migrant workers in Thailand; 53 per cent of those surveyed believed there was no necessity for low-skilled migrant workers; with 77 and 58 per cent of those surveyed concluding that migrant workers contributed to an increase in crime rate, and that they posed a threat to the culture and heritage of Thailand respectively.⁷ Additionally, 52 per cent of those surveyed did not believe migrant workers should receive equal treatment to the Thai nationals, despite Thailand's international obligations as well as its national legislations that mandate equality in pay and access to social security.⁸

The second wave of the COVID pandemic in December 2020 worsened the discrimination against migrants, solely because the outbreak was traced back to a shrimp market in the province of Samut Sakhon where most of the workers had migrated from Myanmar.⁹ Blamed for the spread of the virus, the hate and discrimination against migrants escalated both online and offline. Officials of the Royal Thai government such as the Prime Minister Prayut Chan-ocha¹⁰ and the Minister of Public Health Anutin Charnvirakul¹¹ were also complicit in this by placing blame entirely on the migrant workers for the increase in COVID cases. This anti-migrant sentiment also extended to Thai civil society¹² and spread in the form of hate speech through social media, with one Thai netizen encouraging violence against migrants that they believed were flouting rules that contributed to the spread of COVID further¹³. This discrimination and societal stigma took a harsher tone when following the COVID second wave, government authorities sealed off an area in Samut Sakhon province where about 3,000 migrant workers were living.¹⁴ This led to the forced lockdown of both infected and non-infected individuals for days, without allowing for any discussion or providing any

information to workers who were unable to pay for their basic necessities and thus put further into poverty.

Discrimination and stigma against migrant children and workers based on their nationality and ethnicity also result from the actions of government officials and service providers when they attempt to access public services, particularly healthcare and education. For instance, they face discrimination by healthcare service providers who refuse to treat them,¹⁵ as they are from a lower income group.¹⁶ At school, migrant children are victims of bullying because of the difference in their language and ethnicity, which leads to children quitting school.¹⁷ This attitude was brought on by the discriminatory attitude displayed by Thai parents, who also consider schools accepting migrant children of poor quality. Despite this, government schools driven by public policy persist in admitting migrant children.

Being denied education or healthcare, leads to an increased need for finances or to find alternate sources to move forward in life. This makes migrant children more vulnerable to exploitation and child labour. In such situations, marginalisation may cause migrant children to also be vulnerable to discrimination at the workplace leading to a lower wage, poor working conditions and a lack of other benefits.

Lack of access to social services, including healthcare and education

In addition to discrimination and stigma being barriers to access, many migrant children in Thailand **lack legal status** which bars them from accessing social services. As of 2018, Thailand accounted for 300,000 to 400,000 migrant children; however, most of them are undocumented, thus without legal status.¹⁸ Furthermore, according to the Ministry of Interior (Moi) 145,000 stateless children are registered with the Royal Thai Government.¹⁹ Migrant children remain unprotected as they are not recognised as citizens by virtue of their birth in Thailand under the Nationality Act, particularly if the parents entered Thailand illegally²⁰ – as has been explained further below. These children are only allowed to reside in Thailand and are still identified as illegally staying in Thailand and they can thus be arrested and detained.²¹ Due to their irregular status, migrant children are excluded from government policy and services. This denial of protection and exclusion from social services makes them easy prey to exploitative labour practices and overall marginalisation.

With respect to **healthcare**, the Royal Thai government attempted to increase access by migrant families starting in 2015 by including migrant health under Universal Health Coverage (UHC).²² Unfortunately, this remained ineffective, as some migrant workers that got health insurance cards through this after formally registering with the Ministry of Labour had their cards taken away by employers rendering them unusable.²³ Other aspects, such as difference in the language of communication, difficulty in contacting relevant government officials at the hospital, and distance from their place of residence or work prove to be barriers to access quality and equitable healthcare.²⁴ Often migrants are also forced to undergo physical examinations without their permission and they were often fired from their jobs with no warning if the test proved they were HIV positive.²⁵ Losing their job denies them the means to access treatment, at a time when they need it the most. Loss of social security and access to healthcare has also been one of the negative impacts that resulted from migrant workers being let go during the COVID pandemic.²⁶

Furthermore, various barriers facing migrant children in Thailand prevent them from **accessing education**, even though the Royal Thai Government established policies such as the National Council for Peace and Order (NCPO) No. 28/2016, which mandates 15 years of free education for all children in Thailand.²⁷ In 2019, only 164,000 migrant children were enrolled in educational institutions in Thailand while about 200,000 migrant children did not receive any form of education.²⁸ Migrant children form the largest proportion of children from a marginalised community that are not in school.²⁹

Another factor contributing to poor education amongst migrant children is the limited awareness of their rights in Thailand, which they are often not informed of. In fact, a study conducted in 2013 found that both migrant parents and children were not aware of the rights and services that migrant children were afforded in Thailand.³⁰ In fact, migrant parents did not see the value or importance of education and believed that their children could gain more by working instead of going to school.³¹ Additionally, migrant children may not be able to access education because families are unable to cover related expenses, such as for uniforms, transportation, and their living expenses in dormitories – a situation worsened by the COVID-19 pandemic.³² Other challenges faced by migrant children is the lack of knowledge on what documents are required for the enrolment of children; the language barrier in government schools, where education is provided in Thai language; and migrant children living far away from schools with migrant parents unable to meet the cost of transportation to and from the school.³³

The provision of education to migrant children has further been limited due to the closure of Migrant Learning Centres (MLCs), which are government, non-governmental organisation or community-based operationalised centres established for migrant children to receive primary level education, skills training as well as vocational training.³⁴ For instance, in 2019, in the province of Ranong that borders Myanmar, the Thai police conducted raids targeting teachers from Myanmar without work permits leading to the arrest of 30 teachers and the closure of 10 MLCs as a result.³⁵ Nine other MLCs suspended their classes for fear of police raids, with 2,800 migrant children forced to move to government schools, or suspend their education and instead seek employment in the seafood supply chain³⁶ that is rife with instances of abuse and exploitation.

Since the emergence of the COVID-19 pandemic in Thailand at the beginning of 2020, the lives of migrant children and their access to education has been irrevocably affected. To limit the effects of the pandemic, the Royal Thai Government imposed a partial lockdown that resulted in the closing of schools with classes moved to a virtual interface. Without mobile devices or computers to use the internet at their homes, more than 500,000 migrant children were deprived of learning due to the insurmountable digital divide.³⁷ Even when lockdown was partially lifted, MLCs were understaffed because many teachers from Myanmar had returned to their home country and were unable to return owing to the military coup in their country. The few teachers remaining were left to support a larger number of migrant students, but MLCs lack sufficient transportation to support their travel to reach the students.³⁸ Other obstacles include the delay in opening MLCs scheduled only in October 2020 when government schools were allowed to open in July 2020 with 19,410 migrant children affected; only because MLCs did not have essential supplies and the financial support to implement

COVID safety measures of temperature screenings, provision of masks, and seating of students at 1 to 2 meters apart.³⁹ This prolonged closure of MLCs and lack of access to education proved to be damaging to migrant children.

Need to earn additional income to cover basic necessities

Migrants in Thailand struggle to make ends meet and cover basic expenses for themselves and their families, partly due to the low wages they receive. This is evidenced by the poor pay received by migrant workers, with those working in the agricultural sector earning 6,000 Thai Baht (THB) and those part of fisheries earning 7,730 THB per month – amounts significantly lower than the minimum wage guaranteed in Thailand.⁴⁰ To supplement this meagre income, migrant children often work instead of attending school or outside of school hours. As an example, 14-year old Suthida Longkoo from Myanmar who lives with her family in Thailand, help them pay for rent and basic necessities by working in a restaurant from 4PM to 4AM with her older siblings working in construction sites.⁴¹

The financial instability migrant workers face worsened during the COVID-19 outbreak and the subsequent lockdown imposed by the government in Thailand. With lesser consumption by consumers and the temporary closure of businesses, many migrant workers lost their jobs. Between August 2019 and October 2020, of the 592,450 migrant workers that disappeared from the employment database of the Royal Thai government at least 345,072 of those workers lost their job.⁴² With Thailand's government policy requiring migrant workers to find new employers within 30 days for new paperwork issued in the name of their employer, those who were unable to find work within the stipulated period risked becoming undocumented migrants.⁴³ This was particularly difficult during COVID-19 with limited jobs available. The undocumented status of migrant workers could also affect the legal status of their children, contributing to the denial of rights and protections. To quantify the economic loss caused to migrant families, an assessment measuring the impact of COVID-19 on migrants in Thailand found that 27 per cent of the participants stated that more than 75 per cent of migrants in their communities experienced loss of income due to the pandemic, and ten per cent of the participants noted that more than 75 per cent of migrants in their communities lost all sources of income.⁴⁴ This lack of income and financial resources to cover expenses for basic necessities such as food, water, electricity, shelter, education, and medical expenses; with many families losing their homes or unable to afford food for their family to eat for days together.⁴⁵

While the Royal Thai Government endeavoured to alleviate the negative impact of COVID-19 by providing stimulus and compensation packages of 30,000 THB for a period of six months to Thais who lost their jobs, migrant workers were excluded and were not provided any financial support.⁴⁶ Having lost their jobs and not being provided any assistance, migrants and their families find it more difficult to make ends meet. As a result, more migrant children are being forced to labour to supplement their family income. With many migrant workers in debt due to high recruitment fees they had to pay, or as a result of loans taken to cover medical costs and food; migrant children agree to exploitative working conditions so they may be able to earn money to offset these liabilities as well.⁴⁷ With the pandemic continuing to gain steam at the time of writing of this paper, migrant children who are already employed may face the prospect of worsening work conditions and longer working hours.⁴⁸ Furthermore, with profits

lost as a result of the pandemic, businesses may resort to cost-cutting measures such as child labour. In this situation, migrant children will not be in a position of power to negotiate the terms of their contract with employers, who may take this as an opportunity for exploitation, harassment, abuse and corporate gain.⁴⁹

LABOUR LEGISLATIONS AND MIGRANT CHILDREN IN THAILAND: AN ANALYSIS OF THE INTERNATIONAL, REGIONAL AND DOMESTIC LAW & POLICY FRAMEWORK

Of the 8 core international labour rights conventions, Thailand has ratified 6 off them including the 1930 Forced Labour Convention (C029) and its protocol; the 1951 Equal Remuneration Convention (C100); the 1957 Abolition of Forced Labour Convention (C105); the 1958 Discrimination (Employment and Occupation) Convention (C111); the 1973 Minimum Age Convention (C138); and the 1999 Worst Forms of Child Labour Convention (C182).⁵⁰ Further, Thailand has also ratified several other international labour legislations which shall be briefly addressed to provide an analysis of the labour management system and its impact on migrant children.

The foremost aspect affecting migrant children is their **migration and recruitment** procedures that accompany it. Thailand is not a signatory to any international treaties related specifically to migrant workers that consists of provisions on migration and recruitment. Instead, the ILO Multilateral Framework on Labour Migration provides non-binding principles and guidelines for a Rights-Based Approach to Labour Migration. This framework sets out guidelines to develop, strengthen, implement and evaluate national, regional and international policies and practices related to labour migration.⁵¹ Providing an understanding of the impact of its principles, this framework also incorporates other international legislations such as ICMW.

Despite the huge numbers of migrants that enter Thailand, the country's approach to migration governance has been makeshift at best. The Royal Thai Government first concluded memorandum's of understanding with its neighbours, Cambodia, Lao PDR, and Myanmar allowing for avenues of regular migrant between October 2002 and June 2003.⁵² The length, difficulty and the expense involved often puts people off the MoU, which was not used a lot. As a result, a National Verification (NV) system was introduced for Cambodia, Lao PDR and Myanmar which allowed for their citizens to go through a national verification of those who were undocumented from their country of origin, with those who completed the process receiving a four-year temporary passport.⁵³ Those who failed to go through the process were threatened with deportation. Thereafter, Thailand reviewed the MoU to add cooperation beyond labour to development of skills and guarantees of social protection; in addition to signing an agreement with Vietnam as well.⁵⁴ Thailand created a more comprehensive legal framework in 2017 when it adopted the Royal Ordinance Concerning the Management of Employment of Foreign Workers, which was meant to manage the MoU process – but instead it stated that the MoU is the only official channel that can be employed by low-skilled migrant workers. However, an exception was introduced in Section 64 of the royal ordinance that allows employment for a short time by issuing a 90-day renewable work permit.⁵⁵ Under this ordinance, only a Thai employer or licensed operator is allowed to bring workers to Thailand, after a request has been made and authorization has been given to hire a certain number of

workers.⁵⁶ The worker is then brought in and a work permit is applied for. In 2018, this was amended to make it mandatory for employers to inform authorities after a worker has been employed and once they change their place of work.⁵⁷ Thus, the recruitment and legal status of the migrant worker is attached to an employer, giving them unlimited authority over the employee.

Several other laws are also applicable at the national level. The 1979 Immigration Act explains who can and who cannot enter, depart or reside in Thailand and how they can do so. This law prohibits the entry of workers who have done so as labourers, or for their employment to physical and unskilled work, technical or any other such work that violates other laws.⁵⁸ The 2017 Foreigners' Working Management Emergency Decree allows for the registration of all foreign workers who were not recognized prior to this, with a timeline for such registration set out.⁵⁹ This has, however, been extended on several occasions due to the large volume of those with no recognition. The 2016 Royal Ordinance Concerning Rules on Bringing Migrant Workers to Work with Employers in the Kingdom oversees the recruitment process, punishes illegal recruitment, regularises recruitment fees to prevent debt, and improves the well-being of workers.⁶⁰

Migrant children immigrate to Thailand through different avenues: while some of them accompany their parents, their relatives; or they travel with brokers; and others make the journey by themselves or with their friends.⁶¹ Brokers who bring children across the border before they can secure a job, take an amount of 200 to 6,000 Thai Baht, which doubles if the child pays after securing employment along with a payment taken from the employer, and a huge bribe that the child has to pay to corrupt officials while crossing into Thailand.⁶² The employer deducts the amount given to the broker from the wages of the child, putting them into debt even before they can start to make a living in Thailand. This adds to a larger amount since the migrant child has to pay the Thai authorities every time they arrest and detain him or her for entering the country illegally. Migrant children who apply for a job through a broker have little to no information about the process putting them at risk of cheated or forced into a job, and those who attempt to apply for a job themselves are still made to pay between 2,000 and 8,000 Thai Baht without any explanation of the reason for this.⁶³ This situation of financial struggle makes migrant children more vulnerable to a workplace where the working conditions are exploitative and harmful.

The **payment of wages and minimum wage** has been set out in the 1970 Minimum Wage Fixing Convention (C131) provides criteria according to which the State may determine the minimum wage⁶⁴ and the 1949 Protection of Wages Convention (C095) sets out regulations and standards for the payment of wages including its payment in cash directly to the worker in a regular manner⁶⁵. However, Thailand has not ratified these conventions. Instead, a National Wage Committee recommends a minimum wage, which was increased for unskilled labour from 308 to 330 Thai Baht up at 313 to 336 Thai Baht as of January 2020.⁶⁶ The variation allows for different values to be applicable across provinces. The amount set was criticised as it was too less and much below the amount promised by the Royal Thai government⁶⁷ – proof that employer associations may have convinced them otherwise. Migrant workers in Thailand are found to receive a disproportionately lower wage compared to their Thai counterparts, often this is much lower than the minimum wage.⁶⁸ Migrant children who face more exploitation probably suffer the same or a far worse fate. Further, it

must be noted that in the Labour Protection Act under Section 51 mandates that the payment must directly be made to the child employee.⁶⁹ This has proved a challenge not just for migrant children but for all migrant workers, as sometimes their wage is retained by the employer or deposited in their bank accounts where they could not have constant access particularly if they live in a remote place or if they are employed in a fishing vessel. Furthermore, some migrant children are paid daily, weekly or monthly with the amount to be paid determined entirely by the employer, with deductions made with a claim that these were for legal documents and to cover social security.⁷⁰

With respect to the **protection against discrimination** in employment, the 1951 Equal Remuneration Convention (C100) and the 1958 Discrimination (Employment and Occupation) Convention (C111) that have been ratified by the Royal Thai Government provide the basis for eradicating discrimination and advancing equality in employment and at work. The Equal Remuneration Convention (C100) removes the pay parity with respect to all wages and benefits, including those in allowance, overtime and bonus wages. Equal remuneration and pay equity applies by providing 'equal pay for work of equal value'.⁷¹ The Discrimination (Employment and Occupation) Convention (C111) instructs states to develop and enforce a national policy for the promotion of equality in treatment and opportunity; so that discrimination based on race, colour, sex, religion, political opinion, national extraction, social origin, and other grounds can be eliminated.⁷² It applies to both the formal and informal sector, as well as those who are employed and those looking for employment. On domestic legislations, the Labour Protection Act promotes equal treatment for male and female workers under Section 15 unless the nature of the work does not permit it; and equal pay for equal work of the same nature to men and women under Section 53; while providing special protection with respect to child labour under the Act.⁷³ Unfortunately, even with these progressive legislations, discrimination continues at the workplace; with migrant children often facing multiple forms of discrimination due to different aspects of their identity such as their race, ethnicity, nationality, language, religion, legal status, social status, gender or age. With the registration documents of migrant workers attached to an employer, they are often discriminated with their movement restricted, their registration documents confiscated, all while facing threats, detention and even extortion – sometimes with the complicity of corrupt Thai officials.⁷⁴ Migrants also receive a lower wage, work and live in squalid conditions, and could be denied even social security benefits if they are undocumented.

Although several international labour legislations on **decent working conditions** exist such as the 1919 Hours of Work (Industry) Convention (C001) that sets out standards on working hours that are acceptable,⁷⁵ and the 1947 Labour Inspection Convention (C081) that secures enforcement of legislations related to working conditions and protection⁷⁶; Thailand has ratified neither of them. The only international convention ratified by Thailand is the 1921 Weekly Rest (Industry) Convention (C014), which mandates compulsory rest of 24 consecutive hours within a period of seven days.⁷⁷ At the national level, the Labour Protection Act provides universal protection of all employees by regulating work conditions, setting standards on working hours, overtime, leave and holidays.⁷⁸ It also encourages workers and businesses to form committees and work together to determine salaries and welfare. Decent conditions also extend to provision of fresh and clean water, adequate toilets, and first aid at the workplace. The Labour Protection Act also specifically addresses children by mandating that they must have rest periods of one hour or more for every four hours of work they do

under Section 46; Section 47 states that children below 18 years must not work between 10PM and 6AM unless expressly authorised by the Director General; and children under 18 years shall not be made to work on holiday or overtime in line with Section 48.⁷⁹ While these provisions prove to be positive for migrant children in principle, employers may fail to follow through during implementation with the shortage of labour inspectors making it difficult to constantly scrutinize compliance. In reality, migrant child labourers work about six days a week between 9 to 15 hours a day, with most of them working about 3 to 5 hours overtime, while some of them even worked night shifts and over the weekend.⁸⁰ Migrant children also claimed during a survey that they were not provided sufficient water or any food and first aid at their workplace, but they did have access to sufficient toilets.⁸¹

On **occupational safety and health**, only the 2006 Promotional Framework for Occupational Safety and Health Convention (C187) applies. This promotes continuous progress in occupational health and safety, so as to completely prevent workplace injuries, disease and death; through the collaborative development of a national policy, system and programme along with employer and worker association representatives. With several ministerial regulations and government notifications applicable to various aspects of occupational health and safety; the overarching 2011 Occupational Safety, Health and Environment Act applies overall. This Act lays out the duties of the government and the responsibility of employers to provide a safe working environment to all workers.⁸² Migrant workers, especially those in the informal economy are subject to inadequate occupational health and safety standards at the workplace. This could result because their home may be turned into their workplace, or they do not have sufficient knowledge on requirements for occupational health and safety.⁸³ In addition, faulty work tools, poor working posture, inconsistent employment, low wages causing long work hours, and absence of adequate rest from work could also be contributing factors.⁸⁴ Small and medium sized enterprises (SMEs) have shown a higher proportion of workplace accidents and occupational disease.⁸⁵ With inconsistent application of policy and guarantee of protection, migrant children and other migrant workers who work in the informal sector or in low-skilled jobs tend to face riskier work environments due to the sector or type of businesses they work at. To illustrate, about half of the migrant children interviewed for a study claimed that they had not undergone any safety training and did not know if there were safety signs as they could not read Thai.⁸⁶ Additionally, even though they were provided with tools and safety gear such as gloves, boots and masks; they either had to pay for the equipment or it was deducted from their wages.

Thailand has ratified the most important international conventions addressing **Child Labour**. The 1973 Minimum Age Convention (C138) permits state parties to set a minimum age for employment starting at 15 years, with the exception of 14 years when it is for a specific amount of time, and an exception of between 13 to 15 years when the work is light and it would not impact the health and education of the children.⁸⁷ The type of work deemed as hazardous or otherwise has to be decided upon following tripartite consultations, between the government, businesses and workers. Following ratification of the 1999 Worst Forms of Child Labour Convention (C182), state parties have an obligation to take swift steps to prohibit and eradicate child labour.⁸⁸ With respect to domestic legislation, the 2017 Constitution of Thailand does not specifically mention child labour, nevertheless, provisions within it that refer to children seem to circumspectly refer to child labour. To illustrate, Section 71 states that children must be supported in having a good standard of living, they must be protected

from violence and unfair treatment, and they must be able to access remediation and rehabilitation should such an occurrence take place.⁸⁹ The Labour Protection Act is in fact the most important domestic legislation that addresses child labour. According to Section 44 of the Act no child below the age of 15 years may be employed and Section 45 states that when a child between the ages of 15 and 18 years is employed then a labour inspector must be notified of the employment within 15 days, employment records must be maintained for inspection by the labour inspector, and the inspector must be notified within 7 days if the child no longer works for the employer.⁹⁰ Also, children below 18 years are not allowed to undertake any hazardous work or prohibited activities as per Articles 49 and 50 of the Act.⁹¹ The Department of Labour Protection and Welfare (DLPW) of the Ministry of Labour enforces child labour related legislations and policies, by inspecting workplaces. The DLPW also operates a hotline and has 86 offices of labour protection and welfare in every province to assist with questions about the workplace and to collect complaints on child labour violations.

Despite this and the clear legislative requirements and strict penalties applicable in cases of child labour, gaps in enforcement render laws and policies ineffective. As an example, labour inspectors are to be informed of the employment of a child below 18 years, but this can be evaded by employers who falsify the age of the child by manipulating bone density tests. Other shortages in human resources, capacity building and processes continue to affect enforcement. The Royal Thai Government has consistently made a considerable effort to remedy this. For instance, the budget has been increased by 70,000 US\$ in 2019; and the number of labour inspectors were increased from 880 in 2016, to 1,506 in 2017, and to 1,900 in 2018.⁹² In 2019, although the number of labour inspectors dropped to 1,813; labour inspections increased by six per cent because all labour inspectors were from within the DLPW and not external contractors.⁹³ Similarly, the number of interpreters assigned to the DLPW office and fishing ports to assist with interpreting for migrants was also increased; with 22 additional inspectors appointed in 2018 and 2 more inspectors added in 2019 for a total of 126 inspectors.⁹⁴ However, these numbers are still inadequate as according to ILO's technical advice, 1 labour inspector must be assigned for every 15,000 workers in developing economies.⁹⁵ According to this, Thailand would need to employ 2,558 labour inspectors to be effective.⁹⁶ Without sufficient number of labour inspectors, it would be impossible to carry out child labour inspections unannounced at high risk workplaces such as at construction sites, manufacturing services, and seafood processing units; or at workplaces located in remote locations. Nevertheless, mobile inspection units consisting of labour inspectors, legal affair officers, interpreters, at times supported by the Department of Special Investigation; the Department of Employment; and the Department of Fisheries conduct monthly inspections.⁹⁷ They still fall short as they exchange knowledge with other non-governmental organisations, but not those that are migrant community non-governmental organisations. Also, these efforts will always remain insufficient to ensure children are not subjected to child labour, unless children employed in an informal workplace are also recognised and given access to the same rights and protections.

In reference to a **fisheries sector** where migrant children are increasingly employed, the Royal Thai Government has ratified the Maritime Labour Convention and the Working in Fishing Convention (C188). The 2006 Maritime Labour Convention establishes a standard of working and living conditions for those employed at sea, along with measures for its implementation and enforcement.⁹⁸ These standards include an insight into reasons for employment,

conditions at work, the condition of accommodation and food, healthcare and medical services, as well as social security. The 2007 Working in Fishing Convention (C188) lays out what constitutes decent working conditions for those in the fishing sector, particularly on conditions at work; occupational health and safety; healthcare; and other social security provisions.⁹⁹ As the first Asian country that ratified this convention, Thailand was lauded. However, it will only be successful if labour violations are prevented in the company and its supply chain. Domestically, the Royal Ordinance on Fisheries provides a comprehensive reform to the fishing sector that it requires, to change it from being one of the largest sectors where forced labour, human trafficking, modern slavery, child labour and other exploitative labour practices are rampant. It achieves this by attempting to eradicate all forms of forced labour, and by improving the work condition as well as providing access to welfare measures.¹⁰⁰ In 2014, the Ministerial Regulation Concerning Labour Protection in Sea Fishery Work was adopted. This regulation provides workers with more effective protection, and improved working conditions, with an effort being made to end child labour and to ensure all workers are hired based on a standardized employment contract.¹⁰¹ An attempt was made to amend this ministerial regulation in 2018 and 2019 by adding a provision whereby a descendant of the boat owner with Thai nationality even if under 18 years could do an apprenticeship on the boat.¹⁰² However, this was identified as a violation of 2007 Working in Fishing Convention (C188) and the Labour Protection Act which prohibits children below the age of 18 from working in hazardous industries like the fishery sector.¹⁰³ Fortunately, due to opposition from civil society during the public hearing on this amendment, this provision was removed prior to its adoption.

On **access to remedy**, Thailand has deliberately refrained from ratifying the 1948 Freedom of Association and Protection of the Rights to Organise Convention (C087)¹⁰⁴ as well as the 1949 Right to Organise and Collective Bargaining Convention (C098)¹⁰⁵ which would guarantee migrant workers the right to resolve disputes and negotiation through the use of collective bargaining. In the country, Section 42 of the 2017 Constitution empowers individuals with the right to join together to form ‘an association, a cooperative, a union, an organisation, a community, or any other group’.¹⁰⁶ The 1975 Labour Relations Act establishes a Labour Relations Committee, which includes representatives from the company and from amongst the employees has the power to make decisions related to workplace disputes. The mechanism allows for conflict negotiations including those led by trade unions and employee association.¹⁰⁷ While Thai workers are allowed to unionise and collectively bargain, migrant workers are barred from forming trade unions, being members of the committee heading the union, or being a part of the trade union if they are informal workers and are often fired for their membership to a union or even for expressing support to union activities¹⁰⁸. This blatant act of discrimination is also a barrier for migrant children and shows the intent of government authorities to prevent them from being a part of decisions that could affect them and their livelihoods. Furthermore, under the 2001 Damages for Injured Persons, Compensation and Expense for Defendants in Criminal Cases, migrant workers were initially able to obtain compensation following a review by the Compensation Committee. This changed in May 2015 when the Compensation Committee issued a decree prohibiting access to remedy by undocumented migrants, as it was believed they could not be victims unless they were documented migrants.¹⁰⁹ This could trickle down and impact migrant children and youth who are undocumented but employed.

HUMAN RIGHTS LEGISLATIONS & MIGRANT CHILDREN IN THAILAND: AN ANALYSIS OF THE INTERNATIONAL, REGIONAL AND DOMESTIC LAW & POLICY FRAMEWORK

Thailand has taken no action to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW). However, it became a state party to several international human rights treaties including the United Nations Convention on the Rights of the Child (CRC) in March 1992; to the International Covenant on Civil and Political Rights (ICCPR) in October 1996; to the International Covenant on Economic Social and Cultural Rights (ICESCR) in September 1999; to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in January 2003; and ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in October 2007;¹¹⁰ and is bound by the terms of these treaties as a result. This section shall analyse the enforcement of these treaty provisions with respect to migrant children in Thailand, using CRC and other international human rights treaties as the baseline. Overall at the regional level, Thailand has also voluntarily committed to adhere to the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers¹¹¹ and the ASEAN Declaration of the Rights of Children in the Context of Migration¹¹², which are both iterations of the provisions of CRC and other international human rights treaties.

According to Article 2 of the CRC, States must ensure all rights and protections in the Convention are adopted into the national system so that they cover all children within their jurisdiction; irrespective of race, language, religion, national, ethnic or other status.¹¹³ Thus, the CRC and its provisions should also extend to migrant children in Thailand. Nevertheless, there remain several gaps in law and policy or in its implementation at the domestic level that lead to the violation of rights and protections guaranteed to migrant children under these and other international human rights treaties.

As a basis to accessing rights and protections, ensuring the **legal status** of migrant children is essential. Article 7 of CRC guarantees this by mandating that a child should be registered immediately after birth in accordance with their right to obtain a nationality according to national and international law, especially if they are at a risk of being stateless.¹¹⁴ Article 24 of ICCPR also reiterates the right to nationality of every child.¹¹⁵ The ICERD under Article 5(d)(iii) encourages to eliminate racial discrimination and guarantee to everyone the right to everyone irrespective of race, colour, or national or ethnic origin.¹¹⁶ At the regional level, the ASEAN Human Rights Declaration under Article 18 sets out the right to nationality of every person and prohibits the arbitrary deprivation of this right.¹¹⁷ However, Thailand's commitment to this obligation comes into question due to its failure to accede to the 1954 Convention relating to the Status of Stateless Persons or the 1961 Convention on Reduction of Statelessness.¹¹⁸

At the national level, the Nationality Act of 1913 allowed citizenship to be acquired either *jus sanguinis* or by descent and *jus soli* or by birth in Thailand.¹¹⁹ In 1972, the Revolutionary Declaration No. 337 introduced restrictions to *jus soli* or nationality by birth by allowing a child to acquire Thai nationality by birth if both parents had permanent residency in Thailand.¹²⁰ Although the 1972 Declaration was later revoked, the *jus soli* requirement was

integrated into the Nationality Act.¹²¹ Thus, nationality is not given to migrant children whose parents were allowed to stay temporarily in Thailand or who entered Thailand illegally. The Nationality Act was again amended in 2008 adding the conditions of proving birth in Thailand, subsequent residence in Thailand, along with proof of good behaviour. There are views opposing the criteria as it is believed that determination of 'good behaviour' is left up to the discretion of government officials and it could be used to arbitrarily deprive migrant children of their rights,¹²² even if all they do is express views that are critical of the Royal Thai government. The other challenge remains that to prove birth in Thailand for obtaining citizenship, the Civil Registration Act only allows birth registration to people who are Thai nationals, who permanently reside in Thailand, who have the right to temporarily reside in Thailand, or those who are allowed to temporarily live in Thailand according to the Immigration Act of 1979.¹²³ This excludes migrant children from birth registration also, if their parents entered Thailand illegally. Moreover, it is virtually impossible for migrant workers to get permanent residence in Thailand as the conditions are complicated and almost impossible.¹²⁴ Corruption, inefficient administrative procedures, and lack of clarity on birth registration even amongst local government officials are other reasons that many migrant children have been denied access to a legal status within Thailand.¹²⁵

With no ability to obtain nationality or legal recognition some migrant children are simply allowed to temporarily reside in Thailand, which nevertheless does not prevent their arrest and detention under the 1979 Immigration Act.¹²⁶ In some circumstances, migrant workers have entered Thailand legally but have been unable to procure the documents required by their children because of which they are deported and sent to their country of origin alone. This is a violation of the right of a child to challenge the legality of deprivation of liberty before a competent, independent and impartial authority under Article 9 of ICCPR¹²⁷ and Article 37 of CRC¹²⁸; and could put them at risk of becoming victims of trafficking.¹²⁹ In a positive development, the Royal Thai Government signed a Memorandum of Understanding (MoU) on the Determination of Measures and Approaches Alternative to Detention of Children in Immigration Detention Centers in January 2019, which states that children should be detained only if there is no other alternative with the best interests of the child taken into consideration.¹³⁰ It remains to be seen whether such a commitment will be followed through and if the alternatives to detention prioritise the child and prevent family separation.

Nationality or the lack thereof is often used as a tool to justify **discrimination**, including against migrant children. While *de jure* denial of nationality may be a result of bad laws, *de facto* denial of nationality is often a result of discrimination.¹³¹ Through equal protection under the law and equality before the law, the principle of non-discrimination is set out in all international human rights treaties including under Article 7 of the Universal Declaration of Human Rights (UDHR)¹³²; Article 2 of ICCPR¹³³ and ICESCR¹³⁴. Article 2 of CRC calls for all children within a State's jurisdiction to enjoy rights and protections without discrimination of any kind, no matter the child or parents' race, ethnicity, language or nationality.¹³⁵ This aspect of equality, equal protection and non-discrimination is also enshrined in Article 3 of the ASEAN Human Rights Declaration, at the regional level.¹³⁶ This provision has also been replicated at the national level in Section 27 of the 2017 Constitution of Thailand, where it specifically prohibits discrimination on the grounds of race, language and origin.¹³⁷ For migrant children, this constitutional provision has also been embedded in the 2003 Child Protection Act which requires that importance is given to the best interests of the child, with

no unfair discrimination against children.¹³⁸ In November 2012, 13 marginalised groups including children and migrant workers were identified by a regulation of the National Social Welfare Protection Commission (NSWPC) as those facing discrimination in accessing services, with a decision made to provide special assistance to them.¹³⁹ Unfortunately, just this does not prevent discrimination against migrant children outside the workplace, as has been illustrated in the section above on barriers facing them. Discrimination against migrant children is primarily motivated by negative societal attitudes and pre-conceptions that are not specifically targeted through the implementation or enforcement of legislations or government programmes to ensure inclusivity for migrant children.

Discrimination violates other human rights and impacts social as well as economic security. This impact extends to several aspects that are vital to prevent the exploitation of migrant children, the most important of which is **education**. Article 13 of ICESCR¹⁴⁰ and Article 28 of CRC¹⁴¹ recognises the right of children to education with a progressive and equitable access to this right with primary education made free and compulsory to all; and with secondary as well as vocational education made equally available and accessible with financial assistance provided in case it is required. The right to education is also enshrined at the regional level in Article 31 of the ASEAN Human Rights Declaration which reiterates what is stated in ICESCR and CRC, while adding that education shall also be directed towards strengthening respect for human rights and fundamental freedoms along with enabling effective participation in society.¹⁴² The right to education is also emphasised in the ASEAN Declaration of strengthening education for out-of-school children and youth (OOSCY); which affirms the state responsibility to adopt legislations, policies, and action plans as well as to establish programmes and practices for education that is inclusive equitable accessible continuous quality and sustainable.¹⁴³

At the national level in Thailand, in 1992, the Ministry of Education first circulated a policy asking public schools to enrol non-Thai students.¹⁴⁴ In 1999, this aspect was included in the National Education Act, which provided equal rights and opportunities for all to access quality free basic education under Section 10; and mandated compulsory education up to the age of 16 years according to Section 17 of the Act.¹⁴⁵ Despite these policies, migrant children were unable to gain much from this policy as they did not have knowledge of these policies, they were unable to obtain or they did not have identity documents either from their country of origin or from Thailand, and they were also looked at in a negative light by the school authorities. Thus, in 2004, a separate strategy document on education in Thailand was developed by the Office of the Education Council (OEC) providing benefits for disadvantaged children.¹⁴⁶ However, this document did not make specific reference to migrant children who were completely left behind in policy considerations related to education until 2005. This changed when a Cabinet Resolution on Education for Unregistered Persons of 2005 concluded that all children regardless of their nationality or legal status – even if they were not Thai – were eligible for free primary education in public schools covering grades 1 to 9.¹⁴⁷ This Cabinet resolution was accompanied by a specific budget allocation to cover the education of these children, which led to a drastic increase in the number of migrant children attending schools. This coincided by the 2005 Ministerial regulation to provide education to children without requirement of evidence for legal status or Thai citizenship which set out an operational procedure for managing the education of those without a legal status; by allowing for their admission after accepting personal records of migrant children from parents or

NGOs, or by taking an interview to note down information on their personal history.¹⁴⁸ Still the enrolment was only at 50 per cent because of the other costs associated, with Thai public schools as well as the language barrier as Thai was the language of instruction.¹⁴⁹ A lot of parents who are illegal migrants are also afraid to enrol their children in school, as they are afraid they could be prosecuted and punished for entering the country in this manner. This leads to their children losing out on an opportunity for education.¹⁵⁰

The education of children faces another setback from the gap in the labour rights framework, as the minimum age for work under the Labour Protection Act is lower than the age up to which children have to undergo compulsory schooling.¹⁵¹ This could lead to some children being convinced to leave before they complete their basic education. In such a situation, MLCs were discussed to determine if they could be formalised to benefit more migrant children with their specialised focus. After operating for years in an informal manner with the support of civil society, the Ministerial Regulation on the right of persons in providing basic education through learning centres was adopted in 2011 to bolster the MLC system. Through a systematic management process, this ministerial regulation strengthened MLCs so they may maintain the same curriculum and standards as formal schools. This would allow migrant children may move to formal schools for their higher education without any challenge.¹⁵² In 2019, the Ministry of Education partnered with UNICEF and non-governmental organisations to improve MLCs so students could be provided with government accreditation certificates, which they can use to continue their education in Thailand or elsewhere.¹⁵³

Besides education, **access to health services** and medical care is also essential to ensure migrant children are not vulnerable to exploitation owing to huge medical bills. ICESCR recognises the right of everyone to the highest standard of physical and mental health, in accordance with Article 12.¹⁵⁴ Also, the CRC through Article 24 acknowledges the right of every child to the highest standard of physical, mental and psychological health, along with access to affordable basic healthcare services, and use of medical establishments.¹⁵⁵ At the regional level, under Article 29 of the ASEAN Human Rights Declaration, the same rights as provided by the CRC have been guaranteed but they extend to every individual.¹⁵⁶ At the national level, the 2017 Constitution of Thailand under Section 47 grants every person the right to access public health services and Section 55 highlights the right to universal health care.¹⁵⁷ The National Health Act discusses the right to live in a healthy environment; the promotion of health for children, socially disadvantaged and other groups; and the right to receive sufficient health-related information as per Section 3, 5 and 7 respectively.¹⁵⁸ The National Health Security Act under Section 5 provides the right to ‘standard and efficient health services’.¹⁵⁹ With respect to migrants, there are separate schemes that exist based on their employment and their legal status. Documented migrant workers who have obtained a work permit may access Social Security Scheme governed by the Social Security Act and the Workmen’s Compensation Act, just like Thai citizens.¹⁶⁰ For documented migrant workers in the informal sector and for undocumented migrants, they may purchase the Health Insurance Card Scheme provided by the Public Health for themselves and their dependants. However, they have to pay a 2,200 THB annual premium and a mandatory 500 THB every year for an annual check-up.¹⁶¹ With this health insurance not having any legal basis, migrant workers cannot be pressured into purchasing it. Starting in 2003, the Ministry of Public Health put in place migrant-friendly healthcare services with the support of non-governmental organisations, with the addition of migrant health workers (MHWs) and migrant health

volunteers (MHVs).¹⁶² With the intent of minimising cultural and language barriers, MHWs served as interpreters, coordinators, assistants and educators in healthcare facilities and MHVs fulfil the same role in migrant communities.¹⁶³ Although these interpretation and culturally appropriate support services are invaluable, the limited number of MHWs and MHVs, their inadequate translation skills, absence of capacity building programmes, low supervision and poor financial support for this service has proved challenging.¹⁶⁴

Along with the violation of rights, migrant children are deprived of **protection from exploitation or abuse** in Thailand. In accordance with Article 10 of ICESCR, children are to be provided with protection and assistance against economic and social exploitation irrespective of their parents status or other factors.¹⁶⁵ Additionally, torture must be prevented by states within their jurisdictions by taking legislative, administrative, judicial or other measures; as stated in the CAT.¹⁶⁶ The CRC addresses protection of children against exploitation and abuse extensively. Article 19 mandates state parties to protect children against 'physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation' from a guardian with measures taken to prevent, identify, report, refer, investigate, treat and follow-up on these incidents.¹⁶⁷ The CRC also protects children from economic exploitation and from hazardous work that could harm the education or development of the child; and from sexual exploitation and abuse as set out in Article 32 and Article 34 respectively.¹⁶⁸ Article 36 of CRC protects children against all other forms of exploitation that could harm their welfare. Also, the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially women and children protects children who are victims of trafficking while punishing perpetrators.¹⁶⁹ At the regional level, Article 27(3) of the ASEAN Human Rights Declaration is a reiteration of Article 10 of ICESCR.¹⁷⁰ Further, the Declaration on the Elimination of Violence against Women and Elimination of Violence against Children in ASEAN resolves to eliminate violence against children in ASEAN countries through the introduction of various measures.¹⁷¹

Within Thailand, the 2003 Child Protection Act provides protection to children from harm by prohibiting under Article 26 acts which cause physical or mental torture of a child; withholding things important for life and health which will physically or mentally harm the child; to force, threaten, use or induce a child to commit a wrong, a crime or to otherwise exploit or torture them; to use a child in a way which will affect their growth and development.¹⁷² Additionally, any person who is a witness to such torture against children must report the same to a competent official or a person who the child is in the care of. The Thai Penal Code punishes abuse against children through the criminalisation of rape under Section 277(s), with Section 282 and 283 punishing indecent acts, and Section 312 penalising enslavement.¹⁷³ Witnesses and victims of child abuse who are under the age of 18 years are protected under the Criminal Procedure Code, which allows for the present of a psychologist, social worker, or anyone else the child wants for their interrogation, investigation and identification.¹⁷⁴ The Royal Thai Government also developed a National Strategic Plan to Prevent and Eliminate Violence Against Women starting in 2008 for which it engaged children and youth through consultations.¹⁷⁵ Migrant children face exploitation and abuse in two situations – when they are living in hazardous conditions or when they are by themselves. To illustrate, migrant children living in construction camps are victims of physical abuse, denied education and healthcare, and are vulnerable to child labour that can be exploitative.¹⁷⁶ To protect children from exploitation, abuse, violence and neglect several measures have been taken; such as the

setting up of the 1300 helpline by the Ministry of Social Development and Human Security as well as UNICEF to receive reports of child abuse.¹⁷⁷ The hotline works as a case notification unit and a case referral system as well. The 1999 Resolution of the Council of Ministers has led to the setting up of crisis centres in public as well as private hospitals, where a multidisciplinary team of doctors, nurses, psychologists and social workers treat children who are victims of violence.¹⁷⁸ The centres can also provide support through coordination with the police, lawyers, civil society organisations for shelter, remedy and rehabilitation. Shelter homes have also been established in various provinces for treatment and rehabilitation for these children. However, it is believed with occurrences of harm concentrated at the community level and only four social workers for every 100,000 people in Thailand, there is a requirement for grassroot level reach for this to be effective.¹⁷⁹

RECOMMENDATIONS TO ENSURE PROTECTION OF MIGRANT CHILDREN FROM EXPLOITATIVE LABOUR PRACTICES

POLICY RECOMMENDATIONS

Recommendations for the government

- Ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, in line with Thailand's international obligations.
- Ratify the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (ICMW) and ensure that Thai law is amended to be in line with the obligations set out in this treaty.
- Ratify the 1948 Freedom of Association and Protection of the Rights to Organise Convention (C087)¹⁸⁰ and the 1949 Right to Organise and Collective Bargaining Convention (C098)¹⁸¹ which protect the right to collective bargaining of migrant workers. Remedy the current situation and align domestic laws with these conventions, allowing migrant workers and children to unionise to seek remedy.
- Ratify the 2011 Domestic Workers Convention (C189)¹⁸² to improve the working conditions of migrant children employed in domestic work, by ensuring weekly rest for more than 24 continuous hours, by reducing payment made to the workers in kind, by providing clear information on the employment requirements, and by giving them a voice through collective bargaining rights.
- Adopt a standalone anti-discrimination law that specifically addresses the right to equality of all individuals who are marginalised, stigmatised and excluded including migrant families, to ensure their equality before the law and at the workplace in accordance with Thailand's international obligations.
- Amend the Nationality Act, as well as other immigration, and domestic laws and policies impacting migrant families and migrant children, in line with international labour and human rights legislations to ensure that equal rights and protections can be accessed by migrant worker families with legislations specifically benefiting migrant children – irrespective of their nationality or legal status.
- Draft a ministerial regulation that grant children born in Thailand to stateless or undocumented migrants all the rights set out in CRC.

- Draft policies and measures to address the root causes of child labour and migrant exploitation, such as poverty, lack of legal status and negative societal attitudes.
- Develop policies, cabinet resolutions and ministerial regulations to specifically protect underage migrant children and enhance opportunities for migrant families, through effective access to social security and services, particularly healthcare and education. Assign a local authority with the task of implementing and enforcing these, under the overall supervision of relevant ministries.
- Ensure all MLCs are allowed to formalise through an accreditation process, so that the education they get there can be recognised in other formal institutions of learning and employment.
- Replicate the Good Labour Practices (GLP) Programme by bringing into focus other industrial sectors besides fisheries, with the support of the DLPM, ILO, civil society organisations and migrant families.
- Engage migrant children and youth in dialogues to discuss the development and implementation of laws and policies related to their rights and protections, in accordance with the CRC and in Thailand's Child Protection Act. These dialogues should take place at the national and local levels.
- Extend equal protection to all migrant children who faced a violation of rights just as provided to Thai people, through the establishment of accessible and effective complaint as well as grievance redressal mechanisms as suggested in Thailand's National Action Plan on Business and Human Rights¹⁸³. Inform migrant communities of such facilities.

Recommendations for businesses

- Study workplace conditions and the treatment of migrant workers at the headquarters and throughout the supply chain, to determine if migrant children are employed in conditions violating labour laws and child rights laws. This investigation must be undertaken by a neutral agency or organisation with knowledge of the challenges on human rights, labour rights and the challenges faced in this respect. Transparency should be guaranteed by making the report public in its entirety. Any recommendations made for change should be integrated into company policy.
- Establish workplace-based grievance redressal mechanisms, which allow for reporting of abuse, harassment violence or exploitation in a safe and confidential manner without fear of retaliation or threats of deportation. Mediation techniques can be utilised for grievance redressal with the participation of labour inspectors, other government authorities, recruitment agencies, civil society organisations, and trade unions.

Recommendations for civil society

- Collectively develop reporting guidelines along with media and journalist associations so the language used while reporting remains neutral, human and not harmful in any manner.
- For effective access to remedy in the case of rights violations, create community-based complaint and grievance redressal mechanisms. If required, civil society organisations may provide the migrant child with legal or other professional representation so they may adequately defend their case and obtain the beneficial solution.

PRACTICAL RECOMMENDATIONS

Recommendations for the government

- Aid in the process of accessing citizenship and birth registration by simplifying the procedure and educating migrant workers and their families about the method for obtaining the same.
- Create a registration system with information of migrant children, including their age, nationality and legal status to monitor their safety and promote their access to rights and protections.
- Lift any restrictions on the movement of migrant children and their families, so they may travel safely and are thus not at the risk of being exploited by traffickers or migrant smugglers.
- Carry out regular inspections of the workplace and the accommodation provided to migrant families by employers to determine if the health and safety is adequate, with steps taken remedy any shortcomings found on an immediate basis. This should be accompanied by a follow-up
- With the support of civil society and through the Ministry of Education, support and promote education efforts through projects such as the Learning coin project initiated by the UNICEF which provides financial incentives to migrant children based on the amount they study¹⁸⁴. This could be bolstered by the government by ensuring access to all migrant children, particularly those in the remote areas that may benefit from this programme.
- Provide equal access to education for all migrant children including those without a legal status, by making loans available to them for undertaking their education.
- Through the Ministry of Social Development and Human Security, highlight the extraordinary achievements and contributions by migrant children in Thailand, so this may correct the misconceptions against them in society and increase an understanding of these children and the challenges they may face.
- Organise capacity building programmes for government officials, businesses and migrant families so they are informed of labour rights and human rights they are entitled to, in line with international, regional and national frameworks.
- Raise awareness on government policies, services and mechanisms, such as the government hotlines. Ensure all awareness raising efforts and hotline services for migrant children and their families are available in a language understood by them.

Recommendations for businesses

- Thoroughly inspect documents provided by migrant children to determine if they are underage or if they are barred from doing the work required of them. Businesses are accountable for any failure in this respect.
- All migrant children and youth employed by businesses, particularly between the age of 15 and 18 years should have working conditions and job tasks that are reasonable and abide by the provisions of the legislative framework.
- Promote inclusion of migrant workers at the workplace irrespective of their nationality and ethnicity by working directly with them or reaching out to them through trade

unions. An inclusive environment for migrant workers will trickle down to the family in the form of equality in access to rights and protections, including social services.

- Promote the interests of migrant families and workers by making available low interest or no interest financial loans available, so they may provide an education to their children. This would strengthen the reputation of the business at the same time.

Recommendations for civil society

- Refrain from labelling migrants as inherently vulnerable and powerless and feeding into that negative rhetoric, instead highlighting the marginalisation of migrant families owing to external aspects.
- Promote online activism supporting migrant workers and act against misinformation, disinformation or hate speech online targeting migrant workers.
- Educate migrant families on the importance of providing an education to their children by highlighting the positive developments and opportunities it could lead to; as well as by providing a cost-benefit analysis of this.
- Encourage integration of migrant families and migrant children with their Thai counterparts through social inclusion programmes aimed at ending discrimination and societal stigma, with the support of civil society organisations.
- Raise awareness amongst peers to educate them on what constitutes xenophobia and hate speech against migrant children and their families both online and offline. Take measures to counteract any harmful rhetoric based on the race, colour, language, nationality and ethnicity of migrant children and their families.
- Undertake research through civil society organisations to investigate factors that contribute to migrant child labour, with specific attention paid to the more vulnerable age group of 15 to 18 years. Disaggregated data can be collected on various factors such as age, gender, nationality, legal status, economic stability, living conditions, and rights violations previously faced; to identify aspects that make migrant children more susceptible to exploitation.
- Provide pro-bono counselling services to migrant children from civil society organisations that can support them when they face bullying at school or other rights violations at the workplace.
- Pressure businesses to make changes in their policy or in their practices if they are found to violate the rights of migrant child labourers, by boycotting bad businesses and supporting those that are doing good.
- When rights violations committed against migrant children are encountered at the workplace or elsewhere, individuals and civil society organisations must take action by making a complaint to the relevant government authorities and following up on the complaint till it reaches completion with a fair resolution.

CONCLUSION

Thailand has made considerable progress on the ratification to and accession of international treaties on labour rights and human rights that apply to migrant children. However, this has no meaning until it is successfully translated into an effective law and policy framework at the domestic level. Thailand has a dualist approach to its adherence to international law, which

means international treaties and legislations do not have any enforceable legal status until legislative action through the National Legislative Assembly integrates these international obligations into national law.¹⁸⁵ On several occasions, despite ratifying or acceding to international treaties, the Royal Thai Government has completely failed to ensure its international human rights obligations have found a place in their domestic framework, where they can be implemented and enforced. The treatment of migrant children and their marginalisation is just one more instance, where this regime proves its lack of political will for and inclination to protect the rights of all individuals within their jurisdiction.

Furthermore, with a strict policy of non-interference in the domestic affairs of other countries and officials who are all politically appointed; the ASEAN as a regional mechanism, its charter, and commitments remain without enforcement and thus toothless – particularly on issues of human rights with marginalised communities paying the price. The gaps in law, policy, implementation and enforcement affect migrant children and deny them the rights and protections they are entitled to, due to which they become victims of double marginalisation owing to the nationality or ethnicity as well as their age which makes them unable to effectively access justice in these circumstances. Changes at the policy and at the grassroots level aimed at providing effective and accessible solutions for migrant children in line with Thailand's international obligations should be the goal at present, in order to create a society that is inclusive for all.

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