

A high-angle photograph of a group of children in a classroom. They are all wearing light blue school uniforms. Several children in the foreground have their hands raised, suggesting an interactive activity or a Q&A session. The children have dark hair, some with pigtails and hair ties. The background shows more children and parts of the classroom environment.

ACCESSIBILITY OF PROTECTION SYSTEMS FOR CHILDREN IN THE CONTEXT OF MIGRATION IN SOUTH-EAST ASIA

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ACCESSIBILITY OF PROTECTION SYSTEMS FOR CHILDREN IN THE CONTEXT OF MIGRATION IN SOUTH-EAST ASIA

Foreword from the IOM Regional Director for Asia and the Pacific

Every child is an integral member of the family and entitled to fundamental human rights and freedoms. The Convention on the Rights of the Child recognizes that childhood requires special care and assistance, ensuring that every child can grow to their fullest potential, in a supportive family environment, in an atmosphere of happiness, love and understanding.

However, not all children fully experience the security and protection needed during their childhood. Children in the context of migration are particularly at risk, and yet their specific vulnerabilities are often overlooked in national policies, and they are deprived of essential services. This stems largely from the perception that migration is undertaken by adults, mainly driven economically. Policies governing low-skilled migrant labour, for instance, are often designed to prevent child migration outright – restricting family formation, family reunification and even pregnancy. Within such a system, migrant children are often seen as out of place, leading to critical gaps in their access to basic services, such as legal identity, education and health care. Among particular challenges are lack of birth registration and issuance of birth certificates, which creates a snowballing effect, preventing access to other vital services.

Recognizing these challenges, the Association of Southeast Asian Nations (ASEAN) Member States came together in 2019 to adopt the ASEAN Declaration on the Rights of Children in the Context of Migration, reaffirming that all children – regardless of migration status – are entitled to fundamental rights and social protections, ranging from legal identity to education, health and access to justice.

Yet significant knowledge gaps remain regarding the extent to which child protection systems are effectively accessible and the barriers that prevent children from fully benefiting from them.

To bridge this gap, IOM conducted this study under the Asia Regional Migration Program (RMP) to assess the implementation of various existing child protection systems and initiatives across the ASEAN, with particular focus on Indonesia, the Lao People's Democratic Republic, Malaysia and Thailand. The research examines key areas, such as access to legal identity, education and social protection, identifying challenges and opportunities to enhance policy responses. The findings provide concrete evidence and recommendations to support governments and partners in shaping and aligning policies and plans for better promoting and protecting the rights of the child in line with international and regional instruments and commitments, including the Convention on the Rights of the Child, the ASEAN Declaration and its Regional Plan of Action. This study also complements the 2023 UNICEF report on the *Situation of Children Affected by Migration in ASEAN Member States*.

Ensuring that every child, including migrant children, can grow in a safe and protective environment is a shared responsibility. A stronger focus on child-centred policymaking – across migration, social protection and other sectors – is essential for closing existing gaps. This research represents a critical step towards a more evidence-based approach, offering insights into where migrant children remain underserved. The approach also contributes to fulfilling commitments made towards Agenda 2030, including the Sustainable Development Goals and the Global Compact for Safe, Orderly and Regular Migration, ensuring that no child is left behind.

IOM remains committed to working together with the governments of Indonesia, the Lao People's Democratic Republic, Malaysia and Thailand, as well as partners, to fully promote and protect the rights of the child, including children in the context of migration. We hope that this study will inform effective policymaking that safeguards migrant children's well-being, enabling them to thrive and harness their full potential contributing to the social, cultural and economic development of the country.



Iori Kato

IOM Regional Director for Asia and the Pacific

Foreword from the Representative of Thailand on Children's Rights to the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children

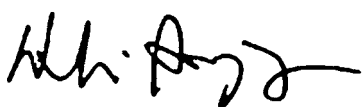
ASEAN Member States reaffirmed their commitment to fully implement the Convention on the Rights of the Child in 2019. They agreed to remove all barriers that hinder equity, inclusion and quality across all child rights, to strengthen their legal framework to prevent all forms of violence against children, to protect children's right to clean and safe environment, and to promote universal health coverage for all children. In addition, ASEAN also recognizes that every child is essential and contributes to ASEAN development.

In Thailand, this commitment translated to the national policies by accelerating efforts to promote and fulfil the rights of all children residing in Thailand, including those who migrate with or without their parents. The country's commitment embedded in their pledges made at the Leaders' Summit on Refugees in 2016 where Thailand declared their commitment to end detention and use detention as a last resort for migrant children. The commitment was reaffirmed in the International Migration Review Forum in 2022. Thailand submitted the pledges to enable birth registration for all children including migrant children, make a progress towards the achievement of universal health coverage including for migrants, effectively implement alternatives to detention and its measures for migrant children, and promote public perception regarding positive contribution of migrants and end discrimination and stigmatization against them. Moreover, Thailand committed to resolve statelessness, enhance access to education and skills development, especially for forcibly displaced and stateless children, and withdraw the reservations of Thailand to Article 22 of the Convention on the Rights of the Child were made clearly during the Global Refugee Forum in 2023.

At the national level, Thailand articulated these international commitments by establishing the standard operating procedure of alternatives to detention for migrant children, promoting access to education and enhance birth registration for every child. Moreover, Thailand led ASEAN to enhance protection of children by chairing the development of ASEAN Declaration on the Rights of Children in the Context of Migration in 2019 and its Regional Plan of Action in 2021.

While initiatives and efforts have been made to strengthen the protection services for migrant children, some challenges remain. IOM study on the Accessibility of Protection Services for Migrant Children in the Southeast Asia, including Thailand provides comprehensive pictures

on the status and gaps of the protection services for vulnerable children in the context of migration. This study provides practical recommendations to the government on how to enhance services, ensuring that protection approaches uphold and promote best interests of the child, especially in the area of access to legal identity and birth registration, education and social protection. Therefore, this study and publication are also useful for sharing knowledge for the child protection practitioners within Southeast Asia to enhance our joint efforts in promoting children's rights, especially for children in the context of migration. I look forward to extending this fruitful partnership with IOM.



Wanchai Roujanavong

Representative of Thailand on Children's Rights

ASEAN Commission on the Promotion and Protection of the Rights of Women
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Acronyms and abbreviations

ACM	ASEAN Declaration on the Rights of Children in the Context of Migration
ALC	Alternative Learning Centre
AMS	ASEAN Member States
ASEAN	Association of Southeast Asian Nations
CBHI	Community-based Health Insurance (Lao People's Democratic Republic)
CLC	Community Learning Centre
COVID-19	coronavirus disease 2019
CSO	civil society organization
DESA	United Nations Department of Economic and Social Affairs
ECE	Early Childhood Education
HIV/AIDS	human immunodeficiency virus/acquired immunodeficiency syndrome
IDR	Indonesian rupiah
ILO	International Labour Organization
IOM	International Organization for Migration
KPAI	Indonesia Child Protection Commission (Komisi Perlindungan Anak Indonesia)
LAK	Laotian kip
M-Fund	Migrant Fund (Thailand)
MHIS	Migrant Health Insurance Scheme (Thailand)
MLC	Migrant Learning Centre
MOU	memorandum of understanding
MYR	Malaysian ringgit
NGO	non-governmental organization
NRD	National Registration Department (Malaysia)
NSM	National Screening Mechanism (Thailand)
NVP	Nationality Verification Process
OHCHR	Office of the United Nations High Commissioner for Human Rights
RPA CCM	Regional Plan of Action on Implementing the ASEAN Declaration on the Rights of Children in the Context of Migration

SAR	Saudi Arabian riyals
SDG	Sustainable Development Goal
SSF	Social Security Fund (Thailand)
SSO	Social Security Office (Thailand)
THB	Thai baht
TIP	trafficking in persons
UNFPA	United Nations Population Fund
UNHCR	(Office of the) United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
USD	United States dollar
WCF	Workmen's Compensation Fund (Thailand)

Glossary

Asylum-seeker

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 he or she has submitted it. Not every asylum-seeker will ultimately be recognized as a refugee, but every recognized refugee is initially an asylum-seeker (IOM, 2019:14).

Child migrants

According to the Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, Art. 1, child is “every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier”. Meanwhile, migrant is an umbrella term, not defined under international law, reflecting the common lay understanding of a person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons. The term includes a number of well-defined legal categories of people, such as migrant workers; persons whose particular types of movements are legally defined, such as smuggled migrants; as well as those whose status or means of movement are not specifically defined under international law, such as international students. Child migrants therefore can be defined as migrants under the age of 18 (IOM, 2019:27 and 132).

Independent child migration

There is no mutually agreed definition of independent child migration. This report borrows Yaqub’s definition of independent child migration as the movement of “children who have to some extent chosen to move their usual residence across a major internal or international boundary” (Yaqub, 2009:10).

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 border (IOM, 2019:109).

Internal migration

The movement of people within a State involving the establishment of a new temporary or permanent residence (IOM, 2019:108).

Legal identity

Legal identity in the present study refers to documentary evidence that includes birth registration notification, birth certificates, residential/identity cards, family certificates, marriage certificates and passports. This includes the basic characteristics of an individual's identity, such as name, sex, place and date of birth conferred through registration and the issuance of a certificate by an authorized civil registration authority following the occurrence of birth (United Nations Strategy for Legal Identity for All, 2019:3).

Migrant children in vulnerable situations

Migrants in vulnerable situations are migrants who are unable to effectively enjoy their human rights, are at increased risk of violations and abuse and who, accordingly, are entitled to call on a duty bearer's heightened duty of care. Migrant children in vulnerable situations thus refers to migrants who are under the age of 18 years old and unable to effectively enjoy their basic rights and are at risk of violations and abuse (IOM, 2019:134).

Nationality Verification Process

NVP refers to a process by which undocumented migrants regularize their status and obtain necessary legal documents to work and remain in the country of destination (United Nations Thematic Working Group on Migration in Thailand, 2019).

National Screening Mechanism

NSM is a regulation that was passed by the Government of Thailand in December 2019. The purpose of the NSM is to identify people who need protection in Thailand because they cannot return to their country (National Screening Mechanism, n.d.).

Non-refoulement principle

The prohibition for States to extradite, deport, expel or otherwise return a person to a country where his or her life or freedom would be threatened, or where there are substantial grounds for believing that he or she would risk being subjected to torture or other cruel, inhuman and degrading treatment or punishment, or would be in danger of being subjected to enforced disappearance, or of suffering another irreparable harm (IOM, 2019:149).

Refugee

A refugee is someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion (United Nations, 1951).

Social protection

Social protection is the set of public and private policies and programmes aimed at preventing, reducing and eliminating economic and social vulnerabilities to poverty and deprivation (IOM, 2019:201).

Stateless persons

Stateless persons refer to those who are not recognized as nationals by any state under the operation of its law (United Nations, 1954).

Chapter 1. Introduction

1.1. Background

In December 2020, an article appeared in Al Jazeera featuring the case of two boys who went missing from their conflict-ridden village in Rakhine State in Myanmar. Three months later, their families received news that the boys had embarked on a perilous journey on foot to join their asylum-seeking uncle in Malaysia. During this treacherous journey, however, the boys were captured by human traffickers, who demanded a ransom of MYR 16,000 (USD 3,900) for each child to be set free (Fishbein, 2020). Upon ransom payment, only one boy made it to Kuala Lumpur. At the same time, the other was intercepted and forced into a detention centre in Malaysia's north-eastern State of Kelantan, joining 1,494 other children being held across 21 detention centres nationwide (UNICEF, 2023).

Nothing is particularly extraordinary or new about the two boys' mobility. Data drawn from DESA, UNHCR and UNICEF (ibid.) demonstrates that around 1.3 million child migrants, 600,000 child refugees and 2.5 million internally displaced children had moved within and beyond ASEAN¹ borders by 2021 for employment and safety, with or without their parents. In the spirit of protecting children affected by migration, AMS came together in 2019 to adopt the ACM, which outlines the rights to birth registration and legal identity, education, health, justice, psychosocial services and freedom from violence, abuse and exploitation, including forced and child labour, child marriage, sexual exploitation, gender-based violence, neglect and domestic servitude (ASEAN, 2019).

Despite being non-legally binding, the ACM is a crucial policy instrument for two reasons. First, it signifies recognition by the AMS of the unique vulnerability of children affected by or involved in various forms of migration. Additionally, it reaffirms the shared commitment of AMS to protecting migrant children's rights. Such explicit acknowledgement of the specific protection needs of migrant children in vulnerable situations provides an avenue for a better-coordinated regional response, which has been essentially difficult since only very few AMS are State parties to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. Secondly, the document has been translated into concrete plans of action to be implemented from 2021 through 2030 and regularly reviewed, providing AMS with clear guidelines on addressing the needs of migrant children in vulnerable situations.

Despite this recent policy development, children remain primarily overlooked in migration policy debates. This is because migration is often perceived as an adult undertaking (Asis and Feranil, 2020) and incompatible with the modern concept of ideal childhood in which

¹ ASEAN stands for Association of Southeast Asian Nations, comprising Indonesia, Malaysia, Brunei Darussalam, Cambodia, the Lao People's Democratic Republic, Myanmar, the Philippines, Singapore, Thailand and Viet Nam. At its Forty-first Summit held in Phnom Penh, Cambodia, in 2022, AMS agreed in principle to admit Timor-Leste as the eleventh member of the ASEAN. Preparatory work is underway to grant Timor-Leste its full membership.

formal education is envisioned as an utmost priority (West, 2008). With this system in place, children on the move are invariably viewed as being out of place, wandering in the dangerous terrain of the adult world.

In many cases, child migration is indeed dangerous. However, this danger is not solely attributed to the fact of their young age or the manner in which they undertake their migratory journey itself. Rather, West (*ibid.*) argues that it is the child-unfriendly environment (that is, services provided throughout migration processes do not consider children's needs because children are not meant to engage in migration to begin with) around the migration journey that makes child migration especially perilous. For this reason, some scholars (Capaldi and Altamura, 2023) also begin to offer more critical views on child migration, inviting to shy away from deploring child migration and, instead, to work on creating a safe and enabling environment should child migration happen.

In the spirit of protecting children's rights, all ASEAN governments ratified the Convention on the Rights of the Child as far back as in the early 1990s and domesticated the Convention into child-specific laws in their respective countries, despite inconsistencies in the manner in which the Convention was legislated at the national level. It is of note that Cambodia is in the process of legislating a child protection law at present. While these laws are relatively comprehensive – covering the rights to life, legal identity, justice, education and health, as well as freedom from abuse, exploitation and human trafficking – the Convention is not fully implemented, especially to the group of people with lack of legal status, such irregular migrants and stateless people (Save the Children, 2016). This lack of focus on migration leaves a huge legal blind spot that hinders the protection of children on the move in the ASEAN.

These legal loopholes have placed child migrants in situations of precarity. For instance, Petcharamesree (2023) brings to the fore the fact that birth registration among nationals is lacking in Cambodia (62%), Indonesia (67%) and Myanmar (72%), believing that birth registration among undocumented child migrants and child refugees is even much lower. The non-registration of birth is an issue of significant concern since it leads to non-possession of a birth certificate which, in turn, leaves a child without any legal identity. This dispossession of legal identity is likened to a state of “civil death” (*ibid.*), as they are considered non-existent in front of the law, presenting considerable barriers to the enjoyment of fundamental rights. For example, a comparative study of Thailand and Malaysia by Verghis (2023) demonstrates that irregularity hinders migrants' access to health care. Without a legal identity, child migrants and refugees are also effectively excluded from the fundamental right to schooling, as observed among ethnic Vietnamese living in Cambodia (Petcharamesree, 2023).

Responding to the issues discussed earlier, some ASEAN countries have rolled out initiatives and policies to extend protection to children in the context of migration. For example, the Government of Malaysia has introduced an initiative allowing State school admission for undocumented and stateless children, provided that one of their parents is a Malaysian national (Laeng, 2023). In Thailand, the 2005 Cabinet Resolution for Education of Unregistered Persons provides children with educational opportunities irrespective of their legal or immigration status (Dewansyah and Handayani, 2018). Notably, the Government of Indonesia has introduced an insurance scheme that guarantees the schooling of “left-

behind children”² up to a bachelor’s degree level in case of their migrant parents’ deaths. Additionally, the Government of Indonesia has set up CLCs, providing primary and lower secondary education to children of Indonesian migrants in the States of Sabah and Sarawak. In terms of access to health care, Thailand has exhibited some notable progress in that undocumented children can avail of the MHIS cards, which will be discussed in more detail in the subsequent sections. At the same time, UNHCR-registered refugees in Malaysia are entitled to a 50 per cent discount on health-care costs applicable to foreign nationals.

However, despite these laudable developments in policy frameworks and initiatives, there is scant literature on the extent to which such protection systems are accessible to different groups of children in the context of migration and the barriers hindering access to those services. The present study aims to close this knowledge gap and enhance understanding of the implementation of various existing child protection systems and initiatives in ASEAN, with a particular focus on Indonesia, the Lao People’s Democratic Republic, Malaysia and Thailand.

1.2. Research objectives

The present study probes into existing systems and initiatives for protecting children in the context of migration, focusing specifically on Indonesia, the Lao People’s Democratic Republic, Malaysia and Thailand. The aim is to identify the gaps and barriers in protection systems for children in the context of migration, especially in relation to the rights to legal identity, social protection and formal education. Findings from the study are used to develop recommendations, inform the work of various stakeholders in ASEAN and contribute to implementing the Regional Plans of Action on Implementing the ASEAN Declaration on the Rights of Children in the Context of Migration.

1.3. Research questions

To understand the implementation of child protection systems, accessibility to those systems and barriers to the enjoyment of fundamental rights, the present study is guided by these general questions:

- What are the existing protection systems and initiatives on legal identity, social protection and education for children in the context of migration in Indonesia, the Lao People’s Democratic Republic, Malaysia and Thailand?
- How have those protection systems and initiatives been implemented?
- What gaps and barriers hinder access to such protection systems and initiatives?
- How have the governments of ASEAN and CSOs addressed the barriers to accessing the protection as mentioned earlier?

² The term *left-behind children* refers to persons under the age of 18 who remain in an area of origin as one or both of their parents migrate to another location, either within or outside their country. Some scholars begin to replace this term with *stay-behind children* to acknowledge children’s agency.

1.4. Scope

The present study is centred on understanding the implementation of child protection systems and initiatives related to the rights to legal identity, social protection and education for children in the context of migration in Indonesia, the Lao People's Democratic Republic, Malaysia and Thailand. It is primarily focused on three categories of children namely: (a) those who have moved either voluntarily or involuntarily with or without their parents; (b) children born to migrant households in countries of destination; and (c) those who remain in countries of origin after either or both of their parents have migrated. To offer a nuanced understanding of their lived experiences, the study considers children's intersecting identities, including immigration status (documented or undocumented), the fact of being separated and/or unaccompanied, statelessness, gender, ethnicity and religion. These children will be collectively referred to as migrant children in vulnerable situations.

To provide an analysis on the first category of children, that is, those who have moved either voluntarily or involuntarily with or without their parents, the study zooms in on the experiences of child refugees and asylum-seekers in Indonesia, Malaysia and Thailand, all of which are major transit countries for forced migrants in South-east Asia. Thailand and Malaysia are the main focus of the study to understand the situations of children born to migrant parents in countries of destination. With regards to the third category of children, that is, children staying behind in countries of origin, Indonesia and the Lao People's Democratic Republic are observed as these are large countries of origin for labour migrants.

Additionally, this study is primarily concerned with children in the context of transnational migration. Attempts have been made to incorporate analyses of internal migration especially as it intertwines with cross-border migration. Due to time constraints and considering relevance to the ACM, the present study mainly probes into the implementation of protection systems and initiatives that pertain to the rights to the following: (a) legal identity; (b) social protection; and (c) formal education.

1.5. Data sources

Both primary and secondary data were collected to broaden understanding of the implementation of various protection systems and initiatives in question. The secondary data analysed in the present study include regional and national laws, policies and circulars, as well as SDGs voluntary national reviews, concluding observations of the United Nations Treaty Bodies, relevant publications of United Nations agencies, news articles and academic papers. Quantitative secondary data were collected to provide insights into general trends or patterns relating to the topic, whereas qualitative data – mostly gathered through field observations and in-person or online interviews – offered a deeper, more nuanced analysis of the said trends.

1.6. Data collection

Data were collected through desk research, key informant interviews and field observation. Data collection involved 25 key informant interviews that represented different stakeholders in Indonesia, the Lao People's Democratic Republic, Malaysia and Thailand. They included representatives of governmental agencies, CSOs, refugee-led organizations, national human rights institutions and migrant children in vulnerable situations and their primary caretakers. Interviews involving migrant children in vulnerable situations were conducted in strict adherence to a safeguarding protocol that was developed and approved by IOM Thailand in consultation with IOM country offices in Indonesia, the Lao People's Democratic Republic and Malaysia beforehand.

This safeguarding protocol was assessed to ensure the protection of migrant children in vulnerable situations throughout the research process, emphasizing the importance of ethical conduct, assessment of risk, provision of support services as needed, data protection and privacy, and responsible dissemination of findings. Additionally, the protocol highlighted the need to work with trusted civil society groups, respect sociocultural norms and obtain informed consent from the children – bearing in mind the challenges associated with their age, language, legal status, economic standing, health status and geographical area.

It is important to note that due to time constraints and the informants' tight schedules, some interviews were either cancelled or curtailed, resulting in underrepresentation of certain stakeholders, countries and types of migration or mobility. Field research were conducted in Indonesia (Lombok, Bogor and Yogyakarta), the Lao People's Democratic Republic (Vientiane), Malaysia (Tawau and Kuala Lumpur) and Thailand (Bangkok and Samut Sakhon) from May to June 2023. To protect informants' safety and privacy, all personal identifiers are anonymized.

Chapter 2. Migration and mobility in the Association of Southeast Asian Nations region

Despite the increasing salience of migration in scholarly and policy debates in the ASEAN region over the past few decades, migration – or mobility at large – is far from being a recent phenomenon. The region has seen large population flows from both within and outside the region for economic, religious, intellectual and cultural pursuits. By the nineteenth century, the South-east Asian maritime trade had connected the following: British-led port cities of Yangon, Singapore, Penang and Malacca; the Dutch-administered coastal cities of Jakarta (then Batavia), Semarang and Makassar; the French-managed Saigon; and the Spanish-administered port city of Manila (Brunero, 2021). With expanding steamer services during the second half of the nineteenth century, the migration flows of traders, religious groups, students, refugees, indentured workers and enslaved people increased in scale and intensity (Amrith, 2011).

Population movements during these periods were much freer, with transport infrastructure being the main barrier rather than border control. In fact, borders were so fluid and porous that people were able to move much more freely within and between kingdoms and colonies (ibid.), making it rather pointless to distinguish between internal and international migrations back then. As waves of decolonization swept through South-east Asia during the mid-twentieth century, however, the question of territorial borders became pertinent. New frontiers were drawn up and solidified, and restrictions on population movements were introduced to filter out undesirable migrants. Despite those restrictions, the migration and mobility of merchants, intellectuals and workers in the previous centuries had led to the formation of ethnic settlements and diasporic communities across the region, creating new ways of connecting far-flung places to shape modern patterns of migratory flows in South-east Asia (ibid.).

South-east Asia has continued to be an important region for migrants who move away for economic or otherwise safety reasons. In 2019, the region hosted an estimated 9.2 million transnational migrant workers, of whom 7.1 million came from the AMS themselves (ILO, 2022:23). These population flows typically follow certain corridors that correlate positively with economic growth. For instance, workers from neighbouring Cambodia, the Lao People's Democratic Republic, Myanmar and Viet Nam are more inclined to move to Thailand for work. The majority of migrant workers in Malaysia originate from Indonesia and South Asian countries, such as India, Bangladesh and Nepal. The migrant workforce of Singapore predominantly constitutes workers from Indonesia, Malaysia, the Philippines and countries in South Asia, while Brunei Darussalam is an attractive destination for Indonesians. Some of these countries have become highly dependent on migrant labour so that in 2019, of its entire population, the migrant workforce of Singapore constituted 37.1 per cent, of whom

56.1 per cent were women. Of the total population, the official percentage of migrant shares amounted to 25.5 per cent in Brunei Darussalam, 15 per cent in Malaysia and 5.2 per cent in Thailand (ASEAN, 2022). These figures, however, may not reflect the actual numbers of migrants due to irregular entry, overstaying of work permits and inconsistencies in recruitment systems.

Transnational migration is not the only form of migration observed in the region. In fact, transnational migration has been greatly outstripped by internal migration. DESA (2013) estimated that 740 million people worldwide moved internally within their countries in 2010, of whom 282 million were in Asia, including the ASEAN region. Skeldon (2015), however, argued that this figure might not accurately capture the true number of internal migrants. Certain spatial and temporal units are used to determine who counts as an internal migrant. One issue that merits particular attention in this regard is that countries in the world do not maintain uniform definitions of what constitutes internal migration, which presents a significant barrier to measuring the true extent of internal migration. In other words, the smaller spatial and temporal units applied in defining internal migration, the more short-term and shorter population movements will be identified as internal migration, potentially giving much larger figures of internal migrants.

Additionally, the ASEAN region has also witnessed conflict-induced forced migration from time to time. The independence movements that led to the birth of new States in South-east Asia after 1945 compelled a wave of forced migration, which was followed by the flight of refugees in the 1970s from Indochina³ due to episodes of violence and civil strife. Between 1975 and 1979, as many as 9,193 asylum-seekers from Indochina found themselves in Indonesia, 83,495 in Malaysia, 5,819 in the Philippines and 235,474 in Thailand (Missbach, 2013). Nevertheless, the last group of Indochina (mainly from Viet Nam) refugees were repatriated from Malaysia only in 2005 (Steenhuisen, 2005).

Around the time when the last groups of Indochina refugees were resettled and repatriated from Indonesia, Malaysia and Thailand, the region started receiving asylum-seekers mainly from the Middle Eastern countries of Afghanistan, the Islamic Republic of Iran and Iraq (Missbach, 2013). More recently, Indonesia, Malaysia and Thailand have also hosted Rohingya⁴ refugees and asylum-seekers who are persecuted and forced to flee Myanmar. UNHCR (2020) revealed that 13,745 refugees and asylum-seekers from 50 countries were registered in Indonesia, of whom Afghan nationals made up more than half. Malaysia hosted a far bigger number of refugees and asylum-seekers in 2023, numbering 181,300 (UNHCR Malaysia, n.d.a), while 95,852 asylum-seekers and refugees were registered in Thailand in 2022 (UNHCR, 2022a). Despite these notable figures, none of these major receiving countries are parties to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. Instead, they shift the responsibilities of refugee management squarely to UNHCR and resort to short-term humanitarian responses. In addition to conflict-induced forced migration, the ASEAN region – Indonesia and the Philippines in particular – is also prone to geophysical disasters as they lie along the Pacific Ring of Fire. For example, the

³ A region now comprising Cambodia, Lao People's Democratic Republic and Viet Nam.

⁴ Note that the term *Rohingya* as used to describe the Muslim peoples of Rakhine State, Myanmar, is not accepted by the Government of the Union of Myanmar, which in June 2016 issued an order directing State-owned media to use the term "Muslim community in Rakhine State".

2004 Indian Ocean earthquake resulted in a mega-tsunami, which obliterated much of the Indonesian province of Aceh and claimed the lives of hundreds of thousands of people not only in Indonesia, but also in parts of Malaysia, Myanmar, Sri Lanka, Thailand and some African countries (Dominguez, 2014).

Another population flow of increasing importance to the ASEAN is that of environmentally induced migration. In fact, the nexus between the environment, climate change and migration has gradually been pronounced in policy circles recently. In its 2022 *Migration Outlook* report, for instance, the ASEAN acknowledged that climate change could potentially (re)direct future population movements (ASEAN, 2022). Also of note is that under the chairmanship of Brunei Darussalam in 2021, ASEAN leaders issued a joint statement on climate change to the Twenty-sixth Session of the Conference of the Parties to the United Nations Framework Convention on Climate Change (also referred to as UNFCCC COP26). Various reports have highlighted that the ASEAN region is highly vulnerable to the deleterious impacts of climate change. Eckstein et al. (2021), for example, observed and concluded that from 2000 to 2019, three AMS were among the top 10 countries to have been impacted by climate change globally, with Myanmar coming in second, the Philippines in fourth and Thailand in ninth positions. In addition, the World Bank estimated that climate change could displace 216 million people by 2050, 94 million of whom would be in Asia (Clement et al., 2020). In addition, some news outlets have gone on to use such terms as “mass migration” (Vince, 2022) and “mass exodus on a biblical scale” (Carrington, 2023) to illustrate the extent of potential risks that climate change can bring about. While concerns about the imminent dangers posed by climate change are valid, de Haas (2020) cautioned against such alarmist terms, as they could potentially encourage governments to impose more restrictive policies on human mobility.

Although migration has received much policy and scholarly attention in recent decades, until recently, children were largely overlooked in migration policies and literature (Asis and Feranil, 2020). They are typically seen as peripheral actors whose involvement with the phenomenon is by means of their parents' migration. However, recent children-focused studies on migration have yielded interesting insights that correct earlier views of children solely as victims and passive social agents. For instance, Lam and Yeoh (2019) revealed the ways in which children are able to exert their agency in influencing their parents' migration decision-making, for instance, by consenting to their absence and demanding their return. Adding to this growing body of knowledge within the migration literature is the Asia Research Institute's Child Health and Migrant Parents in South-east Asia (Wave I and II), a multisited longitudinal study on left-behind children in Indonesia, the Philippines, Thailand and Viet Nam. Although results from the project are either inconclusive or mixed, Child Health and Migrant Parents in South-east Asia throws light on how migration reorganizes parental roles and affects left-behind children (Hoang et al., 2015), positive school outcomes relative to their non-migrant counterparts due to better economic resources (Asis and Ruiz-Marave, 2013), and reduced risk of stunting in cases where children are cared for by health-conscious primary caretakers (Graham and Jordan, 2014).

Other studies began to shift away from mainstream literature to understand how children engage themselves in migratory movements. West's (2008) study on independent child

migration⁵ in the greater sub-Mekong region produces interesting insights into the ways in which child migrants generate a sense of self and empowerment from migrating, and how engaging themselves in paid work, despite some degree of exploitation, is viewed as a performance of filial responsibilities. Beazley (2014) further complicates the discourse of child migration by showing children's capacity as independent agents and evidence of diverse motives that propel children to migrate for work, including but not limited to violence, neglect, poverty and a conscious response to a failing educational system. West and Beazley concur on the view that child migrants are not always necessarily passive victims of exploitation; rather, they can be actively involved in charting their own move and navigating the complex and often-dangerous migration regimes. In this regard, Capaldi (2015) points to the need for a more children-centred approach in migration studies understanding the contextualized concept of childhood and avoid undermining the best interest of the child in the name of adult-constructed notion of protection. Despite that, children in the context of migration are indeed vulnerable in many ways. A multisite study by the Human Rights Working Group (2020) in Indonesia, Myanmar and the Philippines found that left-behind children of migrant workers experienced unique barriers in accessing legal identity documents, formal education and social protection schemes in countries of origin.

2.1. Who are classified as children in the Association of Southeast Asian Nations Member States?

Before discussing migrant children in vulnerable situations in ASEAN, perhaps it is best to depart from a common understanding of what constitutes a child to begin with. For the purpose of the present report, the Convention on the Rights of the Child's definition of a child is used, in which a child means "every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier" (United Nations, 1989:2).

A careful reading of relevant child-related laws in AMS reveals some discrepancies among the Member States. A child is defined as one who is under 18 years of age in Lao People's Democratic Republic (Law on the Protection of the Rights and Interests of Children, 2007), Malaysia (Child Protection Act 2001, amended in 2017), the Philippines (Republic Act no. 7610, 1992) and Thailand (Child Protection Act 2003) – consistent with the Convention on the Rights of the Child. The same definition is adopted in the Law no. 35/2014 on Child Protection of Indonesia, which differs slightly in that it stretches the definition to cover any unborn baby developing in a woman's womb. In other AMS, however, definitions of who is considered a child vary. In Myanmar (Child Rights Law 2019) and Viet Nam (Law on Children no. 102/2016/QH13), for instance, a child is any person below the age of 16. An even lower age is used to determine who is to be identified as a child in the rest of the ASEAN countries. Singapore and Brunei Darussalam's Children and Young Persons Act consider those aged below 14 years to be children. While Cambodia is yet to develop a child-specific law, other relevant regulations on children's rights maintain that anyone younger

⁵ There is no mutually agreed definition of independent child migration. This report borrows Yaqub's definition of independent child migration as the movement of "children who have to some extent chosen to move their usual residence across a major internal or international boundary (often entailing movements from birthplace and/or country of citizenship); and live at destination without parents or legal/customary adult guardians, although possibly do so with relatives (like many adult migrants), and also possibly have traveled independently" (Yaqub, 2009:10).

than 14 years is classified as a child. These variations have a considerable bearing on matters pertaining to consensual sexual conduct, criminal responsibility, marriage, employment and – more specifically – minimum age for labour migration.

Despite the absence of a universal agreement on the minimum age of consent, defined as an age at which a child is deemed capable of consenting to marriage or sexual intercourse, the Committee on the Rights of the Child recommends that it be raised above 13 years to protect children against sexual abuse or violence (UNICEF, n.d.). In this regard, the Philippines made a commendable effort in 2022 to amend its Special Protection of Children against Abuse, Exploitation and Discrimination Act (Reuters and Yeung, 2022). The amendment has resulted in the minimum age of consent being raised from 12 to 16 years, which makes it aligned with the stipulated age of consent in relevant regulations in Brunei Darussalam (Statutory Rape Law), Malaysia (Section 375 of the Penal Code) and Singapore (Section 376A of the Penal Code 2009). It also means that Myanmar now maintains the lowest minimum age of consent (14 years, Statutory Rape Law) in the region, with the highest being the legal age of consent in Viet Nam (18 years, Criminal Code). Meanwhile, children aged 15 years are considered legally competent to consent to sexual intercourse in Cambodia (Article 239 of the Criminal Code), Indonesia (Penal Code), the Lao People's Democratic Republic (Penal Law) and Thailand (Section 277 of the Criminal Code) (Table 1).

Table 1. Minimum legal age in the Association of Southeast Asian Nations countries*

Country	Child definition	Minimum age of consent	Minimum age of criminal responsibility	Minimum age for marriage	Minimum age for employment
Brunei Darussalam	<14 years	≥16 years	≥7–17 years	Chinese Marriage Act: ≥15 for girls, no stipulation for boys; Marriage Act: ≥14 for boys and girls; Islamic Family Law: no stipulation	≥15 years
Cambodia	<14 years	≥15 years	≥14–<18 years	≥20 and ≥18 for boys and girls respectively	≥15 years
Indonesia	<18 years	≥15 years	≥12–<18 years	≥19 years	≥15 years
Lao People's Democratic Republic	<18 years	≥15 years	≥15–<18 years	≥18 years	≥14 years
Malaysia	<18 years	≥16 years	≥10–<18 years	≥18 and ≥16 for Muslim boys and girls respectively; ≥18 for others	≥15 years
Myanmar	<16 years	≥14 years	≥7–10 years	≥18 years	≥14 years
Philippines	<18 years	≥16 years	≥15–<18 years	≥18 years	≥15 years
Singapore	<14 years	≥16 years	≥7–<16 years	≥18 years	≥13 years
Thailand	<18 years	≥15 years	≥12–<18 years	≥17 years	≥15 years
Viet Nam	<16 years	≥18 years	≥14–>18 years	≥20 and ≥18 for boys and girls respectively	≥15 years

Source: Relevant AMS laws and regulations.

Note: * Interpretations of such minimum ages may differ for various child groups; that is, the minimum age that applies to child migrants may be higher than those of their citizen counterparts.

Discrepancies are also found among relevant regulations of AMS associated with the minimum legal age of criminal responsibility. While 18 years is set to be the upper range of the minimum age at which children may be held legally responsible for juvenile delinquency in Cambodia (Article 38 of the Penal Code), Indonesia (Juvenile Justice System Law no. 11/2012), the Lao People's Democratic Republic (Penal Law), Malaysia (Section 82 of the Penal Code), the Philippines (Republic Act 9344), Thailand (Juvenile Procedure Act 2010) and Viet Nam (Criminal Code), the lower age range varies – that is, 10 years in Malaysia, 12 years in Indonesia and Thailand (Section 74 of Penal Code, 29 Amendment 2022), 14 years in Viet Nam and Cambodia, and 15 years in the Lao People's Democratic Republic and the Philippines. Meanwhile, children aged as low as 7 can be brought before court in Brunei Darussalam (Penal Code), Myanmar (Child Rights Law) and Singapore (Children and Young Persons Act 1993; Penal Code 2009). These laws and regulations have important implications on the lives of migrant children in vulnerable situations since many of whom are criminalized for the irregular nature of their entry, employment and stay.

Aside from the minimum age of consent and criminal conviction, regulations in the AMS differ in terms of marriageable age. Eighteen years is considered the minimum legal age for marriage in the Lao People's Democratic Republic (Family Law), Myanmar (Customary Law), the Philippines (Family Code) and Singapore (Women Charter (Cap. 353) 2008). Through the adoption of Law no. 16/2019 amending Law no. 1/1974 on Marriage, the Government of Indonesia raised the minimum marriageable age from 16 to 19. In other countries, however, different requirements apply to girls and boys. In Cambodia (Family and Marriage Law) and Viet Nam (Family and Marriage Law), for instance, boys and girls must reach the age of 20 and 18 respectively to be able to legally marry.

Similarly, Malaysia imposes gender-specific age requirements for legal marriage. Unique to the case of Malaysia is the enforcement of a dual legal marriage system that applies to citizens depending on their religious affiliations. Under this system, Muslim boys and girls must reach 18 and 16 years of age respectively before they can legally marry, with the exception of the States of Selangor and Kedah where the minimum legal age of marriage has been raised to 18 years for both gender groups. For non-Muslim citizens, the minimum age is 18 for both boys and girls (Jamaiudin, 2023). It is worth noting that most of these laws are not applicable to migrants since they are not legally permitted to form a family or bear children. This dual system is not peculiarly Malaysian. Brunei Darussalam enforces a similar system requiring non-Muslim boys and girls to reach the age of 14 to legally marry, with parental permission under the Marriage Act of 1874. Meanwhile, the Islamic Family Law does not explicitly regulate minimum marriageable age for Muslim residents. Under the Chinese Marriage Act, no minimum age is stipulated for boys, but 15 years is set to be the minimum age for girls to legally marry. Lastly, the Family Section 1435 of the Commercial and Civil Code of Thailand maintains that a person should be 17 years of age to be legally married.

Other discrepancies are also observed in relevant laws governing employment. While 15 years is stipulated as the minimum age at which a child may initiate their entry into the workforce in Indonesia (Law no. 20/199 on Minimum Age for Admission to Employment), Malaysia (Children and Young Persons (Employment) Act 1966), Thailand (Labour Protection Act), Brunei Darussalam (Employment Order 2009), Cambodia (Labour Law), the Philippines (Republic Act no. 7610 of 1992) and Viet Nam (Labour Law), a child should

reach the age of 14 years before they can take up employment in Myanmar (Child Rights Law) and Lao People's Democratic Republic (Labour Law). Meanwhile, Singapore maintains an even lower minimum age for permitting young persons to initiate juvenile employment under its Children and Young Persons Act 1993: 13 years. The country, however, requires all prospective employers to hire only those aged 18 years and above to be employed in non-domestic sectors. An exception is made in the employment of migrant domestic workers in Singapore, for which the bar is set even much higher – from 18 years prior to 2004 to 23 years ever since. Amendment to the hiring regulation of Singapore was made to ensure that migrant domestic workers have developed some extent of maturity before commencing their employment (Singapore Ministry of Manpower, 2010). In the same vein, the Philippine Overseas Employment Administration (POEA) rolled out Advisory no. 43-2022 in 2022 to increase the minimum age for overseas deployment of domestic workers from 23 years to 24 years, aligning it with the Expanded Anti-trafficking in Persons Act of 2022 (*Malaya Business Insight*, 2022). In essence, the policies of both the Philippines and Singapore were put in place to prevent the hiring and exploitation of underage workers.

Although it might seem like an ideal measure to enhance protection, raising the minimum age exclusively for work in the domestic sphere carries its own pitfalls – and more so as discrepancies exist between migration policies in origin and destination countries. For example, unlike the minimum age requirement of 23 years in Singapore, migration laws of Indonesia and Cambodia stipulate 18 years as the minimum legal age for migrating. In many instances, such age gaps create loopholes that are readily exploited by the rapidly growing smuggling industry that profiteers from the falsification of travel documents and illicit overseas deployment. One case that merits special attention may be that of Nurhayati, an Indonesian domestic worker who was charged with the murder of her employer's intellectually disabled twelve-year-old daughter (Singapore Ministry of Manpower, 2010). Nurhayati's murder charge was eventually altered, as further examination revealed that her legal documents had been falsified, reflecting her fake age of 24 rather than her true age of 16. This case invited a lot of questions from the public as to how an underage migrant could come in and work in Singapore despite the 2004 ruling that prohibits the recruitment of domestic workers below 23 years.

The case of Nurhayati, and many other cases of similar nature, might explain one way in which children are rendered invisible in the whole migration process – that their involvement with migration can only be mediated by way of some degree of illegality. The subchapter that follows will explain in detail about how migrant children's vulnerability is more of a political construct rather than a result of a chain of unfortunate events.

2.2. How have migrant children become vulnerable?

In April 2016, the KPAI made an appeal for a total ban on the overseas deployment of female workers with under-5 children. They contended that child-rearing responsibilities should lie primarily with the mother and that maternal absence, therefore, can have potentially damaging impacts on the growth and well-being of their left-behind children. To support their argument, the Commission reasoned that the general lack of parental care and supervision in migrant households have led to a range of social problems, such as teen

pregnancy, family disintegration, highly consumptive child behaviours, juvenile delinquency and drug abuse (Andinni, 2016). While the Commission's call is remarkably gendered in its shifting of childcare burdens exclusively to women, it raises an important question that helps put things into perspective: why, unlike that of highly paid migrants or expatriates, does the migration of low-paid workers regularly entail family separation? The present subchapter departs from the view that the vulnerability of children in migrant households is far from being accidental; it is socially engineered and signals a much larger structure of inequality.

It has been explained in an earlier subchapter that some of the largest host countries in the ASEAN region have relied heavily on migrant labour, so much so that migrant workers have come to constitute a considerable share of their population. Despite their increasing dependence on migrant workforce, however, these countries resort to a carefully regulated migration system that is built on the logic of non-integration (Yeoh and Lam, 2022) to prevent certain groups of migrants from permanent settlement. Singapore, for instance, binds its migrant workers to employment contracts that are rigidly clustered under different visa regimes, which conflate skill levels, salaries and nationalities to determine which privileges are accessible to which categories of migrants (see Table 2). In this regard, the country overtly excludes migrant domestic workers from the coverage of the Employment Act, the country's main labour law that applies to other categories of foreign workers (Singapore Ministry of Manpower, n.d.). Instead, migrant domestic workers only come under the Employment of Foreign Manpower Act, which offers no recourse to permanent settlement. Under this law, prohibition is also imposed on pregnancy, family formation and family reunification – privileges that are accessible to highly paid migrants, often referred to as “expatriates”. As such, migrant domestic workers do not have any option but to stretch their households across national borders and perform their child-rearing duties transnationally. This, in many instances, results in disruptions and ruptures in family relations.

Table 2. Visa regimes in Singapore

Work pass types	Work Permit for Migrant Domestic Workers	S Pass	Employment Pass
Relevant legislation	Employment of Foreign Manpower Act	Employment Act; Employment of Foreign Manpower Act	Employment Act; Employment of Foreign Manpower Act
Minimum salary	No minimum salary requirement	SGD 3 000–SGD 4 650 (financial services: SGD 3 500–SGD 5 650)	SGD 5 000–SGD 10 500 (financial services: SGD 5 500–SGD 11 500)
Highlights	<ul style="list-style-type: none"> • No pregnancy • No HIV/AIDS • No marriage with locals without the consent of the Ministry of Manpower • No pathways to permanent residency or citizenship • No family reunification 	<ul style="list-style-type: none"> • No restrictions on pregnancy • No restrictions on HIV/AIDS • No restrictions on marriage • Available pathways to permanent residency and citizenship • Available pathway to family reunification (through dependant's pass scheme) 	<ul style="list-style-type: none"> • No restrictions on pregnancy • No restrictions on HIV/AIDS • No restrictions on marriage • Available pathways to permanent residency and citizenship • Available pathway to family reunification (through dependant's pass scheme)

Source: Singapore Ministry of Manpower, 2012.

Note: USD 1 = SGD 1.301 in September 2012 (Exchange-Rates.org, [Singapore dollar \(SGD\) to US dollar \(USD\) exchange rate history for September 1, 2012](#) (accessed 9 October 2024)).

This specific mode of governing low-paid migrant labour is not peculiarly Singaporean. In a similar fashion, Malaysia and Thailand rely on a migration regime that restricts migrant workers' access to permanency. Migrant workers in low-paid sectors – such as manufacturing, construction, agriculture, plantation and services – are only entitled to an employment period of up to 10 years, after which repatriation must be performed by their employers (Immigration Department of Malaysia, n.d.). In addition, they are subject to regular health screening that includes pregnancy and HIV testing, which may result in immediate deportation if migrant workers are discovered to be pregnant or have contracted HIV (Loganathan et al., 2020a). Equally important to note is that the Immigration Act of Malaysia constitutes a form of reproductive control, as it imposes a ban on marriage and family reunification among low-paid migrant workers. In other words, pathways to family formation and reunification as basic human rights are either non-existent or can otherwise be accessed by means of irregular channels. Such irregularity has serious implications on children's access to legal identity and other basic human rights, as the later chapters in the report show.

Destination countries' discriminatory migration regimes have a considerable bearing on migration policies in countries of origin. For example, pregnancy testing is made a mandatory part of the pre-deployment process in the ASEAN region, with Senator Raffy Tulfo in the Philippines even recommending that pregnancy tests be performed one day prior to migrants' departure to prevent “unwanted” consequences (Abasola, 2022). In Indonesia, the imposition of this no-pregnancy rule has even led to frequent instances of forced contraception among prospective migrant domestic workers to control migrants' bodies and reproduction (Asia-Pacific Forum on Women, Law and Development, n.d.). Those who have children are given no choice but to leave them behind. Thus, migrant parents must plan out alternative care arrangements and reconstruct parenting roles during their overseas placement. In other words, the whole migration regime is designed to render low-paid migrant labour temporary forever, consequently impeding child migration. Under this particular set-up, children fall through the cracks in the migration system: they are either left behind and remain relatively invisible in the discourse of migration, or presented with the option to engage in migration by means of some degree of irregularity.

Such invisibility and irregularity have far-reaching consequences on children's access to basic rights. Petcharamesree (2023) observed that due to the irregular nature of their entry and stay, migrant children in vulnerable situations in the ASEAN region face significant barriers to birth registration and birth certificates, placing them at risk of potential statelessness. The non-possession of legal identity documents also leads to their eventual exclusion from social protection schemes and formal education entitlements. The section below situates migrant children in vulnerable situations in the wider context of protection mechanisms within ASEAN.

2.3. Migrant children in vulnerable situations in the agenda of the Association of Southeast Asian Nations

Although migration has a lengthy history in the ASEAN, regional cooperation frameworks on migration did not materialize until quite recently (see Table 3). The earliest commitments of the ASEAN to the protection of migrants can be traced back to the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers in 2004, or the Cebu Declaration as it is better known. These commitments were later renewed in 2017 with the adoption of the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers (also referred to as the ASEAN Consensus). Despite their non-binding nature, these documents delineate issues of common concern and set forth minimum standards of protection. The documents, however, do not make any mention of the rights of children in the context of migration, which is inconsistent with the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. It is important to note that only the Philippines and Indonesia have ratified the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families among the AMS. Others – countries of destination in ASEAN in particular – have been hesitant to bind themselves to the international treaty, presenting a major obstacle to ensuring protection throughout the entirety of migration cycles. It is in the absence of such common international commitments on migration that the Cebu Declaration and ASEAN Consensus occupy a position of much importance, creating a regional framework for collective effort regardless of its shortcomings (that is, failure to incorporate the rights of children in the context of migration).

In stark contrast, AMS demonstrate a high degree of acceptance of measures aiming to enhance children's well-being. Indonesia, the Philippines and Viet Nam were the earliest in the ASEAN to ratify the Convention on the Rights of the Child (1990). This was immediately followed by the Lao People's Democratic Republic and Myanmar in 1991, Cambodia and Thailand in 1992 and Brunei Darussalam, Malaysia and Singapore in 1995 (OHCHR, n.d.a). Given such a commonality, it did not take long for the AMS to come together and deliberate over children's issues in the region. In 2001, in fact, a collective decision was made to adopt the Declaration on the Commitments for Children in ASEAN, initiating a regional framework of cooperation for children's welfare. The Declaration also makes reference to specific groups of vulnerable children, including indigenous children, homeless children, children affected by natural calamities, children with disabilities and children living with HIV/AIDS. However, no mention is made of migration and its impacts on the well-being of children.

Table 3. Association of Southeast Asian Nations commitments related to migration and children

Year	Association of Southeast Asian Nations document
2001	Declaration on the Commitments for Children in ASEAN
2004	ASEAN Declaration Against Trafficking in Persons Particularly Women and Children (adopted in 2004)
2007	ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers
2011	ASEAN Leaders' Joint Statement in Enhancing Cooperation against Trafficking in Persons in Southeast Asia
2013	The Declaration on the Elimination of Violence against Women and Elimination of Violence against Children in ASEAN
2013	ASEAN Declaration on Strengthening Social Protection
2015	ASEAN Convention against Trafficking in Persons, Especially Women and Children
2016	ASEAN Regional Plan of Action on the Elimination of Violence against Children (ASEAN RPA on EVAC)
2016	ASEAN Declaration on Strengthening Education for Out-of-school Children and Youth
2017	ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers
2019	ASEAN Declaration on the Rights of Children in the Context of Migration (ACM)
2019	Joint Statement on Reaffirmation of Commitment to Advancing the Rights of the Child in ASEAN
2020	ASEAN Roadmap on the Elimination of the Worst Forms of Child Labour by 2025
2021	Regional Plan of Action on Implementing the ASEAN Declaration on the Rights of Children in the Context of Migration (RPA CCM)
2023	ASEAN Declaration on the Protection of Migrant Workers and Family Members in Crisis Situations and Its Guidelines

Source: ASEAN, n.d.

Although children and migration have largely been discussed in separate documents and platforms, attempts to conflate migration and child-related issues have been observed in the ASEAN since the early 2000s. For example, the ASEAN Declaration Against Trafficking in Persons Particularly Women and Children (adopted in 2004) draws attention to the socioeconomic drivers of migration that compel children to undertake migration and expose them to risks of TIP. These commitments were reaffirmed by the adoption of the ASEAN Leaders' Joint Statement in Enhancing Cooperation against Trafficking in Persons in Southeast Asia in 2011. So much attention was indeed given to issues of TIP that in 2015, the AMS signed onto an agreement on combating it. The agreement, known as the 2015 ASEAN Convention against Trafficking in Persons, Especially Women and Children, is one of very few legally binding documents on which the Member States have collectively agreed thus far.

While aiming to strengthen protection of vulnerable populations especially women and children, the disproportionate attention of the ASEAN on issues of TIP has also meant migration being increasingly framed as a security issue. This is problematic, and more so since the regional association does not have any framework with which to address issues of forced migration. This is why there are frequent instances of forced migrants being wrongly identified as undocumented (economic) migrants and turned away. In 2022, Malaysia deported as many as 2,000 Myanmar asylum-seekers – including children – without any risk assessment (Head, 2022). Similar actions have been taken by Thailand, which deported 1,300 Rohingya refugees to Myanmar in 2014 (Campbell, 2014), 109 Uyghur refugees to China

in 2015 (Doksone, 2015), and more recently, 3 refugees to Cambodia in 2021 (UNHCR, 2021a). Indonesia also received public criticisms following the deportation to Somalia of a 35-year-old pregnant refugee in 2022, despite concerns about her health issues and history of sexual violence (Amnesty International, 2022).

Despite the absence of a specific regional cooperation framework to tackle issues of forced migration, commitments to the protection of asylum-seeking and internally displaced children are reflected in various ASEAN documents. The earliest of such commendable commitments can be traced back to 2013 when the ASEAN Heads of State rolled out the Declaration on the Elimination of Violence against Women and Elimination of Violence against Children in ASEAN, which makes mention of the unique challenges faced by children in refugee camps. Decision was made to mandate the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (also known as ACWC) to spearhead the translation of such commitments into concrete, actionable plans. The eventual launch of these plans of action⁶ in 2016 was momentous since it marked the beginning of a more substantive regional engagement on what would otherwise have been a difficult undertaking: combining issues of children and (forced) migration. The Commission's heavy involvement with this advocacy led to the adoption of yet another regional document with a much sharper focus on the nexus between children and migration: the 2019 ACM. This Declaration has been further translated into the Regional Plan of Action on Implementing the ASEAN Declaration on the Rights of Children in the Context of Migration (RPA CCM) – to be implemented in each AMS.

Despite often being treated with some degree of scepticism due to their non-binding status, ACM and its regional plans of action reflect the openness of the AMS to a gradual insertion of the norms and standards encapsulated in international treaties, to which they would otherwise likely refuse to bind themselves. The regional plans of action on the ACM, for instance, contain many of the standards stipulated in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Global Compact for Safe, Orderly and Regular Migration and the Global Compact on Refugees. These include, among others, the right to legal identity documents (Focus area 1), access to justice (Focus area 2), social protection (Focus area 2), health care (Focus area 2) and formal education (Focus area 2) for all children in the context of migration (ASEAN, 2021). Therefore, the ACM and its regional action plans lay out much-needed guidance on protecting the rights of children in the context of migration in the ASEAN region.

The ACM is further underpinned by earlier commitments, such as the ASEAN Declaration on Strengthening Social Protection in 2013 and the ASEAN Declaration on Strengthening Education for Out-of-school Children and Youth in 2016, which recognize migration and statelessness as a serious impediment to the enjoyment of the right to social protection and education, respectively. The chapter that follows will throw light on how regional commitments are implemented at the national level, drawing attention specifically on the experiences of Indonesia, the Lao People's Democratic Republic, Malaysia and Thailand. Issues of access to legal identity, social protection and formal education will assume a central role in these analyses, although attempts will be made to incorporate other issues of particular relevance to migrant children in vulnerable situations.

⁶ ASEAN Regional Plan of Action on the Elimination of Violence against Children (ASEAN RPA on EVAC).

Chapter 3. Child protection systems for migrant children in vulnerable situations in selected countries

3.1. Indonesia

Labour migration has been a crucial livelihood strategy for many Indonesian families. In 2021, at least 3.2 million Indonesian nationals were working overseas (Bank Indonesia, n.d.). Data from the National Board for the Protection of Indonesian Migrant Workers (2023) or BP2MI show that the year 2022 saw the overseas deployment of 200,761 Indonesian workers to various destinations in Asia and the Middle East, of whom women comprised 61 per cent (122,147) and men, 39 per cent (78,614). Among these migrants, 83,635 (42%) were married, 25,790 (13%) were divorced, and 91,335 (45%) were single (ibid.). This is the closest we are to estimating the number of children left behind by their migrant parents since no official data collection on this specific category of children is undertaken by the Government of Indonesia. In 2016, however, the KPAI claimed that at least 11.2 million children could have stayed behind as their parents migrated (Setyawan, 2016).

While no official figures exist to suggest the number of left-behind children of transnational migrants, the National Socioeconomic Survey conducted by the Indonesian Bureau of Statistics in 2019 revealed some interesting findings. The survey demonstrated that 13.3 per cent (36 million) of 269.6 million population of Indonesia in 2019 were identified as internal migrants, of whom around 8 million were children, aged between 5 and 19 years (Indonesian Bureau of Statistics, 2020). Rural-to-urban migration featured prominently in the internal migration of Indonesia, with urban destinations on the islands of Java, Sumatra and Papua being the most popular. Interestingly, an overwhelming 60 per cent of internal migrants in the province of West Nusa Tenggara were reported to have had a history of overseas employment (ibid.), signalling close linkages between international and internal migrations.

Some data is also available to elucidate the conditions of child refugees in Indonesia. In 2021, children accounted for 27 per cent (3,595) of all 13,273 refugees registered with the UNHCR. Among the 3,595 registered child refugees, 75 were seeking asylum in absence of their parents or adult relatives (unaccompanied child refugees), and 35 were separated from their parents (UNHCR, 2021b). The same report shows that Afghan refugees constituted the striking majority of all refugees registered in the country (56%), followed by Somali refugees, whose number stood at 1,364 individuals (10%). Equally important to note is that male refugees significantly outnumbered their female counterparts, accounting for 76 per cent of all refugees (ibid.).

Despite the availability of data to explain some forms of migration, data collection in Indonesia remains largely elusive and fragmented (United Nations, 2017). The absence of robust data

collection on migrant children in vulnerable situations has important repercussions for their protection. The following subchapters will present evidence collected from the present study to throw light on accessibility of protection systems for different groups of migrant children in vulnerable situations in Indonesia.

3.1.1. Right to legal identity

Commitments to the fulfilment of legal identity for children in Indonesia are reflected in several laws and regulations. For instance, Article 27 of Law no. 35/2014 on Child Protection stipulates that children reserve the right to legal identity at birth (that is, a birth certificate). The problem with this Law, however, is that it expressly rules out non-citizens from its coverage, which is inconsistent with the standards of the Convention on the Rights of the Child. Other commitments of Indonesia to ensuring legal identity for children can also be seen in Articles 22 and 25 of Law no. 8/2016 on Persons with Disabilities, in recognition of their unique disability-related barriers, as well as the Regulation of the Minister of Home Affairs no. 2/2016 on Child Identity Cards. Notable in the Regulation is its extent of coverage. Unlike most other legal frameworks in Indonesia, this Regulation sets out procedures on the issuance of child identity cards⁷ for both citizens and non-citizens, including overseas-born Indonesian child citizens who relocate to their parents' home country. Notably, the validity of non-citizen children's identity cards is reliant upon their parents' residence permits. In other words, the expiration of parents' residence permits results in automatic revocation of their children's identity cards.

Despite these commitments, migration-related barriers to obtaining legal identity documents have not received much policy attention. In fact, the country's main law on the protection of its migrant workers, Law no. 18/2017 on the Protection of Indonesian Migrant Workers, does not make any mention of the right to legal identity for left-behind children, nor does it consider migration as a major impediment to securing legal identity for left-behind children. Similarly, Presidential Regulation no. 125/2016 on the Treatment of Refugees and Asylum-seekers, the first legal framework of Indonesia on the management of refugees and asylum-seekers, does not regulate issues pertaining to the right to legal identity for refugee and asylum-seeking children in Indonesia. The case of Nia will show how certain forms of migration can complicate the process of securing legal identity documents for children.

⁷ Child identity cards, or *Kartu Identitas Anak (KIA)*, are legal identity documents for children below 17 years, serving the same purpose as regular identity cards conferred on those above 17 years of age.

Case study 1. Nia, a returned migrant in Lombok, Indonesia^a

I arrived in Jeddah in 2006 and worked for my employer for two years. But at the end of the second year, they refused to renew my visa because of a small issue and forced me to go home. I refused to go. I had taken a loan to migrate and had to pay it off. I finally ran away without bringing any of my documents with me. They kept them. I spent the next 10 years in hiding, working from home to home. Life was so uncertain, and I was very fearful at the beginning.

After I left my employer's place, I rented a small lodging where I met others like me. It looked more like a dorm. I knew the manager of the dorm, and she helped me get a job. She had connections with local employers and would phone them to offer our services. Then these employers would come and fetch us. We paid SAR 100 (around USD 26) monthly for the lodging, but it was all right for me. Under this arrangement, I could make SAR 1,000 (around USD 266) per month after all. It was much higher than my previous salary of SAR 600. Even after I paid my housing bill, I could still save SAR 900 (around USD 239) for myself. They would prefer hiring undocumented workers like us because they did not have to pay anything. If I remember correctly, they would have to pay SAR 14,000 (around USD 3,732) to hire a worker legally back in 2010. Hiring us would save them a lot of money. Although I started work for a new employer and lived with them, I would still keep my lodging. It was like a place of refuge to me. When my employer heard news about police raids, they would ask me to hide in the dorm. I was safe there.

In 2016, I met the man of my life. He was a local – a Saudi citizen. We fell in love and decided to marry the next year. Our marriage was not registered, however. It was a religious marriage. We asked a few Indonesian pilgrims who were performing the Hajj to witness our marriage. The thing is that I did not know these people personally and lost contact with them, and the whole wedding ceremony was not photographed. I was told by my husband that photography was considered *haram* in the local culture. This means that I did not have any evidence of my wedding.

A few months later, I got pregnant, but my husband did not want to take on the responsibility. He said my pregnancy would cause him problems because our marriage was not registered, and we did not maintain any evidence of it. He was fearful that our relationship would be considered a *zina*, an extramarital relationship. He wanted me to go back to Indonesia and deliver my baby here. After giving it much thought, I presented myself to the Saudi police. I was put in jail for a few weeks, and then they contacted the Indonesian Embassy to arrange for my repatriation.

I arrived in Lombok in 2018 and delivered my baby at a local health centre shortly after arriving. I had a lot of trouble getting a birth certificate for my baby. The village office refused to help with the issuance of my baby's birth certificate because I did not have a marriage certificate. They tossed me around. They told me to go to this office, to the court and all that. How would I afford that? I did not even have a stable income. In 2022, my younger sister stepped in to offer some help. She paid an intermediary a large amount of money just so my child could get her birth certificate. She needs it for school. She is going to school soon.^b

^a Pseudonym. All names mentioned in the report are anonymized to protect informants' privacy.

^b Based on the account shared by the informant in Lombok, West Nusa Tenggara (Indonesia), on 14 May 2023.

The case of Nia highlights a mix of barriers resulting in inaccessibility of birth certificates. Having incurred a debt to finance her recruitment to begin with, Nia considered her employer's reluctance to extend her visa as a direct threat to her livelihood and saw the opportunity to escape as a logical response. This decision, however, had important implications on the subsequent chapter of her life as she fell out of her regular status and was thus unable to marry legally. The non-registration of her marriage meant that she was not in possession of a marriage certificate, making it difficult to establish the legal legitimacy of her child's birth and obtain a birth certificate for her daughter. This issue was compounded by her inability to produce evidence of her wedding. Of important note is that the highly complicated

bureaucracy and lack of support from local authorities have further added to the struggle in securing a birth certificate, creating loopholes that are easily exploited by unscrupulous intermediaries whose business thrives on such bureaucratic mishaps.

Nia's case is not uncommon. Evidence gathered through informant interviews in the present study reveals that the difficulty involved in securing birth certificates is often associated with prior instances of being undocumented as a result of non-registration of marriage or *nikah siri*. This issue, however, is not unique to migrant households. *Nikah siri* is widely practised among the Indonesian Muslim communities due to the relative ease that it confers on cases that would otherwise be difficult to navigate through the regular system, such as extramarital pregnancies among underage girls, intentions to initiate polygamous families and lack of legal documents (Adillah, 2011). *Nikah sirih* is so common that a study involving 111 villages in 17 provinces has found that 25 per cent of marriages in Indonesia were unregistered (*Jakarta Post*, 2017), placing an obstacle to obtaining birth certificates.

The Indonesia Ministry of Women Empowerment and Child Protection (2023) discovered that in 2022, 11.58 per cent of citizens aged 0–17 years did not have their birth certificates. There is a considerable discrepancy between rural and urban regions: while 9.09 per cent of citizens in urban areas did not have birth certificates in 2022, 14.69 per cent of citizens lack birth certificates in rural areas. Discrepancies also existed between eastern and western regions. Provinces with the highest coverage of birth certificates lie in the west (98.14% in Yogyakarta, 96.93% in Jakarta and 96.05% in Bangka Belitung), while three provinces with the lowest coverage are all located in the east (45.19% in Papua, 65.66% in East Nusa Tenggara and 74.74% in West Papua).

To address non-registration of marriage especially in rural areas, some attempts have been made by the Government of Indonesia, notably the adoption of the High Court Regulation no. 1/2015 aiming to formalize unregistered marriages and facilitate the issuance of marriage certificates, marriage books and birth certificates. In recognition of financial, physical and procedural barriers hindering registration of marriage, the Regulation mandates the local State/religious court, civil registry office and office for religious affairs to provide civil registration services at the local level. However, this study found that the complexity of this supposedly simple procedure is rather difficult to navigate, as applicants are required to procure a letter of reference from a local religious office, pay for certain components of the services and provide copies of identity and family cards, as well as certificates of death/divorce where applicable. The additional costs of transportation and the requirement of physical presence also discourage applicants from signing up. This is especially the case among migrant-headed households, as they are most likely away for work, either on another island or overseas. Given the uneven infrastructure development of Indonesia, travelling to remote parts of the country may be more expensive and time-consuming.

Although non-possession of birth certificates does not solely affect migrant households, evidence from this study brings to the fore several unique challenges associated with migration. First, there are instances in which returned migrants are compelled to remigrate immediately after childbirth, leaving their children in the care of grandparents who are of an advanced age and oblivious to the significance of legal identity documents. Left-behind children in this situation tend to begin processing their birth certificates much

later as they prepare for admission into kindergarten or primary school, for which identity documents are necessary. Some, however, continue their life into adulthood without any legal documentation altogether. The study has identified that cases of this nature are more often found among left-behind children with disabilities who live in rural areas where local schools are not disability-friendly. Concurrently, special-needs schools are usually located in far distances, in which case the costs of transportation incurred would be too much to bear. As the story of Lia⁸ illustrates, restricted access to education for left-behind children with disabilities can mean that there is little encouragement for processing legal identity documents in the first place.

Case study 2. Lia, 24-year-old left-behind child living with a disability in Lombok, Indonesia

As you can see, I do not have legs. I have been this way since birth. People told me that I was born here at home with the help of a *dukun* (traditional birth attendant). After I was born, my father and mother returned to Saudi Arabia to work and provide for us at home. My grandma stepped in to look after me. As I grew older, I wanted to be like my friends. I wanted to go to school, but I was unable to move independently. I did not have a wheelchair; we were too poor to afford a wheelchair. At the same time, my grandma's body was too weak to lift me and take me to school, so we finally gave up. I did not go to school like everybody else – at all. I did not even know what it was like to go to kindergarten. But my parents arranged private tutoring sessions for me just so I could read and count. They invited university students and paid them a meagre salary to teach me certain subjects. I did not have a birth certificate until very recently. I am 24 years old now, and I lived 22 years of my life without a birth certificate [*chuckles*]. My grandma would always say, “For what? I do not have one, but I am fine.” But in 2022, I heard about this *pra-kerja* (pre-employment) programme^a from the Government, which required an Indonesia identity card (also referred to as *Kartu Tanda Penduduk* or *KTP*) for registration. Only then did I realize the importance of legal documents. Finally, my parents paid somebody, one of these neighbours, to have my birth certificate and identity card issued so I could benefit from the programme.^b

^a Government-led skills training programme for job-seekers that includes financial assistance.

^b Based on an interview with Lia (anonymized) in Lombok, West Nusa Tenggara (Indonesia) on 14 May 2023.

Lia's case illustrates a number of issues that complicate the process of securing her legal identity documents. Immediately clear is her total absence of school attendance due to a lack of government intervention to ensure the fulfilment of the basic right to education. Lia's home-based, independent learning made her primary caretaker assume that no legal documents would be necessary – a view based primarily on the latter's own experience of being undocumented. This shows the need for raising caretakers' awareness of the importance of legal identity. In addition, the case of Lia is similar to that of Nia in which both resorted to private intermediaries to take care of their legal documentation.

Another issue emerging from Lia's story that deserves particular attention is that of home birth. Interviews with various stakeholders in this study reveal that among migrant households, pregnancies conceived out of wedlock tend to be concealed from public view. As a result, some migrant women decline to deliver their babies at health facilities and instead opt for home birth. The problem with home birth, however, is not only that it runs the risk of life-threatening birth-related complications, but it also places a unique barrier to the children's legal documentation. It is especially the case when home birth is carried out

⁸ Pseudonym.

without the presence of a village representative or a medical professional who is authorized to issue a birth statement, a mandatory component for issuance of birth certificates.

The Government of Indonesia has taken action to address issues of irregularity among children of unmarried women. For instance, Regulation of the Minister of Home Affairs no. 9/2016 recognizes children's right to legal identity regardless of their parents' marriage status. Under this regulation, children born to unmarried mothers or unregistered marriages are entitled to a birth certificate although it will only reflect their biological mother's name. However, this study has found that such birth certificates have placed children at a disadvantage, as they will have significant barriers in securing their future employment in public service due to the stigma attached to such birth certificates. Equally important to note is that this Regulation has a negative impact on households headed by single fathers, as they cannot have their names on their children's birth certificates. As a result, many do not have any option but to have their children's names legally incorporated into their next-of-kin's family certificates to secure birth certificates for their children. Such cases often lead to conflicts associated with inheritance in the future.⁹

Barriers to legal identity are also observed among refugee and asylum-seeking children in Indonesia. Although the Ministry of Home Affairs has announced that refugee and asylum-seeking children are able to secure birth certificates from the Civil Registry Office, only a handful of child refugees and asylum-seekers have obtained such documents due to a lack of dissemination of information (UNHCR, 2022b).

3.1.2. Right to education

The right to education in Indonesia is enshrined in Law no. 20/2003 on the National Education System, which ensures children's access to both formal and informal education. The Law is further translated into various implementing regulations, including Government Regulation no. 47/2008 on Mandatory Education. This Regulation specifies that compulsory education of up to nine years must be provided to children, for which all fees for tuition must be borne by the central and/or local government. Under the National Medium-term Development Plan of 2015–2019, the time frame for compulsory schooling is expanded to cover a minimum duration of 12 years (six years for primary school and three years for each of junior high and senior high schools). Owing to limited legal basis for enforcement, however, implementation of this plan lacks uniformity and relies heavily on the political will of each local government (Constitutional Court of the Republic of Indonesia, 2015).

In recent years, there have been some promising development in the policy sphere to widen access to education. In 2020, for instance, the Ministry of Education, Culture, Research and Technology (formerly Ministry of Education and Culture) introduced Regulation no. 10/2020 called Program Indonesia Pintar (literally: Smart Indonesia Programme) to extend financial assistance for citizens aged 6–21 years in support of the Government's 12-year schooling programme. Among those given utmost priority are children from low-income backgrounds, orphaned/abandoned children, conflict-affected children, children displaced by environmental disasters and children with disabilities. The commitment to providing 12 years

⁹ Based on an interview with CSO advocating for children's legal rights in East Java, 15 May 2023.

of formal education is further supported by the Regulation of the Minister of Education, Culture, Research and Technology no. 2/2022, which outlines procedures for distributing financial assistance to schools. In practice, however, undocumented children cannot avail of these programmes as any award of financial assistance is contingent on the ability to present legal documents, such as family certificates, parents' identity cards and birth certificates. It is important to note that these programmes are not accessible to non-citizens, leaving refugee and asylum-seeking children with little chance of formal education.

The right to education is largely inaccessible for the refugee communities of Indonesia. The country has not signed on to the 1951 Convention Relating to the Status of Refugees, which severely limits asylum-seekers and refugees' right to education,¹⁰ among others. Nonetheless, some initiatives have been put in place by the national government to enable refugee and asylum-seeking children to access education. In 2019, for instance, the Ministry of Education, Culture, Research and Technology (Kemendikbudristek) distributed Circular Letter no. 75253/A.A4/HK/2019, instructing nine governors across the country to allow school-age refugees and asylum-seekers admission to formal education institutions (KPAI, 2022). Although this policy initiative deserves commendation, several barriers that hinder school attendance among refugees and asylum-seekers remain unaddressed. First, the Circular makes it clear that child refugees are not entitled to State funding, placing financial burdens squarely on refugee families who are forbidden to take up employment. They may, however, receive funding from sponsoring bodies. Secondly, the Circular emphasizes that priority should be given to Indonesian nationals. Lastly, interviews conducted for this study identified instances of bullying in school due to limited language support for child refugees, which often results in children withdrawing themselves from school or unable to access formal schooling to begin with. Given these barriers, only 40 per cent of all child refugees/asylum-seekers attended formal education institutions across the country in 2019 (*ibid.*).

The commitment to protecting refugee children's right to education in Indonesia was renewed in 2022 through the issuance of Circular no. 30546/A.A5/HK.01.00/2022 by the Ministry of Education, Culture, Research and Technology. Unlike the 2019 circular, the 2022 circular was addressed to a greater number of administrative regions, totalling 50 governors, mayors and heads of education departments at the regency level across Indonesia (Indonesia Ministry of Education, Culture, Research and Technology, 2022). What stands out in the 2022 circular is its exclusion of areas with some of the biggest numbers of refugees/asylum-seekers from its coverage, including Bali, Aceh, Depok, Bekasi and Bogor. This might explain one reason behind school absence among some 1,600 child refugees and asylum-seekers in 2022, as documented by the UNHCR (2022b). In response to limited formal education opportunities, a range of institutions – such as the UNHCR, IOM and refugee-led organizations – set up various education initiatives. These initiatives are often met with challenges, however. A story shared by one informant shines light on the difficulty involved in instituting learning initiatives:

¹⁰ Article 22 of the 1951 Convention Relating to the Status of Refugees stipulates that Member States are to provide the same treatment to refugees as is given to citizens in relation to primary education. In terms of education other than primary schooling, Member States are to ensure refugees' access to studies, acknowledge foreign school certificates, allow for remission of fees and charges, and award scholarships.

Case study 3. Rofi, founder of a refugee-led educational centre, Bogor, Indonesia^a

When we were about to initiate this educational centre, a few *kepala RT*^b and *kepala RW*^c came over. They asked, “What are you doing here?” and I replied, “We just want to open an educational centre for refugee kids.” They continued, “You are not allowed to do that here without permission.” They explained that I had to secure approvals from the local authorities, from *kepala RT*, *kepala RW*, the youth groups and neighbours. I agreed and asked for further information on how to proceed with the procedure. But then they remarked, “Just give us some money. I will issue a permit for you.” But the problem is that they did not want to produce a receipt for me. I thought to myself, “If I do not have any evidence of payment, tomorrow another person will come and force me to pay.” That is why I refused to pay in the beginning.

I tried contacting a local organization for help. They agreed and came here to discuss with the local authorities. But when they left, the local authorities expressed their anger to me. They said, “We are the ones who make decisions in this area. When I talk to you, do not drag other people into our business.” It seems that the rules are set by the local authorities here; nobody from Jakarta would come to help us out. After much deliberation, my colleagues and I agreed to pay them. We paid around IDR 15,000,000 to get their stamps and signatures and to have a permit issued for our educational centre. We finally got it, and we displayed the permit on the wall outside. We have spent so much money these past few months, but I am thankful for the generous support of some donors, including church groups, who lift some of our burdens.

^a The real names of both informants and their educational centre are anonymized to respect their privacy and protect their safety. The case study is based on an interview conducted on 18 May 2023 in Bogor, West Java, Indonesia.

^b Head of neighbourhood.

^c Head of an administrative division covering several neighbourhoods.

Aside from highlighting the flawed bureaucratic system, the case of Rofi also shows one way in which refugees’ vulnerability makes them particularly susceptible to extortion. Notably, the local authorities’ abuse of power suggests poor oversight from higher-level institutions, for which bureaucratic reforms should be introduced. In addition, the centre’s reliance on external funding also underscores the need for a more sustainable financing mechanism, which Circular no. 30546/A.A5/HK.01.00/2022 of the Ministry of Education, Culture, Research and Technology fails to address, to ensure that child refugees/asylum-seekers can access formal education. Despite the bureaucratic hurdles, Rofi’s story also brings to our attention the role of religious groups in rendering assistance to widen child refugees’ access to education.

Religious groups have indeed assumed an increasingly central role in the protection of children in the context of migration. This study has observed that in Muslim-majority areas where outmigration becomes a common feature of livelihood strategies, many migrant parents choose to leave their children in the care of Islamic boarding schools, or *pesantren*, as they are better known locally. Preferred not least for its affordability, *pesantren* is also highly regarded for offering an exceptional mix of formal schooling, religious training, shared residence, and thus, collective upbringing, which are believed to be important ingredients for absorbing the shocks of parental migration. In a number of locales, civil society groups have also initiated partnerships with notable religious figures from Islamic boarding schools to support campaigns against child marriage, a common issue among left-behind children. Others, such as Tanoker¹¹ in East Java, have engaged prominent Muslim figures in an attempt

¹¹ A community group advocating for the rights of left-behind children in East Java, Indonesia (see <https://tanoker.org/>).

to redefine the eligibility criteria for receiving Zakat¹² funds and incorporate parental migration as an additional criterion. As a result, many left-behind children begin receiving financial assistance from religious committees responsible for the collection and distribution of Zakat funds. It is to be noted, however, that such assistance tends to be charity-based and therefore its sustainability is put into doubt. Lastly, although Islamic boarding schools are often likened to a safe haven for left-behind children, this study has found cases of molestation in places where government oversight is either poor or dysfunctional. One of such cases that has caused an uproar in recent months concerns an Islamic boarding school in East Lombok, Indonesia, where a total of 41 students – many of whom are children of migrant workers – were molested between 2012 and 2023 (detikBali, 2023).

Another issue that recurred throughout the interviews conducted for this study concerns school dropouts. Although no official figures exist to suggest the prevalence of school dropouts among left-behind children, interviews conducted with local CSOs reveal that it is most often found in households where remittance flow is obstructed by prolonged non-payment of wages or periods of salary deduction experienced by migrant parents.¹³ Additionally, school dropouts are also common in cases of premarital teen pregnancy, which are seen as damaging school reputation and thus school girls are forced to withdraw. Interviews conducted with local NGOs for this study reveal that teen pregnancy may occur in migrant households – particularly in households wherein both parents work overseas – due to a lack of parental supervision. Nonetheless, this study has identified laudable initiatives by local governments. In East Lombok, for instance, at least six high schools are appointed by the regency government to admit pregnant students or those wishing to continue their schooling upon delivering their babies.

3.1.3. Right to social protection

There are a number of legal frameworks related to the right to social protection for migrant children in vulnerable situations in Indonesia. One of the most recent and pertinent is the Ministerial Regulation no. 4/2023 on Social Security for Indonesian Migrant Workers, issued by the Ministry of Manpower in early 2023. Broadly speaking, the Regulation covers two mandatory and one optional social protection schemes for Indonesian migrant workers, including workplace injury insurance and life insurance, as well as provident fund, respectively. Under the workplace injury and life insurance schemes, benefits include – among others – scholarships for a maximum of two children, defined in the regulation as those aged below 23 years and are either biological children, stepchildren or legally adopted children of the insured. These scholarships consist of annual financial contribution of IDR 1,500,000/person to fund kindergarten fees for up to two years, IDR 1,500,000/year/person for up to six years of primary education, IDR 2,000,000/year/person for up to three years of junior high school education, IDR 3,000,000/year/person for up to three years of senior high school education and IDR 12,000,000/year/person for up to four years of higher education (bachelor's level or its equivalent).¹⁴

¹² Zakat is an obligatory form of charity in Islam, where Muslims give a portion of their wealth to support the less fortunate and promote social justice.

¹³ Based on interviews with CSOs in Lombok and East Java between 14 and 16 May 2023.

¹⁴ Bank Indonesia, [Kurs Transaksi Bank Indonesia](#) [Exchange rates of Bank of Indonesia] (accessed 1 July 2023).

However, several issues with this regulation are worth noting. Firstly, the coverage of benefits for left-behind children's higher education is a year shorter than that for other beneficiaries of non-migrant households. Unlike the regulation for migrant workers, Article 107 of the Ministerial Regulation no. 5/2021 stipulates that child beneficiaries are entitled to scholarships to fund up to five years of higher education. Second, the workplace injury scheme regulates that scholarships are only tenable for cases of workplace-related death. Under certain circumstances, however, it may be difficult to establish such causal relationships; post-migration deaths may be a result of long-term impacts of work-related conditions, such as prolonged exposure to dangerous chemicals (ILO, 2021a) and violation of the right to decent food (Supriyanto, 2013).

Aside from the previously mentioned schemes, there are a wide range of other social security schemes applicable to the general public, including the following: (a) Disability Card (Regulation of the Minister of Social Affairs no. 2/2021) or identity cards issued to persons with disabilities as part of the data-collection effort to ensure their access to education, employment and civil rights; (b) Program Keluarga Harapan (Regulation of the Minister of Social Affairs no. 1/2018), a cash assistance programme aiming to alleviate poverty and improve child nutrition; (c) non-cash food assistance (better known as Bantuan Pangan Non-Tunai or BPNT) (Regulation of the Minister of Social Affairs no. 20/2019), providing eligible households with vouchers and electronic cards with which to purchase food items from designated merchants; (d) Program Indonesia Pintar or Indonesia Smart Programme (Regulation of the Minister of Education, Culture, Research and Technology no. 10/2020), an educational assistance scheme for low-income backgrounds targeting students at elementary, junior high and senior high school levels; (e) State-funded health insurance scheme, Social Security Agency – Recipients of Contribution Assistance (Badan Penyelenggara Jaminan Sosial – Penerima Bantuan Iuran, BPJS-BPI) (Regulation of the Minister of Finance no. 78/PMK.02/2020), aiming to provide free-of-charge health care to eligible households; and (f) maternity insurance Jampersal (Presidential Instruction no. 5/2022), covering pregnancy and childbirth-related costs.

It is important to note that refugees and asylum-seekers are excluded from these social security schemes, which are also largely inaccessible to left-behind children in countries of origin who lack legal documentation. Further adding to these barriers is the widely held perceptions about migrants' economic standing among village officers. Interviews conducted for this study reveal that migrant households are often perceived as economically stable and are thus considered undeserving of financial assistance. This is despite the fact that, as the earlier chapter has demonstrated, obstruction in remittance flows regularly occurs and has deleterious impacts on left-behind children, including school dropouts.

3.2. Malaysia

Migration in Malaysia is complex and should be situated in its historical context. Malaysia, which was formerly known as British Malaya, became the Federation of Malaya following its independence from the British. Subsequently, the British colonies of North Borneo (now Sabah), Sarawak and Singapore (which became independent in 1965) joined the Federation in 1963 to form Malaysia through the signing of the Malaysia Agreement. Sarawak and

Sabah continue to maintain some degree of autonomy over many aspects – including immigration – to an extent that even Malaysian citizens from the peninsula are subject to the same passport/ID screening as regular international travellers when entering Sabah and Sarawak. Additionally, Sabah and Sarawak enforce their own labour laws, which had been passed prior to their accession to the Federation. While the Employment Act 1955 is enforced in Malaysian Peninsula and the federal territory of Labuan, Sarawak retains its Labour Ordinance 1952 and Sabah, Labour Ordinance 1950. This leads to variations in the governance of migrant labour between eastern and peninsular Malaysia.

Governing migration has been a complex undertaking in Malaysia. The eastern part of the country (Sabah and Sarawak) shares long and porous land borders with Indonesia on the island of Borneo (or Kalimantan as it is called by Indonesians), as well as thinly regulated maritime borders that can be readily travelled in a matter of hours from southern Philippines. Such border porosity is exploited by the rapidly growing smuggling industry in the region to facilitate irregular entry and return (Missbach and Palmer, 2022) – which are generally considered by prospective migrants to be preferable because regular migration tends to be complicated, costly and lengthy (Human Rights Working Group, 2018). This irregularity presents a big challenge in measuring the actual number of international migrants in Malaysia.

Some figures are available to give a general picture of migration in Malaysia, although they are often inconsistent. For instance, Malaysia's census data – collected from the Department of Statistics Malaysia – reveal that international migrants only constituted 1.9 million in 2023 (ILO, 2023), which differs from the estimated number proposed by IOM (IOM, n.d.a) of around 2 million.¹⁵ The World Bank, however, estimated that over 3 million international migrants were working in Malaysia in 2020 (Yi et al., 2020), of whom child migrants numbered around 408,200 (UNICEF, 2023). Data from the 2020 census in Malaysia reveal other interesting trends. These official figures demonstrate that the overwhelming majority of Malaysia's residents remained remarkably immobile in 2020, with non-migrants accounting for 98.5 per cent (31.6 million) of the population. Furthermore, of the country's migrant population as the census data demonstrate, internal migrants represented the largest proportion, making up 89.6 per cent. Among these internal migrants, the majority (58.4%) migrated within their respective states, most notably from one urban area to another in the same state. Others (31.3%) crossed their state lines to live in other places, with Johor Bahru being the most popular destination, perhaps due to its geographical proximity to Singapore. In fact, around 300,000 Malaysian migrant workers commute to Singapore every single day to make a living (Ong and Yusof, n.d.). It is also interesting to note that the 2020 census throws light on the fact that the third biggest reason for internal migration (22.3%) is environment-related, suggesting climate change as one of the driving force/s behind human mobility.

Additionally, Malaysia has a sizeable population of refugees and asylum-seekers in both the east (mostly Sabah) and the west (Malaysian Peninsula). The UNHCR Malaysia (n.d.a) revealed

¹⁵ Discrepancies in the numbers of migrants are a result of differing definitions used for data collection. The Department of Statistics Malaysia defines migration as a change of "usual place of residence at two specific points of time which are exactly one year apart". Changes in the usual place of residence locality at these two points in time constitute migration. Population that changes its usual place of residence across state boundaries is known as inter-state migrant (see: Department of Statistics Malaysia, n.d.).

that as of June 2023, a total of 181,560 refugees and asylum-seekers were registered with them, the vast majority (86% or 157,730) of whom came from Myanmar, as well as 50 other countries. Among the Myanmar refugee communities, the Rohingya made up the largest proportion (67%), followed by Chin and other Myanmar ethnic groups. Among refugees and asylum-seekers, 66 per cent were men, and 34 per cent were women. Children below 18 years constituted 27 per cent (49,220) of refugees and asylum-seekers in the Malaysian Peninsula in 2023. While refugees in the peninsula have come to Malaysia rather recently and are ethnically diverse, those in the east (Sabah) migrated to Malaysia decades ago and are almost exclusively of Philippine origin. These include people who were displaced by the civil strife resulting from the Mindanao insurgency in the 1970s and were subsequently permitted to stay and work in Sabah under a special visa called IMM13 (previously called HIF22).¹⁶ Under this scheme, Philippine child refugees were included under their parents' cards and would be eligible to obtain a separate card when they reach 18 years of age. Around 73,000 IMM13 cards had been granted by the time the Ministry of Home Affairs stopped its issuance in 1984 (Leong, 2020). Aside from IMM13, there are other special passes under which migrants live and work in Sabah, including Kad Burung-Burung (39,000 holders) issued by the state government and Census Cards (47,000 holders) issued by the federal special task force (*Daily Express*, 2020). Since 2020, however, there have been calls to invalidate all cards other than the IMM13 in an effort to remove possible pathways to permanent residency and ultimately citizenship. This move will have important repercussions for various aspects of migrants' lives, including the right to legal identity as further discussed.

3.2.1. Right to legal identity

Although Malaysia ratified the Convention on the Rights of the Child as early as 1995, the country has maintained five key reservations to the Convention, one of which is directly related to the right to legal identity for migrant children; that is, Article 7 on birth registration, as well as the right to a name and nationality. Malaysia has not ratified the International Covenant on Civil and Political Rights, which contains provisions on the rights to birth registration and nationality (Article 24).

Different frameworks have been used to regulate birth registration and issuance of birth certificates in Malaysia. In the peninsula, birth registration is regulated under the Births and Deaths Registration Act 1957, while Cap. 123 and Cap. 10 of the Registration of Births and Deaths Ordinance 1951 are in force in Sabah and Sarawak respectively. It is important to note that despite the reservation of Malaysia to Article 7 of the Convention on the Rights of the Child relating to the right to birth registration, none of the three legal frameworks rule out non-citizens from their coverage. For instance, part II of the Birth and Death Registration Act 1957 states that every child born in Malaysia shall be registered. In a similar way, the other two ordinances make the reporting of all births in their relevant territories mandatory without any mention of citizenship requirement.

Birth registration is administered by the NRD under the Ministry of Home Affairs of Malaysia. In the peninsula, all births must be reported by parents, legal guardians or anyone

¹⁶ An IMM13 card is an identification document issued to Filipino refugees in the Malaysian State of Sabah. IMM13 card holders are permitted to take up employment, access medical services at a discounted price and send their children to government schools.

having knowledge of such births within 60 days, after which birth registration is considered late and a late registration fee of MYR 50 will apply (NRD, n.d.). In Sabah and Sarawak, however, reporting of births must be done within 14 days. Registration done on the 15th to the 42nd day after childbirth is delayed, beyond which a registration is considered late. Processing fees of MYR 5 and MYR 10 will be charged for delayed and late registrations, respectively (ibid.). The present study found that although birth registration is free or incurs small amounts of fees, the requirement to submit necessary documents in person means that there are implied costs involved in registering births (that is, transportation costs). This presents major barriers to birth registration, especially in more remote areas such as Sabah where transportation to a nearest NRD can cost hundreds of ringgits.

Birth registration must be accompanied by a range of documents to be submitted to any nearest NRD office. These documents include a birth registration form, confirmation of birth form produced by a doctor/midwife/hospital, prenatal/maternity examination card, parents' identity cards (such as passport, ID, permanent resident card, UNHCR card, IMM13 card and others) and marriage/divorce/death certificates. Delayed or late birth registrations will result in more stringent procedures that require parents to present more complicated documentation aside from the above-mentioned files, including children's full-length photographs, children's recent passport-sized photographs, certification of birth from a headman/village chief/Member of Parliament, extract of school register endorsed by the head teacher or school principal (if the child is aged 7), statutory declarations of two witnesses, parents' recent passport-sized photographs and recent photographs of siblings (if any) (ibid.). It should be noted that children born to unregistered Muslim marriages or conceived out of wedlock will not inherit their fathers' names. In other words, their birth certificates will only reflect their mothers' names. For non-Muslim parents, however, birth certificates can bear the names of both parents even if they are unable to produce marriage certificates, provided that they sign the birth registration card jointly (UNHCR Malaysia, n.d.b).

Despite the commitments of Malaysia to ensuring that every birth is documented, immigration-related barriers persist. The need to present confirmation forms endorsed by hospitals/clinics and maternity books present a significant barrier to birth registration among undocumented migrants, refugees, stateless individuals and Indigenous peoples. This is because access to medical care for these communities remains highly restricted in the first place. In 2001, the Ministry of Health issued the Circular of the Director General no. 10/2001 concerning Guidelines for reporting illegal immigrants obtaining medical services at clinics and hospitals. Some scholars argue that the Circular is meant to obligate health workers to perform their duty as civil servants as stipulated in the Immigration Act 1959 (Loganathan et al., 2020b), although it directly contradicts their professional ethics. As a result, undocumented migrants are frequently arrested while seeking health treatment and subsequently detained or deported. One of such cases involved a pregnant woman who was forced into two-month detention after seeking to register her pregnancy at a government clinic in the final trimester (Lau, 2020). This, in turn, creates a climate of fear that prompts undocumented pregnant migrants to avoid hospitals/clinics, and thus they are unable to procure the mandatory documents required for birth registration at the NRD. Interviews conducted for this study demonstrate that because of their fear of arrest, many undocumented pregnant migrants prefer home births assisted by traditional birth attendants or village midwives.

The need for parents' identity documents is another challenge in birth registration. Researchers found that many of the Philippine refugees holding IMM13 cards in Sabah fail to renew their cards because of their lack of financial resources to cover renewal fees (Yi et al., 2020), as well as corruption and bribery issues (Ansori et al., 2017). Yi et al. (2020) noted that only 55 per cent of IMM13 holders renew their cards annually, suggesting that many may have become irregular. It should be noted that the requirement for marriage certificates has placed another barrier that hinders birth registration, as both documented and undocumented migrants holding temporary work permits are prohibited to marry legally in Malaysia.¹⁷ This irregularity presents significant barriers to birth registration not only at the NRD, but also with the migrants' respective embassies. The interview conducted with a representative from the Indonesian Consulate Office in Tawau reveals that birth registration cannot be completed unless migrant parents are able to present their legal identity documents and marriage certificates, in which case efforts will be made to grant legal identity documents to migrant parents first. This results in long delays before children are able to have their birth certificates issued by the Indonesian Consulate Office in Tawau.¹⁸ It is much harder for Philippine undocumented migrants to acquire necessary legal documents as the Philippines does not have any government representatives in East Malaysia due to its long-standing dispute over the sovereignty of Sabah (Regalado, 2020).

The present study has identified some policy development in Indonesia that aims to ease the birth registration process for overseas-born Indonesian children of undocumented migrants by legalizing unregistered marriages. In 2011, the Indonesian High Court issued Decision no. 084/2011 concerning Legalization of Unregistered Marriages (*itsbat nikah*) in Overseas Indonesian Missions (Supreme Court of the Republic of Indonesia, 2011). Subsequently, annual marriage registration events have been held in overseas Indonesian missions, including Kota Kinabalu, Tawau and Kuala Lumpur. Between 2011 and 2023, as many as 2,718 unregistered marriages among undocumented Indonesian migrants have been legalized in Tawau area, allowing the consulate office to confer necessary legal documents on migrants' children.¹⁹ It should be noted, however, that the annual quota for about 300 couples is considered very small as compared to the large numbers of undocumented migrants in Sabah. Equally important is that the marriage registration programme is inherently discriminatory in that it is not accessible to non-Muslim Indonesian couples. Inability to obtain legal documents has far-ranging impacts on the enjoyment of other basic rights as further detailed.

3.2.2. Right to education

In Malaysia, public education was relatively accessible to undocumented non-citizens prior to the 1990s, as school admission was partly left to the discretion of school principals and tuition fees were generally affordable (Loganathan et al., 2022). However, policy changes in the 1990s introduced stringent measures that required more identity documents for public school admission, making it drastically less accessible to undocumented child migrants. Efforts to limit public education only to Malaysian citizens are reflected in the Education Act 1996

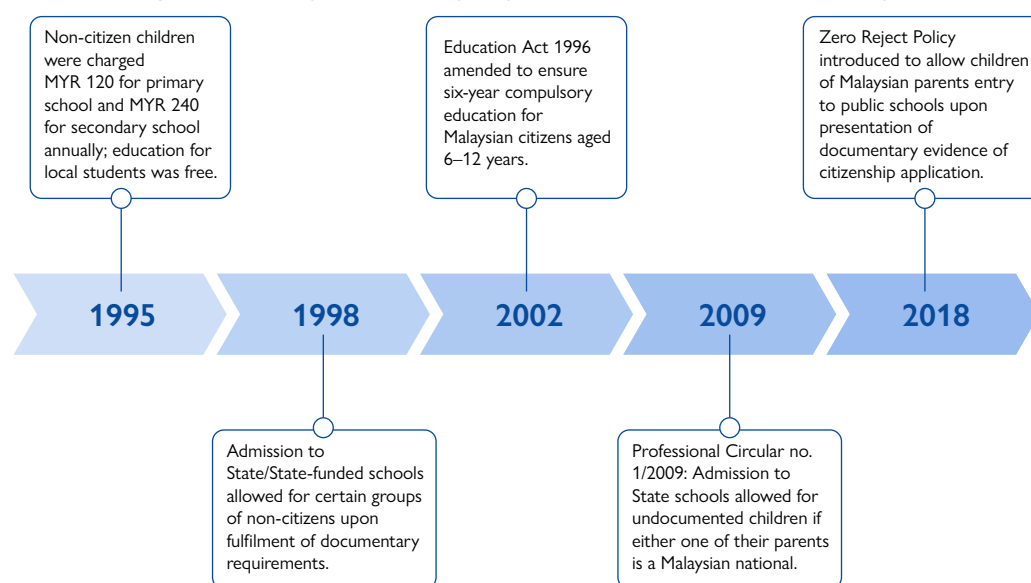
¹⁷ Interviews conducted with informants in this study show that the NRD typically declines to award birth certificates to children whose both of their parents are migrants, including migrants whose marriages were legally registered in their home country. Instead, NRD routinely refers such cases to migrants' respective diplomatic missions.

¹⁸ Based on an interview conducted online on 8 June 2023.

¹⁹ Ibid.

(Act 550), which states that education in Malaysia is “designed to produce Malaysian citizens who are knowledgeable and competent” (Malaysia, Government of, 2012). This exclusionary law has left undocumented migrant workers, including stateless persons, without access to public education. Adding to this barrier is Malaysia’s reservation to Article 28 (1) of the Convention on the Rights of the Child on ensuring access to education for all on the basis of equality.

Figure 1. Development of the policy frameworks for education in Malaysia



Sources: Original elaboration by the author based on Loganathan et al., 2022 and Louis, 2022.

In 2009, the Government made a corrective effort by rolling out the Ministry of Education’s Professional Circular no. 1/2009, allowing public school admission for undocumented children born to a Malaysian parent. However, more effort needs to be done by the Government to make the public aware of the Circular, because even the president of the National Parent–Teacher Associations Consultative Council (PIBGN) was oblivious to the existence of such a Circular despite it being introduced nine years earlier (Yen, 2017). The Government’s commitment toward an inclusive education was further showcased with the adoption of the Zero Reject Policy in 2018, aiming to ensure that no children would be turned away from school, including children with disabilities and undocumented children (Figure 1). This policy, however, excludes children born to non-citizen parents as only those whose parents maintain documentary evidence of citizenship or guardianship may enrol in public schools. Admission to public schools is also granted on the condition that the children should be able to produce necessary legal documents within two years of their enrolment in public schools (Loganathan et al., 2022). Therefore, undocumented children born to undocumented migrant parents are excluded from the basic right to education. This has serious repercussions for their lives as can be seen in the story of Zulaida that follows.

Case study 4. Zulaida, 17-year-old undocumented child migrant in Kuala Lumpur, Malaysia^a

We're five of us: my mom, my dad, my younger sister, my younger brother and myself. My younger sister is 15, while my younger brother is 7. My mom is Indonesian, and my father is from the Philippines. I am not sure which part of the Philippines he came from exactly. When he was here, he worked as a welder. He was involved in a workplace accident and injured his legs. He has lost much of his strength since then and often falls sick. That is why there were periods when he just could not go to work. While my mom ... she worked odd jobs. She would work whatever job was available. Sometimes she sold cookies, other times she worked as a domestic worker. She used to work at a car wash and a school cafeteria too. When she was working at the cafeteria, I offered to help her. So basically that is my first job. I was 13 years old back then. I wanted to ease her burdens and earn some money for our family. She would make around MYR 60 daily. It was not much, but it was enough to just keep life going. We could not really eat what we wanted to eat.

We had to move from one place to another because rent prices went up, and we could not keep up. We finally had to move to Rawang, into an old flat. We do not go to school, none of us, because we do not have any identity documents for registration. Both of my parents were undocumented. My mom still got to teach me and my younger sister how to read, but not my younger brother. He was still so small, 3 years, when my mom and my dad got arrested by the police. They were going out that night to get us some food. We heard some noises out in the street, and when we looked out the window from our flat on the second floor, we saw our mom and dad being dragged into the police car. That was the last time we saw both of them. It's been four years since then. When we discovered what was happening, my immediate response was to turn off our room light for our safety. The police saw us from below, but I am not sure why they did not go up to arrest us. We were waiting in the flat for three days hoping to hear good news, but they never came home. Instead, it was my mom's friend who came to get us. Since then, we have been staying with her and her family here. I can't really recall much. I just want to forget some of those memories. They are too painful to remember. I just want to live a normal life just like everybody else ... to live together with my family and to go to school. That is all I pray for.

^a Pseudonym. Based on an interview conducted on 29 May 2023.

Zulaida's story reveals that irregularity has a wide-ranging impact on other aspects of their life. Deprived of identity documents, Zulaida and her two siblings were left with very few options. Out of necessity, Zulaida had to engage in a paid job to help support the family financially. Their vulnerability was further exacerbated following the deportation of both of their parents, which resulted in long-term family separation. In addition, Zulaida and her siblings cannot go to school, as they do not possess any legal documents necessary for admission. Under the Immigration Act 1959 (Act 155) (for the Malaysian Peninsula), low-paid migrant workers on temporary work permits are prohibited to form or bring their family members into Malaysia. As such, children of low-paid migrant workers – irrespective of their legal/immigration status – are automatically considered irregular migrants in the Malaysian Peninsula. It is also important to note that the non-ratification of the 1951 Convention Relating to the Status of Refugees and the 1954 Convention on the Status of Stateless Persons of Malaysia means that the country does not have any framework to identify refugees and stateless people, lumping them together under the broad category of *illegal immigrants* as per the Immigration Act 1959-1963. Therefore, undocumented migrants, refugees and stateless people are largely exempt from the right to formal education and rely heavily on informal centres or CLCs organized by NGOs, communities and embassies. The case of Salmah below illustrates the vulnerability common among refugee communities in Malaysia.

Case study 5. Salmah, a Somali refugee mother in Kuala Lumpur, Malaysia^a

I have eight children, but they have never been to Somalia themselves. I gave birth to all of them in Saudi Arabia. We used to seek refuge in Saudi Arabia using temporary residence permits. The annual renewal fee was previously SAR 100/person, but then the Government increased it to SAR 200, and we could not afford it. We decided to move to Malaysia in 2018. On the day of our departure, my husband got arrested by the police at the airport. He had an issue with his employer, who then reported him as a runaway. The police started hunting him down and found him at the airport with us. That was the last time we saw him.

Since I lost my husband, I started becoming the single earner in my family. It is difficult to get a job because we refugees are not supposed to take up employment. But I need to make a living for my entire family. Thank God I have never had to deal with the police, but I am so scared of them and would always avoid contact with them. I used to work as a cleaner in a school, but I never wore a uniform for fear of arrest. When I saw the police, I would step away from whatever work I was doing. After that, I started working in a restaurant, but I quit after Ramadan. Now I make cakes and sell them to other refugees. That is how I earn money to support my eight children.

It is difficult because six of my children go to school, a refugee community school. I tried contacting organizations to get help with my children's schooling, but they told me that local schools could not admit refugees. So I sent them to this refugee community school. I told the school management about my situation, and they gave me a discount, so I pay less for my children's tuition. But two of my children do not go to the school they need. They have a hearing disability and cannot really understand what their teachers or friends speak. I send them to school anyway because I want to ensure that they can socialize and learn with their peers. With the help of these refugee community members, I was able to get them hearing devices. Each one costs MYR 2,400. Very, very expensive. And because it is an electronic device, sometimes it does not work properly. I have no idea how to get money and have it fixed if it is broken.

^a Pseudonym. Based on an interview conducted on 30 May 2023.

The case of Salma demonstrates layers of exclusion. Most immediately clear is the absence of legal right to employment, which severely limits the ability to provide for a single-income family. As a result, Salma has to work odd jobs to make her family's ends meet and make an appeal to her children's CLCs to negotiate tuition costs. It is also important to note that two of Salma's children experience learning difficulties resulting from their hearing disabilities, an issue that was resolved only recently as community members made financial contributions to assist the family in procuring the much-needed hearing devices. Salma's case is a potent symbol of the Government's lack of intervention, leaving refugees like her outside spaces of legality and thus particularly vulnerable.

Being excluded from the public education system, migrant children in vulnerable situations rely heavily on ALCs. For instance, refugees in the Malaysian Peninsula can typically only access ALCs established by local NGOs or refugee communities and partner with the UNHCR. Others attend faith-based learning institutions, such as Madrasah or Tahfiz, which are heavily bent towards religious training (Loganathan et al., 2022). Out of 150,379 individuals categorized as "people of concern", 23,823 are of school age, and only 30 per cent of whom are enrolled in CLCs, which comprise 133 units across the Malaysian Peninsula (UNHCR Malaysia, n.d.c).

In addition to NGO or refugee-led CLCs, other migrant children access company and embassy-assisted learning centres. This is particularly the case in Sabah, where plantation companies are permitted to sponsor family reunification for migrant workers on temporary permits and are responsible for their schooling in collaboration with embassies. A landmark agreement was reached in 2013 between the then-president of Indonesia, Susilo Bambang Yudhoyono, and the Prime Minister Dato Sri Mohd Najib Tun Abdul Razak of Malaysia on the establishment of CLCs in Sabah to cater to the large Indonesian migrant communities in Sabah (Sihite, 2013).

The number of CLCs in Sabah is estimated to be around 300 units, 113 of which are located under the purview of the Indonesian Consulate Office in Tawau.²⁰ Of the 113 CLCs, less than 10 are in the urban area of Tawau, while the overwhelming majority are located on the plantations in inner Sabah. Learning is supported by teachers who are locally hired by plantation companies, as well as those deployed by the Indonesia Ministry of Education, Culture, Research and Technology. Despite their names, these CLCs should be considered formal schools since they use the Indonesian curriculum, formally recognized by the Government of Indonesia, and integrated into the national student database of Indonesia. Of important note here is that admission to these CLCs is strictly limited to children of Indonesian descent, making it inaccessible to children of undocumented mixed marriage. Additionally, school admission requires identity documents, most importantly birth certificates. Failure to present birth certificates will result in non-issuance of students' certificates of completion. In many instances, however, teachers allow undocumented children to participate in classes and help them acquire identity documents later by liaising with the consulate office so that they can collect their school certificates upon completing their education. Teachers interviewed for this study describe CLCs as the extended hands of the Indonesian consulate office for their central role in relaying important messages in times of crisis and assistance in processing of legal documents.

It should be noted that the CLCs are only permitted by the Government of Sabah State to provide primary and lower secondary education, after which children must arrange for their repatriation to Indonesia to continue their schooling. Of about 17,326 students registered in the CLCs across the whole of Sabah, around 300 are eventually awarded scholarships by the Government of Indonesia to pursue upper secondary school in parts of Indonesia,²¹ while the vast majority of students do not continue their schooling due to limited financial resources and loss of family networks.

3.2.3. Right to social protection

Based on income levels, Malaysian households are typically classified into three groups, including the bottom 40 per cent (B40) earning less than MYR 4,849/month, the middle 40 per cent (M40) earning less than MYR 10,969/month, and the top 20 per cent (T20) earning more than MYR 10,969/month. Due to the shocks of COVID-19, however, 20 per cent of households previously clustered in the M40 category have fallen into the B40 bracket (Bernama, 2022). The economic instability that has ensued from the COVID-19 pandemic has considerable implications on children's well-being.

²⁰ Based on an interview with the Indonesian Consulate Office, Tawau, on 8 June 2023.

²¹ Ibid.

The Government of Malaysia has put in place social security schemes to help children from low-income backgrounds, one of which is the Bantuan Prihatin Rakyat (BPR), a cash assistance of up to MYR 1,400 mainly for B40 households. The scheme is projected to benefit 10 million Malaysian households (BusinessToday, 2021). Aside from Bantuan Prihatin Rakyat, the Bantuan Kanak-Kanak (BKK or literally Children's Assistance) scheme has been introduced to assist low-income families in enabling their children to enjoy fundamental rights. Under the Bantuan Kanak-Kanak scheme, children aged below 6 years are eligible for a monthly assistance of MYR 200, while those aged between 7 and 18 years can receive MYR 150 monthly, with a maximum assistance of MYR 1,000 per household. To apply for these schemes, however, applicants must present copies of identity documents proving their Malaysian citizenship and birth certificates. Therefore, available social security schemes are inaccessible to not only children of migrant workers and refugees, but also children of Malaysian parents who lack documentary evidence of their citizenship.

Malaysia relies on heavily privatized social security and health insurance schemes for migrant workers. While citizens are covered under the Employees' Social Security Act 1969, migrant workers are entitled to Foreign Worker Hospitalization and Insurance Scheme (also referred to as SPIKPA) (based on Circular of the Financial Division no. 1/2011 of the Ministry of Health) and Foreign Workers Compensation Scheme (FWCS, under the Workmen's Compensation Act 1952). These insurance are to be purchased by the employers. The problem with Foreign Worker Hospitalization and Insurance Scheme is that it does not cover outpatient care and in cases where hospital bills exceed insurance coverage, co-payment between employers and migrant workers is also permissible, making migrant workers vulnerable to unauthorized salary deduction (Loganathan et al., 2020b). Meanwhile, the Foreign Workers Compensation Scheme is supported by private insurers and provides lump sum benefits for migrant workers for workplace accidents and deaths. It is worth noting that these schemes are meant for adult migrants and do not provide benefits for their children, since Malaysia's migration regime for temporary migrant workers is designed from the outset to prevent family formation and child migration in the first place.

The exclusion of migrant children in vulnerable situations from various social security schemes means that they have to rely on out-of-pocket expenditures to access health care. This is problematic, especially because the costs of health treatment for non-citizens have been drastically increased by up to 230 per cent in recent years – around the same time when health care for citizens has become so highly subsidized that the country is considered to have achieved universal health coverage (WHO, 2018). With the adjusted rates, a surgery that would normally cost MYR 1,200 for non-citizens will now cost at least MYR 2,800 (*Malay Mail*, 2017). The imposition of much higher health-care fees is also a major obstacle for refugee communities, despite the 2005 government ruling that stipulates that refugees are entitled to a 50 per cent discount off their medical bills upon presentation of their UNHCR cards. Those who are unable to present their UNHCR cards, however, must pay full fees as applicable to non-citizen patients.

This study has found that in Sabah, the exclusion of migrant children in vulnerable situations from existing social security or health-care insurances results in their dependence on health clinics provided by plantation companies. These clinics are preferred because they are considered affordable and safe from government raids. However, perinatal/maternity services at the clinics are generally limited, and they are poorly equipped to provide emergency response to pregnancy-related complications. There are instances in which pregnant migrants are referred to larger hospitals for delivery at the expense of their companies, who will later deduct the migrants' monthly salary to compensate for the delivery costs.

3.3. Thailand

Thailand is a country of origin, transit and destination for different forms of migration/mobility. As an origin country, Thailand recorded that there were an estimated 121,922 Thai nationals working overseas in 2020, the majority of whom were employed in Taiwan (59,375) and Israel (21,916) (Department of Employment as cited in *The Nation*, 2020). The Thai migrant community has made a considerable presence in Singapore too, amounting to 7,000 in 2020 (Singapore Department of Statistics, 2020). These numbers grew rapidly following the easing of COVID-19 border restrictions. In fact, the Ministry of Labour of Thailand shared that as many as 88,164 Thai workers registered for overseas deployment in 2022 (*The Nation*, 2023a).

Thailand also has a long history of being a transit country for many migrants who seek international protection. By 1989, it hosted at least 419,000 refugees fleeing civil strife and violence in neighbouring Cambodia, Lao People's Democratic Republic and Viet Nam (Chantavanich and Rabe, 1990). Thailand is also experiencing high degrees of mobility from neighbouring countries, which are motivated by varying factors, including escaping life-threatening situations. Those living in temporary shelters along the borders are almost exclusively of Myanmar origin, while refugees and asylum-seekers living in the urban settlements constitute nationals of 51 different countries. UNHCR has registered 90,617 Myanmar refugees and 4,836 urban refugees/asylum-seekers, of whom around 25,000 were children (UNHCR, 2022a).

With regards to the protection of refugees, a significant development was evident in 2019 when the Cabinet of Thailand approved the establishment of the NSM on 24 December. The NSM was aimed at identifying individuals needing special protection due to fears of potential persecution in their areas of origin. Although the NSM is often lauded for promising greater degrees of protection for undocumented migrants and refugees in Thailand, there is some degree of scepticism regarding its implementation for two main reasons. First, the NSM explicitly excludes from its protection coverage Myanmar nationals residing in established refugee camps and those registered as migrant workers (OHCHR, 2023). Secondly, applicants may also be denied protection on the grounds of maintaining national security. These caveats potentially lead to some Myanmar undocumented migrants and refugees being disqualified from protection under the NSM despite the real threats to their safety due to the 2021 Myanmar military takeover.

Thailand is also home to 566,686 stateless persons who mainly reside in the mountainous regions of the country, many of whom are members of minority ethnic groups (UNHCR, 2022a). In addition to being a transit country for migrants, including refugees and asylum-seekers, Thailand has also received much attention recently for being a transit and a source country for criminal syndicates operating cyber scam companies in the special economic zones of Cambodia, the Lao People's Democratic Republic and Myanmar (US Department of State, 2023). Migrants from Thailand and its neighbouring countries, some as young as 12 years old, were trafficked through Thailand into forced criminality and forced labour in Cambodia (Ford and Vimonsuknopparat, 2022).

As a destination, the rapid economic boom of Thailand has also made it increasingly desirable for workers from other sub-Mekong countries who come in to work under bilateral agreements between Thailand and governments of Cambodia, the Lao People's Democratic Republic and Myanmar. Under these bilateral arrangements, often referred to as an MOU, migrant workers are not legally permitted to bring their dependants into Thailand. As of December 2022, 564,357 migrant workers had been deployed under these MOU arrangements, with the largest pool of migrants coming from Myanmar (351,183 people), followed by Cambodia (117,287 people) and the Lao People's Democratic Republic (95,756 people) (OHCHR, n.d.b). These workers were predominantly employed in the manufacturing, agricultural, domestic, fishing and seafood processing, as well as construction sectors – comprising more than 10 per cent of the entire Thai workforce (United Nations Thematic Working Group on Migration in Thailand, 2019). In addition, there are around 58,000 seasonal workers who hold temporary border passes and work on a seasonal basis along the borders of Thailand, with the majority being Cambodian workers (91%), followed by Myanmar workers (9%) (ILO, 2019). Like MOU migrant workers, seasonal workers are not allowed to bring their family members into Thailand. However, it is of note that children constitute around 300,000–400,000 individuals out of around 4 million migrant workers in Thailand (IOM, n.d.b); they may have been brought into the country irregularly or born into unregistered marriages among migrant workers. However, these figures may not accurately capture the actual numbers of migrant groups due to the nature of the irregular entry and stay of some migrants. Such irregularity results in lack of legal documentation, which places significant barriers to basic rights for their children.

3.3.1. Right to legal identity

Commitments to ensuring legal identity for children in Thailand are enshrined in various documents. It is one of six ASEAN countries and among the earliest (1996) to have ratified the International Covenant on Civil and Political Rights, which stipulates the right of every child to equal treatment, immediate birth registration and nationality (Article 24). This commitment is also reflected in the country's domestic law. In 2008, Thailand amended its Civil Registration Act to allow for birth registration among undocumented children. Under the amended law, every child born within the borders of Thailand is entitled to birth registration regardless of their parents' immigration or nationality status. It was due to the eventual alignment of domestic laws with international commitments that in September 2010, the Thai Cabinet eventually approved the withdrawal of the country's reservation to Article 7 of the Convention on the Rights of the Child concerning the right to birth registration and nationality.

Subsequent to the 2008 amendment of the Civil Registration Act, the Ministry of Interior of Thailand set up the so-called Community Network of Civil Registration Volunteers to aid vulnerable populations with birth registration. Between 2008 and 2016, these networks grew rapidly to cover 51 provinces home to sizeable groups of stateless persons and undocumented migrants (Bali Process, 2018). The Government also organizes annual training sessions for civil registry officers possessing less than five years of experience to equip them with necessary skills for birth registration (ibid.). In addition to policy changes, interventions supported by development actors have also assumed a central role in ensuring the protection of children's right to legal identity in Thailand. In 2013, for instance, an online birth registration system was created by the Government of Thailand with the technical assistance of UNICEF Thailand (UNICEF, 2016). This system allows partner hospitals across the country to integrate data of newborns into the civil registration system to ensure that every birth is documented. Of important note there is that home births, which are still common among ethnic minorities and migrant groups, are not captured in the system. Despite this loophole, such concerted efforts have yielded positive results. In 2019, Thailand recorded a 99.8 per cent birth registration rate, the second highest in ASEAN just behind Brunei Darussalam and Singapore, which jointly came in first place with a 99.9 per cent birth registration rate (World Bank, n.d.a).

Despite this notable success, a range of barriers persist and result in non-registration of birth being a common feature of migrant children in vulnerable situations. In fact, a study conducted in 2018 found that 90,000 schoolgoers, the majority of whom were undocumented migrants, did not have a birth certificate (Petcharamesree, 2023). The same study also found that despite the Thai civil registration system being inherently inclusive, there are frequent instances in which birth registration is denied to members of ethnic minorities who lack documentary evidence of citizenship and undocumented migrants because civil registration officers believed that conferring birth certificates to them could help them become Thai nationals. Concurrently, many migrants – especially those lacking legal documentation – are unaware that their right to legal identity is protected under the amended Civil Registration Act.

Despite commendable improvement in birth registration, the present study has identified challenges in accessing other legal identity documents, most notably passports, among Myanmar migrants in Thailand. Passport application and renewal have been drastically restricted following the military takeover in Myanmar in February 2021. In Myanmar itself, the authorities instructed all 20 passport offices throughout the country to halt passport issuance indefinitely starting January 2023. In a similar move, Myanmar ordered its consulate in Chiang Mai to wind down new appointments and its embassy in Bangkok to limit passport renewals to Saturdays only (*Frontier Myanmar*, 2023). Although passport renewal services resumed in February 2023, additional renewal fees were introduced in March with a hefty increase of more than 60 per cent from its previous fee: from THB 800 to THB 1,250. This further adds to the financial burdens on migrant workers. Aside from increases in fees, the difficulty involved in securing visa appointments has presented another loophole that is easily exploited by unscrupulous intermediaries, who charge up to USD 305 for arranging visa appointments (Burma News International, 2023). As a result, many Myanmar migrants have

failed to renew their passports and work permits and subsequently become undocumented, which may have a deleterious impact on the well-being of their migrant children. The Human Rights and Development Foundation (2022) shared that during the COVID-19 pandemic, around 500,000 migrants had fallen out of their regular status as they failed to renew their passports and work permits. Constraints faced by migrants in processing their legal documents should be addressed, as earlier studies show that undocumented migrants are less likely to report the births of their children to the civil registry office for fear of arrest or detention (Petcharamesree, 2023).

Interviews conducted for this study reveal that Myanmar refugees living in the temporary shelters along the Thai–Myanmar borders generally do not experience major issues with birth registration, as refugee committees are closely involved in facilitating birth registration processes. It is to note, however, that because income-generating activities in the shelters are scarce, many have been compelled to leave in search of a more stable earning outside. Child refugees living with or without their parents outside the shelters often experience more constraints in birth registration, as they are more likely to avoid contact with the authorities due to fears of being identified as undocumented economic migrants, which may result in arrest and detention.

3.3.2. Right to education

A survey conducted by UNICEF (2019) yields interesting findings that throw light on the state of education in Thailand (see Table 4). Generally speaking, school completion rates varied across categories of gender, regions, income backgrounds and areas (rural–urban). While the country achieved a 99 per cent primary school completion rate in 2019, the completion rate decreased to 86 per cent for lower secondary and dropped to 47 per cent for upper secondary nationwide. In terms of sex, completion rates decreased along the progression of education, with the completion rate of upper secondary school being slightly higher for female students (54%) than their male counterparts (42%). The study also found that a higher share of students completing upper secondary school lived in urban areas. Considering the income levels of the students' households, only 19 per cent of the poorest students completed upper secondary school, although they made up 20 per cent of the population, while the rate for the richest students was 76 per cent, showing considerable inequality in educational outcomes. In terms of region, those in the South and North-east were less likely than other regions to complete upper secondary education. Care should be taken to interpret these data with reference to migration, as those moving to attend upper secondary school elsewhere might be captured in their current domicile rather than their original residence.

Table 4. School completion rates in Thailand in 2019

Total		Completion rates (%)		
		Primary	Lower secondary	Upper secondary
		99	86	47
Sex	Male	98	81	42
	Female	99	92	54
Area	Urban	99	90	56
	Rural	98	83	37
Wealth	Poorest	97	66	19
	Second	97	85	35
	Middle	99	88	43
	Fourth	99	91	60
	Richest	100	98	76
Region	Bangkok	99	88	64
	Central	99	91	50
	North	99	86	43
	North-east	100	85	35
	South	95	79	42

Source: UNICEF, 2019.

Note: These figures include child migrants.

There has been a considerable development in access to education in Thailand. Prior to 2005, public education was only meant for local Thai students, excluding stateless, refugee and undocumented children from the formal education system. It was mainly due to such exclusionary attitudes that MLCs were initiated by NGOs in the 1990s, catering to the needs of migrant children. However, a significant landmark was achieved on 5 July 2005, when the Thai Cabinet approved a resolution that was built on the principle of “education for all,” allowing all non-citizens to enjoy 12 years of free compulsory education as stipulated in the National Education Act of 1999 (amended in 2002). To support the implementation of such a resolution, the Government allocates school funds for enrolment of non-citizens, the amounts of which are identical to those for citizen students (Tuangratananon et al., 2019). Certificates of school completion will also be awarded to non-citizen students, who can use them to enrol in higher education institutions. To further aid public schools with enrolment of non-Thai students, the Ministry of Education of Thailand launched the Handbook and Guideline for Providing Education for Persons without Legal Status or Thai Citizenship (United Nations Thematic Working Group on Migration in Thailand, 2019). Due to such progressive measures, about 145,379 migrant children attended public schools in 2017. It should be noted, however, that a higher share of migrant children (approximately 164,000 individuals) attended MLCs rather than Thai public schools, and a far larger number of migrant children (200,000) were estimated to be out of school (ibid.). Many children choose to attend MLCs rather than public schools, as the latter require fluency in the Thai language to participate in classroom activities.

Although Thai public schools are free of charge, additional costs of school attendance – such as the costs of uniforms, books, stationary and transportation – may lie beyond the migrants' financial capacity. In fact, a national survey by the University of the Thai Chamber of Commerce involving 1,230 households found that on average, parents' expenditure sits at around THB 19,000 (USD 565) per child at the beginning of school term to cover the above-mentioned fees (*The Nation*, 2023b). This presents a challenge, as the majority of migrant workers in Thailand earn a monthly salary of about USD 250 (Sinsomboonthong et al., 2021), making it difficult for them to pay for the additional costs of schooling. MLCs, on the other hand, are considered more affordable as they are typically situated in or close to migrant settlements, allowing migrants to slash their spending on transportation. Additionally, the present study has also found that some MLCs frequently distribute school uniforms for free as part of a charity programme. Unlike public schools, MLCs typically charge small amounts of tuition fees. One MLC interviewed for this study, for instance, charges THB 1,600 (USD 46) annually. However, taking all the other additional costs into consideration, MLCs are seen as a more affordable alternative for migrants. It is important to highlight that children attending MLCs may face more difficulty in accessing higher education since the educational quality provided by MLCs is considered by the universities to be substandard. As such, students are to sit for an additional test. They are also required to demonstrate identification documents to enrol in a university, a requirement that undocumented migrant children find difficult to fulfil.

School choice is not only shaped by financial considerations. The present study has found that those wishing to stay in Thailand for longer periods tend to prefer Thai public schools as they will enable them to integrate into Thai society and provide better chances of further studies. On the other hand, migrants who aspire to return to their original countries, most notably Myanmar, after certain periods of employment tend to send their children to MLCs as they are considered to be better positioned to equip their children with linguistic and cultural skills necessary for reintegration. For instance, many of these MLCs use various Myanmar languages as a medium of instruction, and learning is largely facilitated by Myanmar nationals. It is of note that MLCs across Thailand do not maintain uniform curricula, resulting in discrepancies in terms of quality.

This study also found that during the COVID-19 pandemic, many MLCs were forced to postpone in-person learning activities to contain the spread of the virus. Interviews conducted for this study found that some MLCs were unable to organize online learning for two years because of the students' lack of digital devices for distance learning, causing disruption and lengthy delays in schooling. Aside from COVID-19-related factors, delays in schooling were also observed among Myanmar child refugees who fled their war-torn villages to seek refuge in Thailand, as can be seen in a story that follows shared by a child informant.

Case study 6. Aung, 14-year-old student in Samut Sakhon, Thailand^a

I just moved to Thailand about three months ago. Previously, I lived with my grandmother in Myanmar. My mother and father have been working in the construction sector in Thailand for quite a while now. My older brother is also here. He is 24 years old. He studied in Myanmar, but when he moved to Thailand, he just stopped going to school. The situation was increasingly dangerous in Myanmar, so my mom, dad and grandma decided that I should go to Thailand for my safety. They paid a broker about THB 10,000 to arrange my entry. He was one of our own community members. We trusted him.

I remember leaving my village at around six in the morning. I made the journey on my own, just me and the broker. He asked me to sit in the car and drove me to the Myawaddy–Mae Sot border. I was scared of what would happen to me. When we drove past the checkpoint, they [Thai immigration officers] only talked to the broker and left me alone in the car. They did not ask me anything. When I arrived in Mae Sot, my aunt came to pick me up. It was my aunt because I used her daughter's identity documents to go into Thailand.

It has been 3 months now since I last went to school. I am here at this learning centre now because I want to continue my studies. I knew this learning centre from the school bus that passed by my neighbourhood. Then I asked my parents to send me here. I like this learning centre because most of the students here are Burmese.

^a Pseudonym. Based on an interview conducted on 6 June 2023 in Samut Sakhon, Thailand.

Lacking legal identity documents in the first place, Aung was forced to use falsified documents to escape the increasingly dangerous village in Myanmar and migrate independently to Thailand for her safety. While her migration included a degree of forced displacement that would qualify her for special protection, she might be categorized instead as an undocumented migrant under the current NSM, placing her in a situation of vulnerability. Aung's story also reveals how her forced migration causes disruption in her schooling as she waited for three months before applying to the MLC.

Aung, however, is among the fortunate child migrants who are able to continue their schooling. Findings from this study show that many child migrants are unable to continue their studies, as the number of MLCs is limited, and many cannot afford the hidden costs of attending public schools. The founder of an MLC in Samut Sakhon interviewed for the study shared that they do not have any choice but to turn down applications frequently, as they no longer have any space or resources to admit any more students, resulting in postponement of studies or school absence altogether. That the number of MLCs is small merits particular attention. Registering an MLC with the Government of Thailand is a complicated undertaking. In fact, the informant and her team had to design a curriculum and revise it five times before her application for an MLC licence was granted. Aside from issues of registration, the informant also shared that language barriers often hinder schooling. For instance, when resuming their education in Thailand, Myanmar students have to sit for admission/equivalency tests, yet because of language barriers, they perform poorly in the tests and must be placed a few levels back. As such, Myanmar child migrants tend to spend more years in school in Thailand.²² The informant also shared that local people have expressed concerns about migrants' limited command of the Thai language to an extent that the school management was forced to incorporate more Thai language sessions into its curriculum.

²² Based on an interview with a founder and head of an MLC on 6 June 2023 in Samut Sakhon, Thailand.

3.3.3. Right to social protection

There are three types of social security schemes applicable to migrant workers in Thailand, including SSF, WCF and more recently, MHIS. The establishment of the SSF was mandated by the Social Security Act 1990. This scheme is applicable to all workers in the private sectors, including documented migrant workers, and its implementation is placed within the purview of the SSO, under the Ministry of Labour of Thailand. Contributions to the scheme are jointly made by employers, workers and the Government. Of important note is that the benefits of the SSF include child allowance, which was the second most frequently claimed benefit in 2019 after the sickness benefit (IOM, 2021a). Similar to the SSF, the WCF is administered by the SSO of the Ministry of Labour and applicable to all workers, including documented migrant workers. However, it excludes those employed in the domestic sector and street vending businesses, and it does not offer benefits for child dependants. Contributions to the WCF are made by employers (*ibid.*).

To extend social security coverage to migrant workers who are excluded from the SSF and WCF schemes, the Government of Thailand introduced the MHIS through a Cabinet Resolution on 15 January 2013, followed by various decisions often referred to as the Health Examination and Health Insurance of Foreign Workers 2019. Unlike the other two schemes, MHIS is implemented by the Ministry of Public Health. Its membership is voluntary, and contributions to the insurance are made by migrant workers themselves, with the exception of those working in the fishery, in which employers are obligated to pay contributions to the insurance (*ibid.*). Notable among MHIS benefits is its coverage of HIV treatment, maternity care (delivery and neonatal care) and childcare (vaccinations for children aged 0–15 years). It should be noted, however, that similar to the other two schemes, MHIS is only accessible to documented migrant workers or those whose status has been regularized through the NVP. As such, migrant workers who come into Thailand irregularly or those who have become undocumented due to the shocks of COVID-19 pandemic as explained in an earlier section cannot access this insurance.

Table 5. Migrants registered in Migrant Health Insurance Scheme as per 30 September 2019

	Myanmar	Cambodia	Lao People's Democratic Republic	Other nationalities	Total
Migrant workers and their dependants (aged 7–18 years)	544 000	173 186	56 436	604	774 226
Migrant children <7 years old	38 625	8 405	2 530	6	49 566
Total	582 625	181 591	58 966	610	823 420

Source: IOM, 2021a:29.

Although the MHIS embodies a more inclusive social security scheme, its implementation is hindered by a range of challenges. Unlike the other insurance schemes, the costs of MHIS are to be borne solely by the migrants themselves. Migrants have to pay an annual fee of THB 365 (USD 11) to procure an insurance card for children under 7 years, THB 1,600 (USD 47) for those aged 7–14 years and THB 3,200 (USD 95) for those aged 15 years and above (Chamchan and Apipornchaisakul, 2022). Insurance cards are available for purchase at public hospitals, and health services can only be obtained from the public hospitals to which

migrants are tied. This arrangement is problematic especially when migrants have to change employers or move elsewhere for new employment (IOM, 2021a), although migrants in the fishing sector are able to access health services from registered hospitals located in 22 coastal provinces (ILO, 2021b).

A study conducted in the Thai–Myanmar border by Chamchan and Apipornchaisakul (2022) involving 803 migrant children found that 83.2 per cent of respondents did not have MHIS cards. One of the most common challenges identified is migrants' lack of knowledge about this entitlement, signalling the need to further promote awareness of the MHIS among migrant groups. Additionally, respondents shared that their poor command of the Thai language hinders communication with the locals, including hospital staff. The study also reveals that the lack of legal identity documents, especially birth certificates, places a significant barrier to accessing MHIS, especially after the 2020 ruling that excludes irregular (child) migrants from MHIS coverage. It may be due to these challenges that MHIS membership dropped steeply from 823,420 in September 2019 to 510,211 in August 2020 (IOM, 2021a).

Chamchan and Apipornchaisakul's study (2022) also yields interesting insights: child migrants who have obtained their MHIS cards are predominantly those in their school age, suggesting the role of education institutions in raising awareness about the right to social security. It is also worth noting that migrants aspiring for long-term stay in Thailand are more inclined to purchase MHIS cards in hopes of protecting themselves against unforeseeable circumstances that can potentially harm their future career options in Thailand.

In response to the absence of social security schemes for irregular migrants and their dependants in Thailand, Dreamlopmements – a private enterprise – established a not-for-profit private social security scheme called M-Fund to provide quality health services for migrants regardless of their immigration status. Previously initiated in Mae Sot, M-Fund has expanded its coverage in collaboration with partner hospitals and clinics in border provinces in Thailand (Chiang Rai, Kanchanaburi, Sa Kaeo, Tak, Trat, Ubon Ratchathani), Myanmar (Myawaddy) and Cambodia (Poipet City), reaching as many as 56,000 members as per July 2023 (M-Fund, n.d.). Of particular note is that the insurance provides various schemes, some of which are directly related to the well-being of mothers and children, including school benefits (for a monthly premium of THB 75 (USD 2.2)) for children aged below 17 years and pregnancy benefits (for a monthly premium of THB 200 (USD 6)). Overall, the M-Fund helps close the health coverage gaps in the present social security schemes, which exclude some of the most vulnerable members of Thai society. There remain several practical barriers, however. The insurance membership remains relatively low due to its voluntary nature and migrants' lack of awareness of such a scheme, preventing the insurance company from being self-sustaining (Pudpong et al., 2019). Given the lack of funds collected from its members, the M-Fund is unable to cover the costs of certain treatments (ibid.), pointing to the need for sustainable financing.

3.4. Lao People's Democratic Republic

Among AMS, the Lao People's Democratic Republic has the smallest population, accounting for slightly over 7.5 million people in 2022 (World Bank, n.d.b). Of the country's total population, 30 per cent are aged 0–14 years, while those aged 15–64 years amount to 65 per cent. Only 5 per cent of the Lao population are aged over 65 years, making it one of the youngest nations in Asia (UNFPA, 2023). The Lao People's Democratic Republic is home to more than 49 ethnic groups, many of whom inhabit its hard-to-reach northern mountainous regions. The 2015 census data reveal that the majority of Lao people (67.1%) lived in rural areas, of whom 7.9 per cent resided in villages without any roads. It is to note that the number of rural population had declined, from 73 per cent in the 2005 census to 67 per cent in 2015, signalling increased urbanization (Lao Statistics Bureau, 2015). Being landlocked, the country shares borders with Thailand to the south, Cambodia to the south-east, Viet Nam to the east, Myanmar to the west and China to the north. The long and porous land borders with these countries have allowed for cross-border population mobility for decades.

Thailand has been a popular destination for many Lao workers because of its geographical, linguistic and cultural proximity, and importantly, the difference in minimum wages and exchange rates. For instance, the minimum wage in Lao People's Democratic Republic stood at LAK 1,200,000 (USD 63) in 2022 (*Laotian Times*, 2023), while the minimum wage in Thailand in the same year was THB 10,620 Thai (USD 313) (Reuters, 2022) – almost five times higher than that in the Lao People's Democratic Republic. As a result, many aspire to take up employment in Thailand. In early 2019, there were an estimated 207,561 Lao migrants holding regular status in Thailand, many of whom were employed in the agriculture, industry and service sectors. The number soared to 277,845 in the middle of 2019, as many Lao migrants managed to regularize their status through the NVP (IOM, 2021b), although the actual number of Lao migrants in Thailand may be far higher if those holding irregular status are taken into account. As a result of the COVID-19 pandemic and resulting joblessness, however, around 200,000 Lao migrants have been forced to return home since March 2020 (*ibid.*:2).

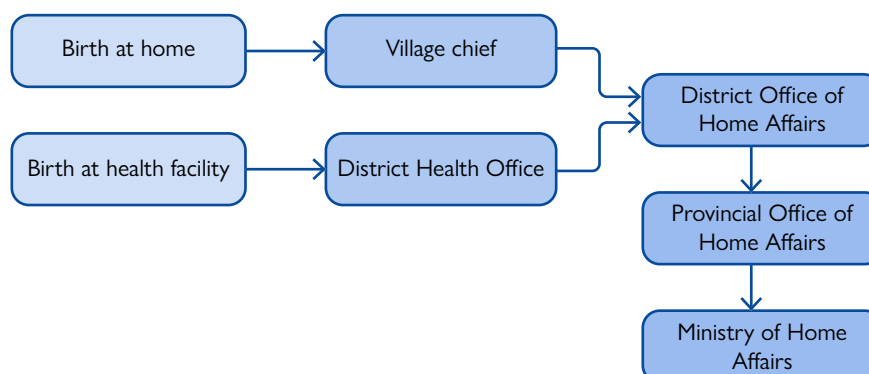
The 2015 census data have revealed that aside from cross-border migration, many Lao people undertake internal migration/mobility. In fact, around 17 per cent of the country's 6.5 million population at the time were considered lifetime internal migrants, of whom about 45,500 were foreign nationals living in the Lao People's Democratic Republic. Meanwhile, 7.4 per cent of the Lao population were recent migrants, about 206,000 of whom moved from another Lao province (UNESCO, 2018:3). It is important to note that less than 10 per cent of the women surveyed undertook internal migration for reasons having to do with employment, while 25 per cent of male respondents migrated for job-related reasons. Women were more likely to move for marriage or family-related reasons (IOM, 2021b). There is no reliable data to suggest the number of child migrants or children left behind by their migrant parents, presenting challenges to ensure their protection.

3.4.1. Right to legal identity

Birth registration in the Lao People's Democratic Republic is governed mainly by two laws: (a) Family Law no. 07/90/SPA, 1990 (amended in 2008); and (b) Family Registration Law no. 03/PSA, 1991 (amended in 2009 and 2018). Article 31 of the Family Law stipulates children's right to a name and nationality. It further explains that children reserve the right to alter their names upon reaching 18 years of age. Meanwhile, under the Family Registration Law, Article 9 provides that all births at home must be reported by heads of household to the village chief, and a baby born in places other than one's home must be reported by their mother or father to the village chief. Upon receiving a notification of birth, village chiefs are to issue "a birth certificate as evidence in order that the applicant can then register the birth with the family registration official within 30 days from the date that the certificate of birth is received" (Article 9 on National Assembly of the Lao People's Democratic Republic, 1992:3), suggesting unclear procedures for birth registration.

Indeed, the process of birth registration was poorly coordinated and largely unclear until 2011, when the Government of the Lao People's Democratic Republic eventually established the Ministry of Home Affairs to coordinate birth registration, among others. Under the new arrangement, village heads are to report the number of home births in their respective villages once every four months to the district government. Meanwhile, babies born at health facilities will be reported to the District Health Office, who will forward the data to its district government. Both village chiefs and health facilities will issue a birth notification, which is used by the District Office of Home Affairs to incorporate birth details and personal identification number into one's family book. Having gathered reports from District Health Offices and village chiefs, district governments will pass the data along to the provincial government twice a year. The provincial government will collect all data of births in their provinces and submit it to the Ministry of Home Affairs once a year (United Nations Statistics Division, n.d.). It should be highlighted that there is no real-time digital database to capture these birth records. In other words, the entire process is largely paper-based and only periodically updated. Aside from such a paper-based process, other issues including lack of awareness of the importance of vital events registration, geographical remoteness and limited operational budgets for outreach activities have resulted in low birth registration (World Bank, 2020). In fact, in 2018, the Lao Statistics Bureau (2018) reported that only 73 per cent of under-five children had their births registered. Meanwhile, completeness of birth registration only stood at 43 per cent nationally in 2021 (UNFPA, 2021).

Figure 2. Process of birth registration in Lao People's Democratic Republic



Source: Author's elaboration based on Đoković, 2021.

It is important to note that certain groups face more barriers to birth registration than others. A study based on data collected from the 2011–2012 Social Indicator Survey involving 18,843 households in the Lao People's Democratic Republic found that parental education levels, place of settlement, ethnicity and place of baby delivery play important roles in accessing birth registration (Nomura et al., 2018). Of the parents who had attained high school education, 93 per cent performed birth registration for their babies. The percentage fell to 83.9 per cent for those with secondary education, 75.1 per cent for those having completed primary school, and 66.3 per cent for parents without formal education at all. In terms of residential areas, those in urban areas were far more likely to have their children registered than those in rural areas without access to main roads. Birth registration was particularly low among the Khmer ethnic group, amounting to only 57.1 per cent. The study also found that 65 per cent of children born at home did not have access to birth registration. This is a major concern since home births accounted for 75 per cent of total deliveries in the Lao People's Democratic Republic (Sychareun et al., 2012).

To widen access to birth registration, the Government of the Lao People's Democratic Republic has introduced several measures. For instance, in early 2023, an electronic civil registration and vital statistics (also referred to as CRVS) system was launched by the Government of the Lao People's Democratic Republic in collaboration with the World Computer Company (WCC) – a Dutch developer company – and the World Bank. This system allows for a real-time, centralized digital database to record vital events such as births that can work offline to enable birth registration in villages where Internet connectivity is poor or unstable. In addition, the Ministry of Home Affairs is also working with kindergartens and primary schools across the country to ensure that students who have enrolled without birth certificates can acquire necessary legal documents (World Bank, 2020). The challenge, however, is that school attendance remains relatively low in certain regions and among ethnic minorities.

3.4.2. Right to education

Education in the Lao People's Democratic Republic is governed by the Education Law 2007 (amended in 2015). While the Law makes an explicit mention of compliance with the principle of non-discrimination, it excludes non-citizens from its coverage. The Law further explains that all Lao citizens are entitled to a compulsory education of 12 years, consisting of 5 years of primary education, 4 years of lower secondary education and 3 years of upper secondary education. Aside from 12 years of compulsory education, the Law also stresses the importance of ECE as part of the country's national education system (Article 4 of the Lao Education Law). In the Lao People's Democratic Republic, children are expected to start ECE at age 3, primary education at age 6, lower secondary school at age 11, and upper secondary school at age 15.

While no data is available to explain how a household's migration status is factored into the educational attainment of children, the Social Indicator Survey II conducted in 2017 produced important insights.²³ In terms of ECE, only about 30 per cent of all children aged

²³ While the survey does not specifically capture specific population groups, that is, migrant children, it is useful to understand the educational contexts of Lao children, many of whom are children of migrant parents.

3–4 years were enrolled in ECE programmes. Discrepancies existed between rural and urban areas, however. While more than half of all children aged 3–5 years in urban areas attended ECE programmes, only one fourth of those in the same age bracket in rural areas had access to ECE programmes. The percentage decreased significantly in the case of children living in villages without road access, amounting only to 15 per cent (UNICEF, 2020).

The survey has also revealed how highly gendered division of child-rearing duties had an impact on children's ECE attendance. While 80 per cent of children whose mothers were highly educated attended ECE programmes, only 13 per cent of children whose mothers had lower formal educational attainment were enrolled in ECE institutions. Children of less formally educated mothers who lived in rural areas belonged to non-Lao–Thai ethnic groups and came from poorer households who were most disadvantaged and least likely to access ECE programmes (*ibid.*). It is important to ensure that children have equitable access to ECE since low attendance of ECE regularly leads to repetition of primary schooling. For instance, while the Social Indicator Survey II in 2017 demonstrated that primary school completion rate stood at 90 per cent, cohort completion rates only accounted for 83.4 per cent due to repetition during the first years of primary education (Lao People's Democratic Republic, Government of, 2018).

Although the primary school attendance rate reached 90 per cent nationally, the percentage varied across different categories. For example, primary school attendance in urban areas amounted to 95 per cent, above the national average, but less than 90 per cent of children attended primary school in rural areas. In villages without road access, 41 per cent of children tended to start primary school later than the official age. When economic backgrounds were considered, 50 per cent of children from the poorest households started primary school older than the official age. In terms of ethnic backgrounds, Lao–Tai groups were highly represented in primary school attendance, while children of Mon–Khmer were poorly represented (UNICEF, 2020), signalling the need to consider ethnic-specific barriers to education.

While primary school attendance was high, the percentage fell steeply in terms of lower secondary and upper secondary education attendance, reaching 60 per cent and 38 per cent respectively. Discrepancies as result of geographical, financial and cultural barriers became more pronounced. For instance, 61 per cent of urban children attended upper secondary school, while the percentage only stood at 29 in rural areas. The Lao–Tai group had a 50 per cent attendance of upper secondary school, while other ethnic groups remained poorly represented. Those who came from lower-income backgrounds were also more likely to drop or remain out of school. In this regard, Lao children of migrant households tend to be more financially privileged due to their migrant parents' remittances. Thus, they are more likely to attend or remain in school and less likely to start employment early as compared to their non-migrant counterparts (US Department of Labor, 2014). It is important to note, however, that teacher absence was the biggest reason that hindered school attendance (82%) (UNICEF, 2020), showing the need to invest in better deployment and distribution of teachers, as well as teacher training.

Children who are absent from school are more likely to initiate entry into the workforce earlier. In fact, the Government of the Lao People's Democratic Republic found that

42.8 per cent of children aged 15–17 years have come to be “working children” as they are engaged in paid labour, with girls accounting for 42.4 per cent and boys at 43.2 per cent (Lao People’s Democratic Republic, Government of, 2018). Although there are no reliable statistics to show how many children are employed, it is believed that many have crossed the borders to work in Thailand. Indeed, in an earlier study on cross-border labour migration from the Lao provinces of Champassak, Khammouane and Savannakhet, 21.4 per cent of those migrating into Thailand were aged below 18 years. Male migrants below 18 years accounted for 15.6 per cent of all Lao migrants, while the rate stood at 25.4 per cent for their female counterparts (Huijsmans, 2008). Lao migrant workers form 8 per cent of the Lao People’s Democratic Republic’s total workforce (Lao People’s Democratic Republic, Government of, 2018).

Abrupt obstruction of remittance flows for migrant households, as well as the general economic slowdown as a result of COVID-19 for non-migrant households, has started to cause disruption in children’s schooling. For instance, enrolment in ECE programmes has dropped by 6 per cent in public institutions and 22 per cent in private institutions. Primary school cohort completion rate has decreased to 77 per cent in the last two years (from 83.4% based on the Social Indicator Survey II in 2017) (Lao People’s Democratic Republic, Government of, 2022). In addition, the shocks of COVID-19 have also threatened the well-being of many Lao households, as will be discussed in the subsequent subchapter.

3.4.3. Right to social protection

There are no statistics to show the exact number of children living in the context of migration in the Lao People’s Democratic Republic, nor is there data to suggest the extent to which these children are covered by social protection schemes. However, the fact that only 0.4 per cent – the lowest among AMS – of Lao population were covered by at least one social protection benefit in 2019 may mean that many children of migrant parents may not enjoy social protection benefits (DESA, n.d.). Those who have migrated irregularly with or without their parents to Thailand may be covered by the M-Fund (see the previous subchapter on the right to social protection in Thailand).

As of 2019, the Office for Foreign Workers Administration of Thailand recorded that at least 225,588 Lao migrants were working in Thailand under various schemes, including the MOU scheme²⁴ (174,948 individuals) and the NVP scheme (50,640 individuals) (IOM, 2021a). Of this number, 63,053 migrants were covered under the SSF of Thailand, which includes allowance benefits for child dependants. In fact, child allowance was the second (26%) most claimed benefit in 2019, and third (16%) in 2020 only after unemployment (42%) and sickness (30%) benefits (Thai SSO 2021 in *ibid.*). Additionally, 58,966 other most likely undocumented Lao migrants and their children were registered in the MHIS in 2019 in Thailand (*ibid.*).

To ensure the social security of those at home, the Lao People’s Democratic Republic has put several social security schemes in place. The oldest of these is the Social Security for Civil Servants, which was set up in 1993 through the adoption of the Prime Minister’s

²⁴ It is important to note that while MOU migrants are not legally permitted to bring their dependants into Thailand, many have brought their children irregularly into the country.

Decree no. 178/PM/1993. As its name suggests, however, the scheme is only applicable to citizens working in the public sector and thus merely accessible to a tiny section of the population. In 1999, another scheme was launched through Prime Minister's Decree no. 207/PM: Social Security Scheme for Enterprises. Implemented first in 2001, this scheme is meant for individuals employed by private companies with a minimum of 10 employees. It is a contributory scheme and administered by the SSO under the auspices of the Ministry of Labour and Social Welfare. Similar to the previous scheme, the Social Security Scheme for Enterprises is only accessible to a handful of people since the vast majority of the Lao population (90%) work in the informal sectors (Joint SDG Fund, 2022). The Government of the Lao People's Democratic Republic has introduced other schemes to protect informal workers and others who are left out of the two previous schemes. In 2001, the Government introduced the CBHI, a voluntary insurance scheme to cover health-care fees for informal and self-employed workers. Previously run in selected areas, the scheme was further expanded in 2006, and government subsidies were introduced in 2016 in support of its expansion of coverage. Due to its voluntary nature, however, CBHI membership remains low. Only around 18,730 people (3,979 households) are registered with the CBHI (ILO, n.d.). In addition to the CBHI, other schemes have been introduced, including the Health Equity Fund in 2004 targeting the poorest households and Free Maternal and Child Health in 2010 aiming to provide free health care for pregnant women and under-5 children. However, these schemes are donor-funded, and thus their sustainability is seriously put into question.

It is also important to note that the Free Maternal and Child Health scheme is severely underused, as only 38 per cent of births occur in health facilities, while only 56 per cent and 39 per cent of women seek antenatal and postnatal care at health facilities, respectively (World Bank, n.d.c). This underutilization is attributed to the fact that many of the pregnant women live away from health facilities, which are mostly located in more urban parts of their respective areas. Additionally, home birth is still popular in the Lao People's Democratic Republic, as pregnant mothers are traditionally expected to stay by a fire before and after delivery (Nomura et al., 2018) as it is thought to enhance their well-being. To address these gaps, the Government of the Lao People's Democratic Republic set up the National Health Insurance in 2016 to provide more accessible health care through a co-payment mechanism that involves very low fees ranging from LAK 5,000–20,000 (USD 0.25–1) for outpatient care to LAK 5,000–30,000 (USD 0.25–1.57) for inpatient care. Additionally, pregnant women, members of poor households and children are exempt from service fees (WHO, 2022). To further consolidate its varying social protection schemes, the Government of the Lao People's Democratic Republic adopted its first-ever National Social Protection Strategy in April 2020 with the aim of providing a social protection floor for everyone by 2030. This was followed by the establishment of the National Social Protection Commission in December 2021 to coordinate, monitor and oversee the implementation of the Strategy.

Chapter 4. Conclusions and recommendations

Earlier chapters show that migrant children have received increasing attention in the policy sphere in ASEAN. The adoption of the 2019 AMC and the ASEAN Regional Plan of Action on Implementing the ASEAN Declaration on the Rights of Children in the Context of Migration embodies a great leap forward; it creates a common platform and opportunities for regional engagement on the protection of migrant children in vulnerable situations in a time when AMS maintain varied ratification statuses on some of the key global instruments on migration: International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, the Global Compact on Refugees and the Global Compact for Safe, Orderly and Regular Migration.

Chapter 2 of the present report demonstrates several challenges to the protection of children in the context of migration. While all 10 AMS in general defined *child* as every person under the age of 18 in accordance with the Convention on the Rights of the Child, there are still differences among AMS on the minimum age in relation to other purposes, such as age of consent for sexual conduct, age of criminal responsibility and others. Nevertheless, such varying definitions can have important implications on the effort to overall protection of children. Another issue that recurs throughout the chapters is a lack of comprehensive, reliable data collection on migrant children in vulnerable situations in countries of origin, transit and destination. The lack of data limits understanding of their predicaments and prevents from extending much-needed assistance to them. Additionally, a careful reading of various AMS policies brings to the fore certain features that characterize migration regimes in the region: that the governance of labour migration is designed from the outset to ensure that low-paid workers can only migrate individually and stay temporarily, without any legal recourse to family formation or family reunification. Under this particular set-up, children do not have any choice but to stay behind and tackle the shocks of family separation resulting from parental migration, or to migrate irregularly and become undocumented migrants.

4.1. Access to legal identity

Migrant children in vulnerable situations face unique barriers to accessing legal identity documents. Across all the four countries studied, home birth remains common practice and presents a challenge to establishing the legal legitimacy of one's child in procuring a birth certificate. While home birth is preferable to rural (migrant) communities in Indonesia, the Lao People's Democratic Republic and Thailand due to limited financial resources, lack of health facilities, cultural barriers and geographical remoteness, it is common among migrant communities in Malaysia as they tend to avoid hospitals and clinics due to fears of arrest and deportation. This is problematic since birth registration in Malaysia requires that parents present original copies of maternity cards and endorsement forms by hospitals/clinics. As the previous chapters have shown, access to legal identity may also be constrained by non-

registration of marriage, caretakers' lack of awareness of the importance of legal documents, complicated bureaucratic procedures, limited financial resources to cover the additional costs of in-person birth registration and hostile attitudes of civil registration officers. It is also noteworthy that the 2021 military takeover in Myanmar has further added to the complexity of accessing legal identity documents among Myanmar migrants in Thailand. As explained in earlier chapters, these barriers often create loopholes that are exploited by unscrupulous intermediaries who profit off bureaucratic mishaps.

However, the present study has also identified a range of good practices in ensuring the right to legal identity. In Indonesia, through the Minister of Home Affairs Regulation no. 2/2016 on Child Identity Cards, the Government of Indonesia has made it possible for children – citizens and non-citizens, including overseas-born citizens who relocate to Indonesia – to acquire a *Kartu Identitas Anak* (or KIA, child identity card), giving them some form of legal identity. In the Lao People's Democratic Republic, the Ministry of Home Affairs has been working with kindergartens and primary schools to ensure that all students are able to obtain necessary legal documents. However, evidence shows that a large number of children lack access to formal education to begin with, due to cultural, geographical, gender, parental education and economic barriers. In Malaysia, for instance, attempts have been made by the Indonesian consulate office to formalize unregistered marriages (*itsbat nikah*) among migrant couples to confer legal identity documents on their children. However, attempts should be made to increase the quota for *itsbat nikah*. In Thailand, the Civil Registration Act provides that all children, regardless of their nationality, are entitled to birth certification. Furthermore, health facilities have been integrated into the national registration system, allowing for swift civil registration of all births occurring at health facilities. Despite that, members of minority ethnic groups living in mountainous hard-to-reach regions of the country tend to give birth at home.

4.2. Access to formal education

The previous chapters have also demonstrated that migrant children in vulnerable situations face a range of barriers in accessing formal education. In Malaysia, refugee and asylum-seeking children are excluded from the national education system and are thus reliant upon alternative learning arrangements, including refugee-led educational centres, NGO-led ALCs and faith-based learning institutions. Similar patterns have been observed among children of labour migrants in eastern Malaysia, who depend largely on CLCs jointly provided for by diplomatic missions, companies and migrant groups. Similarly, in Indonesia, child refugees and asylum-seeking children are also excluded from the national education system. On the other hand, setting up ALCs for refugee and asylum-seeking children can be challenging due to lengthy bureaucratic processes at the local level. For left-behind children of Indonesian migrants, access to education may be constrained by a lack of identification documents, geographical remoteness and limited accessible infrastructure for left-behind children with disabilities. In the Lao People's Democratic Republic, access to school remains low for lower and upper secondary levels due to a range of barriers related to cultural affinity, economic background, gender, parental education and rural–urban developmental divide.

Nevertheless, this study has identified several good practices. In Indonesia, the Ministry of Education, Culture, Research and Technology has instructed 50 governors, mayors and heads of education departments at the regency level to enable child refugees and asylum-seeking children to attend public schools. However, the lack of available language support presents a major barrier. It is also important to note that the circular does not apply to several cities with the highest numbers of refugees and asylum-seekers, prompting many to resort to alternative learning arrangements. In Malaysia, the Government has implemented the Zero Reject Policy to ensure that children are not turned away from school. Worthy of note, however, is that it excludes children born to migrants as only those whose either or both of their parents maintain documentary evidence of citizenship or guardianship may enrol in public schools. In Sabah, CLCs have helped migrant children access formal education, but they are only legally allowed to provide primary and lower secondary education. The limited scholarships provided by the Indonesian consulate offices to help children further their education in Indonesia mean that many cannot continue their schooling. In Thailand, the Government has made public schools accessible to all children regardless of their nationality or migration backgrounds. It is to be noted, however, that although public education is provided for free, additional costs of transportation may mean that child migrants lack the means to attend public schools. The requirement of fluency in the Thai language has also placed a considerable barrier to their access to public schools. As such, many choose to attend ALCs. The issue with such dependence on ALCs is that they tend to be donor-driven and under-funded, pointing to the need for intervention to ensure their self-sustainability.

4.3. Access to social protection

Migrant children in vulnerable situations, in particular those who lack legal documentation, are also generally excluded from social protection schemes. This study found that in eastern Malaysia, children of migrant workers are excluded from social protection schemes and only rely on company-owned health clinics. In the Malaysian Peninsula, however, refugee and asylum-seeking children are entitled to a 50 per cent discount off their health-care fees, but the recent increases in health-care costs applicable to foreigner nationals mean that health-care fees have become largely out of reach. In Indonesia, public perceptions about migrant households being financially stable have led village officers to assume that left-behind children are undeserving of financial assistance. Others who are able to prove that they are in need of financial assistance often face constraints in accessing social security schemes as a result of their lack of legal documentation. In the Lao People's Democratic Republic, social security remains a major issue not only for children of migrant households but also for the general population. However, it should be noted that the Government of the Lao People's Democratic Republic is currently in its early stages of building a social protection floor. In Thailand, migrant children are able to participate in a contributory social security scheme called MHIS, although they have to regularize their status beforehand. A good practice is observed in Thailand where undocumented child migrants can purchase a low-cost private insurance called M-Fund. However, the M-Fund membership remains relatively low due to its voluntary nature and migrants' lack of awareness of such a scheme, preventing the insurance company from being self-sustaining (Pudpong et al., 2019). Given the lack of funds collected from its members, M-Fund is unable to cover the costs of certain treatments (ibid.), pointing to the need for sustainable financing.

Based on evidence gathered in the present study, the following recommendations are proposed in hopes of widening migrant children in vulnerable situations' access to legal identity documents, formal education and social protection schemes.

4.4. General recommendations

- (a) AMS should ensure consistency of legal definitions of a child with that in the Convention on the Rights of the Child.
- (b) In line with Focus Area 4 of the RPA CCM, the AMS should undertake robust data collection on children who have moved either voluntarily or involuntarily with or without their parents, children born to migrant households in countries of destination and those who remain in countries of origin after either or both of their parents have migrated. Data collection should capture relevant categories, including but not limited to age, gender, ethnicity, region (rural/urban), income level, disability and religion to ensure better-targeted interventions. In countries of origin, data on left-behind children should be collected during the initial stage of job application. In countries of destination, data collection should be undertaken in cooperation with relevant NGOs, communities and companies. Principles of privacy and data protection must be upheld.
- (c) AMS should review policies and regulations to uphold the principle of non-discrimination and child protection, in line with the spirit of the (RPA CCM). AMS should ensure migrant children in vulnerable situations' access to basic rights – most importantly the rights to legal identity, formal education and social protection – by aligning their policies or regulations with the principle of non-discrimination.
- (d) In line with Focus Area 1 of the (RPA CCM), the Government of Indonesia should amend Law no. 35/2014 on Child Protection to extend its protection coverage to non-citizen children, for which the Ministry of Women Empowerment and Child Protection could lead the process.
- (e) The Government of Indonesia should amend Law no. 18/2017 on the Protection of Indonesian Migrant Workers to widen its scope of protection to children of migrant workers, in line with Focus Area 1 of the RPA CCM.

4.4.1. Right to legal identity

- (a) In line with Activity 1.3 of Focus Area 1 of the RPA CCM, AMS should ensure that birth registration can be accessed by all children regardless of their immigration or nationality status. Importantly, birth registration should be free of charge, including for delayed or late registrations.
- (b) In line with Activity 1.3 of Focus Area 1 of the RPA CCM, AMS should review their policies and regulations to ensure that migrant children in vulnerable situations are able to obtain the documents necessary for birth registration (that is, maternity cards or endorsement forms from hospitals/clinics), such as policies that obligate health workers to report undocumented migrants to the authorities upon completion of health-care provision.
- (c) In line with Activity 1.3 of Focus Area 1 of the RPA CCM, AMS should identify general and group-specific barriers that hinder child delivery at health facilities and adopt measures to encourage childbirth at health facilities.

- (d) In line with Activity 1.3 of Focus Area 1 of the RPA CCM, AMS should perform regular outreach programmes to ensure that communities with limited financial resources in hard-to-reach areas have access to birth registration. Concurrently, effort should be made to develop an online birth registration system that allows communities in hard-to-reach areas to perform birth registration online, in cooperation with health facilities, community groups and local authorities.
- (e) AMS should organize regular activities targeting primary caretakers to raise awareness of the importance of legal identity documents, especially in places or among communities where birth registration remains low.
- (f) In line with Focus Area 5 of the RPA CCM, AMS should strengthen collaboration with health facilities, schools and village authorities to ensure that children have access to birth registration and birth certificates – in particular those who have historically faced more barriers as the present study has identified, including the following: (i) children who live with disabilities; (ii) children who are members of ethnic and/or religious minorities; (iii) children from low-income backgrounds; (iv) undocumented children/children born to undocumented migrants; and (v) children living in remote/rural areas, stateless children, children born to unregistered marriage and refugee/asylum-seeking children.
- (g) AMS should increase the quota for formalization of unregistered marriages and ensure its inclusivity to religious minorities to expedite the conferment of legal identity documents (such as birth certificates) on undocumented migrant children.
- (h) The Government of Indonesia should amend the Presidential Regulation no. 125/2016 on the Treatment of Refugees and Asylum-seekers to ensure the protection of the right to legal identity documents for child refugees and asylum-seeking children.
- (i) In the case of *itsbat nikah*, the Government of Indonesia should harness technology to facilitate videoconferencing and replace the requirement of physical presence. The use of videoconferencing will enable low-income families to cut additional costs associated with transportation and expedite the process of verification for households in which one or both of the parents are away for work. In this regard, the Government should ensure that all relevant parties possess the digital skills necessary for videoconferencing, including improving Internet connectivity across the country.
- (j) Refugees and asylum-seekers in Indonesia are able to procure birth certificates from local civil registry offices. However, the Government of Indonesia should strengthen the efforts to disseminate this information to wider refugee communities.
- (k) The Government of Malaysia should ensure the full implementation of the Birth and Registration Act 1957, which guarantees that every child born in Malaysia should be registered by removing linguistic, geographical and financial barriers, as well as barriers related to migrants' immigration status.
- (l) The Government of Malaysia should harness technology and abolish the requirement of physical presence when submitting all necessary documents for birth registration. Concurrently, the Government should ensure that migrants have the digital literacy required for online submission of documents.
- (m) The Government of Thailand should strengthen the efforts to raise awareness about migrants' right to legal identity, which is already protected in the country.

4.4.2. Right to formal education

- (a) In line with Activity 2.3 of Focus Area 2 of the RPA CCM, AMS should ensure that migrant children in vulnerable situations can access free public schools, including special needs schools, in any part of the country regardless of their immigration status and render necessary assistance to enable them to participate in learning activities meaningfully, including by providing language support and cultural orientation programmes.
- (b) AMS should ensure that migrant children in vulnerable situations are able to access 12 years of compulsory education and provide necessary support for children who have historically faced more barriers to education, including the following: (i) children who are members of ethnic and/or religious minorities; (ii) children from low-income backgrounds; (iii) undocumented children/children born to undocumented migrants; and (iv) children living in remote/rural areas, stateless children, children born to unregistered marriage and refugee/asylum-seeking children.
- (c) More specifically, the Government of Malaysia should review its laws and policies to ensure that ALCs are able to provide education up to an upper secondary level.
- (d) ALCs should be an option rather than a necessity. AMS should simplify the procedures for ALC registration and ensure the quality of learning at ALCs.
- (e) Considering ALCs' structural dependence on external funding, AMS should provide more sustainable financing sources to aid learning at ALCs.
- (f) AMS should perform regular oversight of residential schools as a preventive measure of combating sexual abuse of migrant children in vulnerable situations.
- (g) The Government of Indonesia should amend the Government Regulation no. 47/2008 on mandatory education to include non-citizen children, including child refugees and asylum-seeking children. In addition, the Government should establish a legal basis (law) on 12-year compulsory education to ensure uniform implementation across the country.
- (h) The Government of Indonesia should review Circular no. 30546/A.A5/HK.01.00/2022 by the Ministry of Education, Culture, Research and Technology to cover wider regions and allow for remission of fees and award of scholarships to child refugees and asylum-seeking children, in line with Article 22 of the 1951 Convention Relating to the Status of Refugees.
- (i) The Government of Malaysia should amend the Zero Reject Policy to ensure that all children, regardless of their documentation status, can enrol in public schools.

4.4.3. Right to social protection

- (a) In line with Focus Area 2 of the RPA CCM, AMS should develop/strengthen programmes and policies that provide equitable access to universal social protection for migrant children in vulnerable situations against poverty and risks to their well-being, especially those who are more likely to be out of coverage, including the following: (i) children who are members of ethnic and/or religious minorities; (ii) children from low-income backgrounds; (iii) undocumented children/children born to undocumented migrants; and (iv) children living in remote/rural areas, stateless children, children born to unregistered marriage and refugee/asylum-seeking children.

- (b) AMS should ensure that all migrant workers are covered by social protection schemes that include benefits for child dependants, including but not limited to child allowance and child health care.
- (c) Although migrants' health insurance membership is generally tied to a specific health facility, AMS should ensure that insurance benefits can be accessed from/ transferred to a health facility closest to migrants' residence.
- (d) AMS should collaborate with educational institutions (that is, public and private schools, as well as ALCs) to raise migrant children in vulnerable situations' awareness of existing social protection schemes applicable/available to them.
- (e) AMS should collaborate with companies that sponsor ALCs to ensure the accessibility and quality of education provided.
- (f) AMS should amend aspects of their social protection policies that discriminate against migrant children in vulnerable situations and ensure that migrant children in vulnerable situations can enjoy the same entitlements available to other children (for instance, in Indonesia, to ensure that child migrant beneficiaries are entitled to the same period of benefit coverage for their higher education).
- (g) AMS should ensure that perinatal (prenatal and postnatal) health-care is available free of charge to all migrant women regardless of their documentation status.
- (h) The Government of Malaysia should revoke the Circular of the Director General of Health no. 10/2001 concerning Guidelines for Reporting Illegal Immigrants Obtaining Medical Services at Clinics and Hospitals by introducing firewalls²⁵ to ensure the principle of non-discrimination in health care.

²⁵ Firewalls are built on the premise that while States have the prerogative to enforce immigration laws, they also have obligations to protect fundamental rights. Those fundamental rights include the right to health. A firewall delinks the delivery of health care from the enforcement of immigration rules, ensuring that public trust and the pursuit of important social and health goals are not undermined or interfered with by political objectives on migration control (Platform for International Cooperation on Undocumented Migrants, n.d.).

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