Assessment of Child Protection Services for Migrant Children in Thailand
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ACRONYMS

BCATIP   Border Cooperation on Anti-Trafficking in Persons
CRC     UN Convention on the Rights of the Child
DCY     Department of Children and Youth
IDC     Immigration Detention Centre
IOM     International Organisation on Migration
JOPC    Juvenile Observation and Protection Centres
MLC     Migrant Learning Centre
MSDHS   Ministry of Social Development and Human Security
OSCC    One Stop Crisis Centre
PSDHS   Provincial Social Development and Human Security
SAO     Sun-district Administration Organisation
TBC     Township Border Committee
UNHCR   United National High Commissioner for Refugees
FOREWORD

Thailand has a long history of migration to the country, most recently with growing number of migrant workers from the neighboring countries of Myanmar, Cambodia, Laos and Vietnam. Children often make the move to Thailand as dependents of the laborer parents or as workers themselves. Some children are trafficked. While others are born in Thailand to migrant parents. Many of these children remain in Thailand long term while others move back and forth daily across the border. These children are also divided among those who are documented and those who are undocumented. Regardless of the way they came, where they are staying and their legal status, these children need and deserve protection from violence, exploitation, abuse and neglect.

Thailand has been progressively extending access to social service for migrants. The education and healthcare systems opened up first and each has made investments in improving access and services for children. Child protection is following that model to improve protection in Thailand as well as through cross-border mechanisms with neighboring countries. The Child Protection Act of 2003, which provides the current framework for Thailand’s child protection system, provides protection to all children in Thailand, regardless of their nationality or legal status. The main challenge remains in the implementation, as particular guidance and associated training on how to address cases of children is lacking as well as some very practical but necessary measures such as translation.

This research sought to identify priorities for government investment to strengthen that system and build capacity to address cases of migrant children. It is hoped that the findings in this report will inform policy, procedure and guidance development that will allow Thailand’s main system to respond to the particular needs of this group of children.
EXECUTIVE SUMMARY

1. Introduction

Thailand home to an estimated 4.9 million non-Thais, approximately 3.9 million of whom are migrant workers from neighbouring countries (Cambodia, Laos, Myanmar and Vietnam)\(^1\) and the majority of whom are thought to be ‘irregular’ (where persons do not have the required documentation to enter and remain in the country legally).\(^2\) The estimated hundreds of thousands of migrant children thought to be residing in Thailand\(^3\) appear to be at heightened risk of a number of child protection issues, including: parental separation and institutionalisation; abandonment; violence, abuse and neglect; community violence and harassment; child labour and economic exploitation; trafficking and sexual exploitation; and coming into conflict with the law.

While the Thai Government has adopted a progressive policy of allowing access to education, healthcare and child protection systems and services to migrant children, irrespective of their status and level of documentation, the challenge has been to ensure that these systems are accessible to, and address the particular needs and situation of, migrant children. There has been limited research examining the child protection needs of migrant children, and even less that examines the capacity of the child protection system to respond to these needs.

This report aims to contribute to the knowledge base on the protection needs of migrant children and the capacity of the Thai system in responding to these needs in order to inform efforts to strengthen the system in the way that it responds to the needs of migrant children. It includes an analysis of the Thai child protection system, along with cross-border mechanisms with Cambodia and Myanmar to respond to trafficking and other child protection cases with a cross-border dimension.

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2. Methodology

The study employed a qualitative approach and research was carried out in locations within four provinces which are known to contain a high number of child and family migrants: Greater Bangkok; Ranong; Tak (Mae Sot); and Sa Kaew. Research also took place in Banteay Meanchey province in Cambodia in order to collect data on cross-border management of child protection cases. Researchers also benefited from a simultaneous study being carried out on child protection and migration within Myanmar by UNICEF Myanmar. The selection of locations aimed at achieving maximum variation in terms of the types of migrants and types of issues and risks that they are likely to face, while ensuring that the selection of sites allowed for an in-depth examination of cross-border trafficking and child protection protocols and practices between Thailand/Myanmar and Thailand/Cambodia.

In total, 83 key informant interviews were carried out with 118 participants, including PSDHS Social Workers, Police Officers, Immigration Officials, Emergency and other shelter staff, Prosecutors, Judges, One Stop Crisis Centre (OSCC) staff, key Sub-district Administration Organisation (SOA) officials and staff from key NGOs that work with migrant children and families. 29 focus group discussions were carried out with 129 adolescents (67 girls and 62 boys) and 60 adults (parents) in communities in order to gather data in relation to prevalent community perceptions, attitudes and practices in relation to migration and (perceptions of) access, responsiveness and quality of child protection systems and services. In addition, 10 in-depth interviews were carried out with child migrants aged 13 years and above, and migrant families with children of varying ages. These interviews aimed to gather rich and detailed data on child protection risks, needs, barriers to access and experiences in the child protection system, drawing directly from the perspectives and experiences of children and families themselves.

3. Findings

Thailand has developed a robust legal, policy and institutional framework for the protection of children in need or at risk of harm, set out primarily in the Child Protection Act 2003. The Child Protection Act 2003 applies to all persons aged under 18 years, including migrant children regardless with their legal status. However, considerable barriers exist for migrant children and families in accessing the child protection system, and gaps and challenges exist in implementing child protection systems and services at the local level in a way that responds to the needs of migrant children.

3.1 Legal status

Labour policy and the immigration system have limited the viable options for migrant children and their families to remain documented in Thailand. Parents’ continued practice of bringing children to the country despite these policy restrictions has increased vulnerability to family separation (for instance, where parents are arrested and detained on immigration grounds) and exposed children to a range of risks, including to trafficking and sexual and economic exploitation. Not only has this heightened the exposure of migrant children to protection risks, it has also caused considerable barriers to accessing protection (and other) services. Migrant children who are undocumented are largely hidden, and there are considerable social and practical barriers to them seeking help and accessing services. The considerable barriers to accessing formal law enforcement and child protection systems compounds their vulnerability and likely increases their exposure to violence and exploitation.
3.2 Access of migrants to the child protection system

The data indicate that significant barriers exist to migrants accessing State child protection services, particularly in the case of violence occurring within families in which parents and / or children are undocumented. Migrants involved in the study were unlikely to approach authorities or child protection services directly, even for more serious cases of violence. This was linked to their lack of legal status and fears around being arrested / deported on approaching authorities. Instead, community leaders and CBOs appear to play a prominent role in child protection reporting, and many cases appear to be addressed informally through support from neighbours and / or mediation among families – an approach that often focused on restoring community harmony or mediating between families, rather than on addressing the needs of the child. “Urban refugees / asylum-seekers” appear to be in a particularly vulnerable position: constant fear of arrest and detention (and deportation) place them in a position in which they are extremely reluctant to report any violence, abuse or neglect and access services.

Migrant children and parents / carers involved in the study appeared to have limited knowledge of how and where to get help in relation to a child protection issue and this is likely exacerbated than the situation for Thais by challenges communicating in Thai. Unaccompanied children may be especially vulnerable due to the likelihood of them having very limited family and social networks to help them navigate services and systems of support.

The economic dependence of migrant women on men and unequal gender power relations appear to be additional barrier to reporting acts of violence in the family – migrant women may be reluctant to report cases of violence and abuse where this might involve arrest of the family ‘breadwinner’ in the context of limited access to support networks and services. While this is likely to be a barrier relevant to both Thai and migrant women, the impacts of gender inequality are likely heightened in the case of migrant women, given their limited access to social protection, limited social safety nets and barriers accessing services.

3.3 Gaps in the child protection system for migrant children

Certain gaps were identified in the child protection system that apply to the system in general (i.e. to Thai and migrant children alike), including an insufficient number of social workers at the local level in study locations and limited coordination among key agencies, fuelled by siloed working practices. There is also limited coordination between Government service providers and NGOs, with NGOs doing their own case management, and cases not being referred into the State child protection system.

Other gaps were identified that are specific to the system’s response to migrant children. Social workers appear to lack proper training to address the needs of migrant children and have only limited understanding of how to apply the legal framework for child protection to migrant children. There are no guidelines or SOPs for professionals on working with migrant children in the child protection system (apart from victims of trafficking). Communication can be a challenge for those migrant children and families, especially in the area where NGOs and interpreting services are absence.
**Identification and referral**

In the study locations, the limited numbers of social workers or trained staff in communities or at the sub-district level, along with a reluctance among the population to approach formal child protection services, has impeded the identification and referral of both Thai and non-Thai children into the system. Routine border screening and referral systems exist in the case of trafficking victims; however, there is an absence of referral procedures for other child protection cases including unaccompanied migrant children more generally, and a likely practice (at least for those who are older e.g. over 16 years) to deport them or deny them entry at the border. In addition, limited knowledge of child protection among immigration officials and tension between their national security mandate and the need to protect migrant children, may result in other vulnerable children not being identified and / or an inappropriate or harmful response (such as deportation without family tracing etc.).

**Assessments**

For migrant children at risk of violence, abuse or neglect who enter the child protection system, assessments will be typically carried out by a multi-disciplinary team, which operate at provincial level and have been piloted at selective sub-district level. However, it is not clear that a robust best interest determination is being carried out and that a migrant child’s best interest is guiding decision-making in child protection cases involving migrants as there seems to be no system in place to monitor or assure that this happens. In study locations, care and placement decisions appear to be guided by the interests of the immigration system and by the policies of shelters, rather than based on a robust, individualised assessment of the best interest of the child.

Age assessments, where carried out, do not follow best practice: age assessments rely on dental and / or bone density methods (where there is a margin of error of three years), rather than in a multi-disciplinary manner, drawing on relevant multi-sector experience and involving the least physically invasive option.

It does not appear that guardians are appointed in cases of unaccompanied migrant children in Thailand, representing a significant gap (though it is noted that Directors of MSDHS Shelters for Children and Families are designated under the CPA as ‘guardians of safety’ for children placed in the shelters).

**Services**

The research found considerable barriers to service delivery: budget allocations for some services are tied to having a 13-digit identification number, which many migrant children do not have. While there is a specialised system for responding to victims of trafficking in persons in which this number is not required, the absence of a policy on responding to more vulnerable children generally (those that are unaccompanied, neglected by parents etc.) has meant that children and parents / carers who do not have the 13-digit identification number have difficulty accessing some essential services as the service provider’s per head budget will not cover it, and will contribute to the budgetary burden of the agency. Prevention services, in particular, appear to be inaccessible to non-Thai children and parents: it is difficult for service providers to deliver financial and other support and services (e.g. drug and alcohol rehabilitation, food assistance etc.) without children having a required 13-digit identification number.

In addition, some respondents demonstrated challenging attitudes or limited knowledge of their obligations towards migrant children, suggesting that they are ‘outsiders’ or ‘burdens’ and that there is no mandate, and insufficient funding, to assist them. This appears to have an impact on the provision of services to these children.
**Care placements**

In practice in the research locations, care placements for unaccompanied and separated children at risk are quite limited, with a lack of family-based placements and overreliance on institutions. Accommodation options for children at risk, including migrant children, appear to be very limited and there is a notable gap in non-institutional options, such as foster care; it was also noted that the very limited private foster placements are very difficult to allocate to non-Thai children, with language considered as one limitation. This has led to situations in which babies and very young children are being placed in inappropriate and harmful care placements, particularly in cases in which family cannot be traced or where a child cannot return home (as is the case, e.g. for Rohingya children).

In addition, shelters cater to young children with mothers; adolescent boys and men (fathers) will need to go to different shelters, causing family separation in some cases. There are no Government community-based family placements which would allow migrant families to stay together.

### 3.4 Gaps and challenges in cross-border child protection cases

**Trafficking cases**

Thailand has developed a number of laws and procedures relating to human trafficking, including a Memorandum of Understanding with Cambodia, Laos PDR and Myanmar on cross-border cooperation in trafficking cases. Systems and mechanisms for responding to human trafficking between Myanmar/Thailand and Cambodia/Thailand were found to be working quite well, with clear guidelines, well-established working procedures and effective coordination, though gaps were identified. For instance, the care and protection of child victims in trafficking cases does not appear to be subject to and guided by a best interests determination. This has the effect of other considerations trumping what is best for children. A challenge in Thai/Myanmar cross-border working is that Myanmar and Thailand have different child protection standards and systems. While the Thai system is decentralized, the system in Myanmar is centrally managed and coordinated with limited devolution to the local level, which has created challenges in developing standard procedures for cross-border case management at the province level. The need for permissions and authorization at the central level in Myanmar also causes substantial delays in case processing, with possible negative implications on children.

**Other cross-border child protection cases**

There are no clear guidelines or mechanisms in Thailand, and no established processes and budgets for responding to child protection cases that have a cross-border dimension but do not meet the legal definition of child trafficking (e.g. vulnerable unaccompanied children who are not victims of trafficking and children who are separated from parent/s or carers as a result of immigration or criminal processes, or as a result of risk or harm). As a result, there are no assessment tools and no standardised processes, forms and tools to help social workers manage non-trafficking child protection cases that have a cross-border dimension.

As a result of the lack of cross-border mechanism for responding to non-trafficking child protection cases, service provision is done in an ad hoc way, relying on the personal relationships of staff in the relevant agencies. However, there is a lack of knowledge on how to deal with migrant children and how to do removals of migrant children; countries lack a clear, agreed central mechanism (and budgets) on returns. It was also found that there is no effective system for family tracing in non-trafficking cases, resulting in migrant children spending an unnecessary long time in shelters.
Nonetheless, some limited examples have emerged in the research locations of the cross-border mechanism being utilized to respond to child protection cases with a cross-border element, showing the potential of the trafficking mechanism if it were expanded or formally operationalized to work beyond trafficking cases. Regulations / standards are needed in order to expand the cross-border mechanisms so that they may be used systematically in non-trafficking child protection cases where there is a cross-border dimension.

3.5 Child-friendly justice for migrant children in conflict or contact with the law

All children – Thai and migrant children alike – are entitled to the special protections when they come into contact with the law as a suspect or victim / witness. However, the way that these protections are implemented has resulted in migrant children being excluded from accessing some of these special protections.

Migrant children in conflict with the law

Migrant children in conflict with the law who are unaccompanied may, in practice, be denied access to bail and to community sentencing options, on account of having no primary residence or guardian. This can result in migrant children being placed in pre-trial detention or detention where not strictly necessary. Also, some community sentencing options and rehabilitation programmes require the involvement of guardians, effectively excluding unaccompanied children from participating and making them more at risk of being deprived of liberty. Where child migrants are placed in detention, limited access to interpreters can make them quite isolated, and unable to communicate with staff, placing them at risk. There does not appear to be any cross-border mechanism for responding to cases of migrant children who are in conflict with the law (e.g. consideration of whether to refer the child to their country of origin in order to carry out their sentence or follow up on a case).

Special protections for child victims / witnesses

Thailand appears to have operationalised special protections and processes for child victims/witnesses, including pre-trial witness examinations and the ability to give evidence via video link etc. and special protections are available, in law, for victims of trafficking. However, these protections are not always implemented in practice. Also, vulnerable migrant children (those who are undocumented but not victims of trafficking) appear to be excluded from seeking financial remedies for criminal acts of violence or abuse. Victims of non-trafficking crimes (including child victims of violence, abuse, neglect and exploitation) may apply for state remedies. However, undocumented (irregular) migrants are unable to access this fund.

While a specialised framework is in place for child victims/witnesses in trafficking cases, barriers exist in practice. Prosecution for trafficking cases can be a lengthy process, and child witnesses appear to be kept in Thai shelters while the process is carried out (with apparently no best interests determination); it could take over a year in some cases, making return and reintegration more challenging. Also, while trafficking victims have a legal right and access to an explicit process allowing them to claim compensation, perpetrators have been able to avoid complying with compensation orders and have not paid in the vast majority of cases. Victims of trafficking may also be compensated automatically through a Government fund, which provides living and rehabilitation expenses and compensation for lost wages; however, it has been noted that the amounts received are insufficient to enable victims of trafficking to rebuild their lives.
4. Conclusion and policy recommendations

The research indicated that considerable barriers exist to the access of migrant children and families to the child protection system. In addition, some gaps and challenges exist in ensuring that the child protection system and services meet the needs of migrant children. It is crucial that these barriers and challenges are addressed to ensure that vulnerable migrant children have access to responsive child protection mechanisms and services.

In order to address the key findings on gaps and challenges, the following policy recommendations were made. Policy recommendations were guided by the assessment of international standards and best practice guidance and informed by stakeholders’ feedback provided during a workshop in Bangkok in October 2019.

4.1 Operationalisation of laws and policies

- Revise the Child Protection Manual to incorporate process, procedures and considerations for working with migrant children and families.
- Incorporate the needs of migrant children into relevant child protection tools and forms.
- Develop Inter-Ministerial Standard Operating Procedure for cross-border child protection cases.

4.2 Legal status

- Develop viable options for safe, documented migration into Thailand from neighbouring countries for low skilled workers.
- Develop routes to legal status for asylum-seekers and refugees following international human rights standards.

4.3 Administrative and operational considerations

- Remove 13-digit identification number as a requirement for accessing services OR develop avenues for migrant children to receive a 13-digit identification number.
- Strengthen data collection systems on the extent and nature of child migration.
- Develop ‘firewalls’ in which information about the status of migrant children and families who access child protection services and have irregular status is not shared with immigration officials.
- Deliver training to border staff and government officials in identifying risk factors and responding appropriately to unaccompanied migrant children; add checks to the screening tool used by border officials.
- Sensitise ‘front line’ professionals, including police, OSCC staff, immigration officials, border police, key SAO staff and social workers on the rights of migrant children to access child protection services and their responsibilities to migrant children and integrate training on child protection and the needs and rights of migrant children into pre-service and in-service training for these professionals.
- Identify and train a group of interpreters in migrant communities to provide services within the child protection system.
4.4 Child protection system, services and case management

- Improve case management practices of all child protection cases (including those involving migrant children).

- Develop robust public-private partnerships or outsourcing for child protection service delivery.

- Provide community leaders and CBOs working in migrant communities with training and information packages on how to refer children and families to child protection services and how to identify cases.

- Carry out community mobilisation or awareness raising campaigns with migrant communities to encourage child protection identification and referral.

- Revise process and methods for carrying out age assessments to ensure compliance with international standards and best practice; develop a consent form (in a range of languages) to allow a child to provide informed consent to a particular age assessment method; develop forms and checklists to aid in observational psychological age assessments and forms and checklists for acquiring relevant documents and testimony from parents, teachers and community leaders; issue a decree that, where an age range is established for a child, the age that is in the child's best interests is selected; and carry out training and sensitisation with key professionals in child-friendly and best practice age assessment processes.

- Ensure best interests determinations, based on international guidance and best practice, are integrated into the child protection system at all points in which a decision is made as to a child's care, incorporate guidance on best interests decisions into the Child Protection Manual and Standard Operating Procedures and train professionals on carrying out best practice best interests determinations.

- In order to increase the availability of prevention services in the shorter term, a comprehensive mapping of local service providers could be carried out in communities with high numbers of migrants and a compendium of service providers could be provided to PSDHS Offices in order to support increased help seeking and access to appropriate preventative services for migrant children and families. Given the reluctance of migrant families to access formal services, and the budgetary and attitudinal barriers of service providers, direct referrals to preventative services from CBOs / community leaders could be considered (at least initially) to encourage direct referrals to preventative services.

- In the longer term, the development of preventative services could be aided through models such as public-private partnerships or outsourcing.

- Consideration should be given to the development of family placements for migrant (and other) families in order to avoid separation (e.g. of fathers or 12-year-old + boys from parents and siblings).

- Where parents are arrested (on immigration or criminal grounds), and children are unable to be returned and reunited with other family members, ensure that the parent is permitted regular visits to the child and this should be arranged through effective coordination with PSDHS shelters / family-based care placements and police or immigration officials.
4.5 Cross-border child protection case management

- Develop clear guidance for management of cross-border cases, as part of the cross-country collaboration agreement (MOU). The guidance should set out clear processes and roles for each agency / professional in each of the three types of cases: (a) Suspected trafficking cases (cross-referencing the trafficking law and guidance); (b) Where a child is at risk of harm (violence, abuse, neglect, cross-referencing the child protection law and guidelines); and (c) In the case of any unaccompanied or separated migrant child. The guidance should be consistent with international guidance and best practice and could draw on the good practice elements of the cross-border trafficking agreements and mechanisms.

4.6 Migrant children in conflict or contact with the law

- Develop (perhaps alongside efforts to strengthen cross-border management of child protection cases) processes and mechanisms for addressing cases involving children in conflict with the law where there is a cross-border element (e.g. the child is unaccompanied, and their family is living outside Thailand).

- Develop alternatives for where an unaccompanied child applies for bail, or where diversion or a community sentence is being considered, whereby an institution (e.g. PSDHS social workers or registered NGO shelters) could substitute as the child’s guardian and provide a place of primary residence for the purposes of bail applications.

- Develop clear guidance to set out that cases involving a child witness who is a victim of trafficking shall be guided by a robust and individual best interests determination as to their care and case processing.

- Strengthen legal enforcement of compensation orders in cases of trafficking should and provide legal support to child victims of trafficking to make compensation claims.

- Child migrants who are victims of crimes other than trafficking should be entitled to apply for victim compensation: efforts should be made to ensure that the Compensation Committee reverses its decree prohibiting undocumented (irregular) migrants from accessing the fund. Migrant child victims / witnesses should also be ensured access to the child protection system, where necessary, and to rehabilitation, counselling and other victim support services.
Thailand has long been recognised as a destination country for children on the move, particularly from neighbouring countries in the region. It is home to an estimated 4.9 million non-Thais, approximately 3.9 million of which are migrant workers from neighbouring countries (Cambodia, Laos, Myanmar and Vietnam).

While less visible than adult migrants, and therefore more difficult to estimate their numbers, hundreds of thousands of migrant children are thought to be residing in Thailand. A substantial proportion of migration (as much as 50 per cent) is thought to be ‘irregular’ (where persons do not have the required documentation to enter and remain in the country legally).

Migrant children may be exposed to a range of child protection risks. In its recent Joint General Comment on State obligations regarding human rights of children in the context of international migration, the UN Committees on the Rights of the Child and the Protection of the Rights of All Migrant Workers and Members of Their Families noted that migrant children, particularly those who are undocumented, stateless, unaccompanied or separated from their families, are particularly vulnerable to different forms of violence through the migratory process, including “neglect, abuse, kidnapping, abduction and extortion, trafficking, sexual exploitation, economic exploitation, child labour, begging or involvement in criminal and illegal activities, in countries of origin, transit, destination and return.”

The UN Committee on the Rights of the Child noted its concern, in their most recent concluding observations on Thailand, that “many migrant workers in irregular situations and their children face arrests and deportations without any risk assessment as to whether their return would be safe.” It also expressed its serious concern about the “widespread sexual exploitation and abuse of children, boys and girls” and noted the particular vulnerability of children of undocumented migrants to trafficking for sexual exploitation. It is therefore crucial that migrant children have access to effective child protection systems and services.

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8 UN Committee on the Rights of the Child, Concluding Observations: Thailand, 17 February 2012, CRC/C/THA/CO3-4, para. 72.
9 UN Committee on the Rights of the Child, Concluding Observations: Thailand, 17 February 2012, CRC/C/THA/CO3-4, para. 76.
While the Thai Government has adopted a progressive policy of allowing access to education, healthcare and child protection systems and services to migrant children, irrespective of their status and level of documentation, the challenge has been to ensure that these systems are accessible to, and address the particular needs and situation of, migrant children. There has been limited research examining the child protection needs of migrant children, and even less that examines the capacity of the child protection system to respond to these needs.

This report aims to contribute to the knowledge base on the protection needs of migrant children and the capacity of the Thai system in responding to these needs. It examines: the protection risks facing migrant children in Thailand; their access to the child protection system and its services; how the child protection system responds to these risks, and to what extent it meets the needs of migrant children; and to what extent and how child protection matters with a cross-border dimension (including but not limited to trafficking in persons) are addressed. The study aims to understand the gaps and challenges in delivering services to this group of children, to inform efforts to strengthen the system in the way that it responds to the needs of migrant children.

The research project forms part of UNICEF’s emerging focus on migration in the East Asia and Pacific region and complementary focus on the needs of migrant children within its work to develop the national child protection system and ensure that it is inclusive of all children. In particular, the project forms part of UNICEF’s programme, funded by the EU, “Protecting children affected by migration in Southeast, South and Central Asia” (2018 – 2021), which aims to document the extent to which migrant children are currently covered by the child protection system, areas that need further reinforcement and approaches for effectively linking the Thai system with those of neighbouring countries.

1.1 Purpose of the study

The key research questions that the study sought to examine are:

1. What child protection threats do migrant children face en route to and/or in Thailand?
2. How do migrant families and communities respond to child protection risks? What barriers do migrant children and families face in accessing the child protection system? What community-driven child protection mechanisms exist, how are they accessed and (how) do they link to formal / government systems?
3. To what extent is the child protection system in Thailand meeting the protection needs of migrant children? What challenges do services providers face in operationalising the child protection laws and guidance in the case of migrant children? How can the system be strengthened to reach more migrant children and better meet their needs? What are the specific policy recommendations that would strengthen the system?
4. How does the cross-border human trafficking victim assistance mechanism function and address the needs of human trafficking victims? To what extent can the cross-border human trafficking model be adapted to address a range of cross-border child protection cases?
5. (How) are the rights of migrant children protected when they are in conflict or contact with the law / deprived of liberty?

It is anticipated that the findings of this study will contribute to expanding the limited knowledge base on the protection of children, and that they will be used by UNICEF in its work with the Ministry of Social Development and Human Security (MSDHS) and other relevant Ministries to strengthen the coverage of the child protection system, and to strengthen cross-border protocols for case management between
Thailand and neighbouring countries, in particular Myanmar and Cambodia. In particular, the study aims to develop concrete recommendations that can be used to inform the development of an annex to the Child Protection Manual in order to guide social workers on how to work effectively with migrant children.

### 1.2 Scope of the study

As the purpose of the study is to identify barriers and challenges in the child protection system as it relates to migrant children, the study focuses on the ‘mainstream’ child protection system. That is, the generalised child protection system which applies to all children within Thailand, including Thai children and migrants. The particular systems of protection and services within temporary shelters for displaced persons from Myanmar and within immigration detention centres are outside the scope of the study. This study included an examination of cross-border child protection mechanisms, systems and practices (working practices and systems with neighbouring countries: Cambodia and Myanmar).

However, the study also considers community-based child protection approaches and mechanisms, that is, how migrant communities themselves respond to child protection concerns, and the extent and type of linkage of community-based systems to State child protection systems.

The study also examines child justice systems and how responsive they are to the needs of migrant children who come into conflict with the law (i.e. migrant children who are suspected, charged or convicted of having committed a criminal offence, other than an offence related to their migration status), and those who come into contact with the law as a victim / witness.

The study does not include an in-depth examination of the immigration system and the protection of children’s rights within this system; however, the ways in which migration laws and policies create child protection risks and vulnerabilities is examined.

It should be noted that the issue of birth registration for migrant children and statelessness among migrant and Thai children are not the focus of this study; it is noted that separate studies focusing on both of these issues is currently underway. However, birth registration and statelessness are considered to the extent that these issues represent barriers to migrant children’s access to the child protection system.

### 1.3 Definition of key terms and concepts

The study has used the following understandings of key terms and concepts:

“Child”: For the purposes of the study, a child is a person aged under 18 years, in accordance with international law and Thai domestic law.

“Migrant”: the study adopts IOM’s inclusive definition of migrant, which includes any person who is moving or has moved across an international border, temporarily or permanently, regardless of: “(1) the person’s legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of stay is.”

It should be noted that the study does not include Thai persons who migrate within the border of the country.

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11 Section 4, Child Protection Act 2003 (though note that children who have attained majority through marriage are not included within the definition of ‘child’ in the Child Protection Act 2003).
12 UN IOM, Who is a migrant? Available at: [https://www.iom.int/who-is-a-migrant](https://www.iom.int/who-is-a-migrant)
Defining the status of child migrants

The status of children who cross an international border can fall into a number of categories; these categories may be difficult to apply in practice as they can overlap and fluctuate. However, how child migrants are labelled (their status) can have important ramifications for the way they are treated in law and the services that they are entitled to in domestic law.

Unaccompanied and separated migrant children

The UNCRC defines unaccompanied children as those “who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.”13 Separated children are “children who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.”14 Often, these two terms, ‘unaccompanied’ and ‘separated’ are used interchangeably and refer to children who are separated. For this study, unaccompanied children will be those that have been separated from parents or legal caregivers.

Accompanied child migrants (children who are not separated from their parents or legal caregivers)

The study also includes children who migrate and remain with their parents or legal carers and children who are born in Thailand to migrant parents.

It has been noted that the distinction between the definitions of accompanied and unaccompanied / separated children may be difficult to apply in practice. For instance, some children may begin migrating alone, but may meet family members on the way or at their destination. Conversely, they may begin migrating with parents but be separated when their parents are arrested, detained or deported.15

Refugees, asylum-seekers or displaced persons

Refugee is defined according to the United Nations Convention relating to the Status of Refugees 1951 as a person who is: outside their country of origin; has a well-founded fear of persecution due to his/her race religion, nationality, member of a particular social group or political opinion; and is unable or unwilling to return.16 A refugee is someone who has been granted refugee status by the United Nations or by virtue of a State’s domestic law. Refugee children have rights and entitlements to protection under the Refugee Convention, which lays down basic minimum standards for the treatment of refugees, including access to primary education, to work and the provision of documentation, including a refugee travel document in passport form. An asylum-seeker is a person who is in the process of making a claim for refugee status but has not yet had their claim granted. It can also be used to refer to a person who has crossed an international border with the intention to apply for refugee status.

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13 UN Committee on the Rights of the Child, General Comment No. 6: Treatment of unaccompanied and separated children outside their country of origin, 1 September 2005, CRC/GC/2005/6, para. 7.
14 UN Committee on the Rights of the Child, General Comment No. 6: Treatment of unaccompanied and separated children outside their country of origin, 1 September 2005, CRC/GC/2005/6, para. 8.
16 Article 1, Resolution 2198 (XXI) adopted by the United Nations General Assembly.
It should be noted that Thailand is not party to the 1951 Refugee Convention and does not have domestic laws allowing for the determination and granting of refugee status. Therefore, the legal status of ‘refugee’ and ‘asylum seeker’ does not exist in Thai domestic law. Migrants in Thailand who are fleeing conflict or persecution are typically referred to as ‘displaced persons’ by the government or ‘persons of concern’; a status that is granted following a determination process carried out by UNHCR, but which does not exist in Thai domestic law.

The study includes both migrants in an irregular situation and migrants in a regular situation (sometimes referred to as “documented” and “undocumented”). Migrants in an irregular situation are persons “who moves or has moved across an international border and is not authorised to enter or to stay in a State pursuant to the law of that State and to international agreements to which that State is a party.” It includes those who entered a country in accordance with its immigration regulations, but who have stayed beyond the period of time to which they were legally entitled or who have otherwise breached a condition(s) of the law or regulations relating to their stay. Migrants in a regular situation are those who enter and stay in a country in accordance with its immigration laws and regulations and to international agreements to which the State is a party.

The study also includes children whose parents originated from another country but who are stateless (i.e. they do not have the legal status of nationality / citizenship with any State).

“Child trafficking”: Migrant children are exposed to the risk of child trafficking, which will be considered in this study as a child protection risk, as well as a driver of child migration. Child trafficking is a legal term that refers to “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or for other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control of another person for the purposes of exploitation.” However, it should be noted that force or coercion is not required to be established for trafficking in children to occur.

“Child protection”: as per the 2008 Thai Child Protection Manual, the term ‘child protection’ is used in this study to refer to strategies and activities to prevent and respond to abuse, exploitation, neglect and violence against children. The Thai National Child Protection Strategy 2017 – 2021 elaborates that the system operates at different levels, ranging from the formal to less formal, and includes the family, the community and the State. It includes a continuum and process of care whereby: “the continuum of care delineates the specific ways in which the system responds to rights violations whereas the process of care specifies the procedures that are followed. The process of care incorporates assessment strategies, case planning, treatment, and follow up, with the specific processes shaped by whether the underlying services are promotion, prevention, or response.” It should be noted that the functioning of other systems, including

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17 However, it should be noted that in December 2019, the Thai Cabinet approved the establishment of a mechanism to distinguish persons in need of protection from ‘economic migrants’: see UNHCR, “UNHCR welcomes Thai Cabinet approval of national screening mechanism”, 26 December 2019: https://www.unhcr.or.th/en/news/general/pr/unhcr-welcomes-national-screening-mechanism
the education system, health system, social protection system and system of labour laws and regulation / monitoring systems can serve a preventive function – a supportive social protection or labour regulatory system, for instance, can prevent children from experiencing violence, abuse, exploitation or neglect. However, the in-depth examination of these systems is beyond the scope of this report.

“Violence, abuse, neglect and exploitation of children” is defined broadly, in accordance with the CRC, as “all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse” against persons under 18 years of age. Thailand’s National Child Protection Strategy adopts this definition and adds: “using a child to act or behave in the manner that is likely to cause physical, mental or development harms or that is against the law and good ethics, regardless of the child’s consent.”

Violence against children may be perpetrated through actions or omissions. Physical violence is the deliberate or intentional use of physical force that either results in or has the potential to result in causing bodily harm. Emotional violence is the ongoing infliction of emotional pain through, for example, bullying, humiliating, scaring, terrorising, threatening, isolating, controlling and generally diminishing self-worth. Emotional violence can also include, in the case of children, witnessing intimate partner violence. Sexual violence is any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts otherwise directed against a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting. Neglect is the failure of those responsible for a child’s care to meet their physical and psychological needs, to protect them from danger or obtain basic services (as long as caregivers have the means, knowledge and access to such services). Child exploitation refers to the use of children in work or other activities for the benefit of others and to the detriment of the child’s physical or mental health, development and education. It can include harmful child labour and sexual exploitation, which is any situation where the victim takes part in sexual activity in exchange for a gain or benefit (or for the promise of a gain or benefit) to themselves or a third party. This definition encompasses prostitution and pornography, including online sexual exploitation. In practice, child exploitation frequently overlaps with child trafficking (see definition above).

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22 Convention on the Rights of the Child, Article 19(1); UN Committee on the Rights of the Child, General Comment No. 13 (2011), The right of the child to freedom from all forms of violence, 18 April 2011, CRC/C/GC/13 (CRC GC No. 13 (2011)), para 4
23 This is in accordance with article 1, UNCRC.
25 The meaning and significance the provisions contained in Article 19 are further explained by the Committee on the Rights of the Child in General Comment No. 13 (2011) on the right of the child to freedom from all forms of violence.
27 Committee on the Rights of the Child, General comment no. 13: The right of the child to protection from all forms of violence. 2011. CRC/C/GC/13, para. 21.
28 World report on violence and health (Heise & Garcia-Moreno, 2002; Jewkes, Sen & Garcia-Moreno, 2002) at p.149 http://apps.who.int/iris/bitstream/10665/42495/1/9241545615_eng.pdf [12.07.17] It is noted that the definitions of sexual violence differ according to the age of the victim / survivor. Children below the legal age of consent will often be considered a victim of (statutory) rape. This is discussed in more detail below.
29 Committee on the Rights of the Child, General comment no. 13: The right of the child to protection from all forms of violence. 2011. CRC/C/GC/13, para. 20.
31 https://www.unicef.org/protection/57929_79672.html
1.4 Analytical framework: international standards and best practice guidance

The study used key international human rights standards, guidelines from relevant international organisations and (where possible) evidence of good practices to provide a framework for analysis and to measure the policies and practices in Thailand, and to inform the development of concrete recommendations (see section 5). A number of principles have been elaborated in international instruments, including in the UN Convention on the Rights of the Child (CRC) and CRC committee’s concluding observations to guide States as to how to ensure that the State’s child protection system accommodates the particular risks and needs of migrant children. This includes general principles relating to the provision of child protection to all (including migrant) children along with special provisions that apply to separated or unaccompanied children and those applying in the context of trafficking in persons. Annex C provides a detailed analysis of relevant international standards and best practice guidance, though key international standards and best practice are set out throughout the report. A summary of key international conventions and provisions is set out in the box below.

INFORMATION BOX: KEY INTERNATIONAL STANDARDS ON CHILD PROTECTION AND MIGRATION

The UN Convention on the Rights of the Child and supporting international instruments (including, most relevantly, the Optional Protocol on the Sale of Children, Child Prostitution and Pornography 2000, the UN Guidelines on the Alternative Care of Children 2010 and the UN Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice) elaborate the rights of children and standards applicable to the functioning of the child protection and child justice systems in State parties. The UN Committee on the Rights of the Child has made it clear that the rights contained in these instruments, including those relating to child protection, apply equally to citizens as to non-citizens, including undocumented children.32 The CRC Committee makes it clear that the needs of migrant children shall be identified, assessed and provided for by the child protection/welfare system and that child protection and welfare actors shall take primary responsibility for children in the context of international migration.33

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32 UN Committee on the Rights of the Child, General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin, 1 September 2005, CRC/GC/2005/6, para. 12.
In addition, there are special rights and standards that apply to unaccompanied and separated migrant children. The CRC Committee sets out a number “necessary measures” that States must take to protect unaccompanied migrant children including: identifying unaccompanied and separated children; regularly inquiring as to their whereabouts; and conducting information campaigns that are age-appropriate, gender-sensitive and in a language and medium that is understandable to the child.34

The Protocol to Prevent, Suppress and Punish Trafficking in Persons (the Palermo Protocol) contains special provisions that apply to migrants who have been or are exposed to the risk of human trafficking. In addition, the ASEAN Convention Against Trafficking in Persons, Especially Women and Children, provides a range of protections for victims of human trafficking and places an obligation on parties to establish national guidelines or procedures for the proper identification of victims of trafficking,35 rights to physical protection and protection of privacy and to specific protection and support, including to adequate housing; counselling and information; medical, psychological and material assistance; and employment, educational and training opportunities.36

The Convention Relating to the Status of Refugees 1951 elaborates rights and protections for refugees and asylum-seekers, including children; however, Thailand is not a signatory to this Convention and it does not have a domestic refugee law or refugee determination process (Thailand also has a reservation to article 22 of the CRC, which sets out specific rights and protections for refugee and asylum-seeking children).37 Though it should be noted that in December 2019, the Thai Cabinet approved the development of a mechanism to distinguish persons in need of protection from ‘economic migrants’.38

34 UN Committee on the Rights of the Child, General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin, 1 September 2005, CRC/GC/2005/6, paras. 52.
35 ASEAN Convention Against Trafficking in Persons, Especially Women and Children
36 ASEAN Convention Against Trafficking in Persons, Especially Women and Children, Article 10.
37 It is noted that an in-depth examination of refugee law and procedure is outside the scope of this study, which focuses on access and functioning of the child protection system for migrant children in Thailand.
In September 2016, the New York Declaration for Refugees and Migrants was adopted by the General Assembly, following recognition by UN member States of the need for a more comprehensive approach to the movement of persons at the global level. The Declaration explicitly recognises the needs of refugees, internally displaced persons and migrants and makes a number of commitments that are intended to ensure “a people-centred, sensitive, humane, dignified, gender-responsive and prompt reception for all persons arriving in a country, and particularly those in large movements, whether refugees or migrants,” with full respect for their human rights and fundamental freedoms. Following the adoption of the Declaration, intergovernmental consultations and negotiations took place culminating in the adoption of the Global Compact for Refugees and a separate Global Compact on Migration, which was formally endorsed by 152 States at the UN General Assembly on 19 December 2018. According to the New York Declaration and Global Compact, States commit to protect the human rights and fundamental freedoms of all refugee and migrant children, regardless of their status, and to give primary consideration at all times to the best interests of the child. This applies particularly to unaccompanied children and those separated from their families; who are to be referred to the relevant national child protection authorities and other relevant authorities for care.

The Global Compact emphasises the importance of ensuring that the domestic child protection system of States covers migrant children: objective 7 commits States to “account for migrant children in national child protection systems by establishing robust procedures for the protection of migrant children in relevant legislative, administrative and judicial proceedings and decisions.”

39 UN Doc. A/71/L.1, 13 September 2016. The NY Declaration took note of the report of the Secretary-General, entitled “In safety and dignity: addressing large movements of refugees and migrants” (A/70/59), prepared pursuant to General Assembly decision 70/539 of 22 December 2015; the World Humanitarian Summit, held in Istanbul, Turkey, on 23 and 24 May 2016; the high-level meeting on global responsibility-sharing through pathways for admission of Syrian refugees, convened by the Office of the United Nations High Commissioner for Refugees on 30 March 2016; the conference on “Supporting Syria and the Region,” held in London on 4 February 2016; the pledging conference on Somali refugees, held in Brussels on 21 October 2015; regional initiatives such as the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime; the European Union-Horn of Africa Migration Route Initiative and the African Union-Horn of Africa Initiative on Human Trafficking and Smuggling of Migrants (the Khartoum Process); the Rabat Process, the Valletta Action Plan and the Brazil Declaration and Plan of Action.

40 UN Doc. A/71/L.1, 13 September 2016 para. 22

41 UN Doc. A/73/L.66, 12 December 2018, Global Compact for Safe, Orderly and Regular Migration.

42 Global Compact, objective 7(e).
The study employed a qualitative approach as the aim of the study was to understand, in an in-depth and deeply contextualized manner the particular child protection risks and threats that migrant children face en route to and within Thailand, and their access to and experience of the child protection system, along with gaps and challenges within the child protection system in providing for the needs of migrant children. Qualitative data was used to promote meaningful and participatory dialogue with stakeholders.

The methodology was designed following a week-long inception visit which involved a series of interviews with Government, NGO and (I)NGO representatives who have key roles or expertise in child protection and migration. The development and implementation of the methodology benefited from the guidance of a steering committee composed of key Government institutions, NGOs and experts.

2.1 Research locations

Research was carried out in locations within four provinces which are known to contain a high number of child and family migrants. The selection of locations aimed at achieving maximum variation across a number of criteria in terms of the types of migrants and types of issues and risks that they are likely to face, while ensuring that the selection of sites allowed for an in-depth examination of cross-border trafficking and child
protection protocols and practices between Thailand/Myanmar and Thailand/Cambodia. While the study did not aim to collect representative quantitative data on the prevalence or nature of child protection needs of migrant children or on the functioning of the child protection system, it did aim to develop findings on the types of child protection risks that migrant children face and to explore and understand access to and the functioning of the child protection system’s capacity to respond to the needs of migrant children across a range of contexts and circumstances. It was therefore important to examine the situation and working procedures and practices across diverse locations and diverse groups of migrants in order to generate findings that are broadly generalisable. It should be noted, however, that some gaps or limitations in the child protection system and service delivery are likely to be more pronounced in the study locations, due to the economic implications of having a relatively large number of child migrants in these locations, many of whom are undocumented.

Selection criteria for research locations were devised accordingly, and locations were chosen to allow for an examination of protection risks across diverse contexts in terms of: rural and urban locations and locations in which there is a mixed migrant community and those in which there is a dominant community from a particular country/area within a country; a range of migration statuses and situations (documented, undocumented, UNHCR ‘persons of concern’, children who are accompanied by family, children who are unaccompanied etc.); migrant children and families from a range of countries, but in particular, from Cambodia and Myanmar, and a range of locations/ethnic groups within these countries; locations including diverse migration drivers: work, education, conflict and security etc.; a wide range of work/livelihoods of migrant children and families; and exposure to different or particular types of protection risks (trafficking, child sexual exploitation, child economic exploitation, children living on the street etc.).

The following locations were selected: Greater Bangkok; Ranong; Tak (Mae Sot); and Sa Kaew (profiles of migration in these locations are set out in section 3.1). Sub-districts within these locations were selected in consultation with DCY and included those with a relatively high proportion of migrant families. Research also took place in Banteay Meanchey province in Cambodia in order to collect data on cross-border management of child protection cases. Due to access difficulties on the border region in Myanmar, and the centralised governance system, researchers were unable to carry out data collection in the border areas in Myanmar (however, researchers benefited from a simultaneous study being carried out on child protection and migration within Myanmar by UNICEF Myanmar).

2.2 Data collection

Data was collected through a series of semi-structured key informant interviews, life history interviews and focus group discussions with migrant children and parents/caregivers. Data collection was carried out by two international researchers and two national researchers, following an orientation/training session and a piloting phase. Participants were recruited through the network of Provincial SDHS offices, shelters and local NGOs operating in each location.

In addition, a series of key informant interviews were carried out with representatives of institutions at the national level. The purpose of these interviews, which were carried out during the inception phase of the research, was to strengthen understanding of the context of child protection and migration in Thailand, as well as the needs and priorities of different stakeholders, in order to inform the methodology and approach.
Key informant interviews

Key informant interviews (KIIIs) were used to obtain detailed and specific information from experts or key informants who have a role or function within the child protection system. Interviews were carried out with individuals, though some interviews involved several participants from the same institution. In total, **83 KIIIs were carried out with 118 participants**, including PSDHS Social Workers, Police Officers, Immigration Officials, Emergency and other shelter staff, Prosecutors, Judges, One Stop Crisis Centre (OSCC) staff, key Sub-district Administration Organisation (SOA) officials and staff from key NGOs that work with migrant children and families (see Annex A for further details). A semi-standardised approach was used, guided by a structured tool, but allowing for a responsive, participant-directed interaction. The purpose of this was to provide a more flexible interaction in which the key informant was able to guide the interview and thereby prioritise themes and issues according to the particulars of each context (and their perspectives on this).

Where possible, participants were asked to bring two to three files involving migrant children to the interview and were directed to talk through the circumstances of the cases, and the process followed, with researchers drawing out relevant information on key gaps and challenges. This allowed researchers to examine child protection processes and services in a concrete and applied manner. However, not all participants were able to produce case files; when this was the case, participants were asked detailed questions about key recent cases.

Focus group discussions with migrant families and adolescent migrants

A series of focus group discussions (FGDs) were conducted with migrant families (parents) and adolescents (13 – 18 year olds) in communities in order to gather data in relation to prevalent community perceptions, attitudes and practices in relation to migration and (perceptions of) access, responsiveness and quality of child protection systems and services. These FGDs also aimed to examine community-based child protection structures and mechanisms and coping strategies, and how these relate to formal child protection systems and services. Focus group discussions were based around a series of hypothetical scenarios involving different types of child protection risks. This allowed researchers to elicit quite concrete and applied data in a non-intimidating manner (i.e. focusing on hypothetical situations rather than direct experiences of migrants themselves). Child-friendly participatory action research tools were developed for FGDs involving younger adolescents (those aged 13 – 15 years).

**29 FGDs were carried out, involving 129 adolescents (67 girls and 62 boys) and 60 adults (parents)** (details are contained in Annex A). The sample involved a roughly even gender mix and mix of age ranges (between 13 to 18 years, though an 11 and 12-year old were involved in two FGDs), along with a range of migrants from different countries and circumstances (in particular Cambodia, Myanmar, Vietnam and Somalia).

In-depth life history interviews with migrant children and families

A series of participatory qualitative in-depth interviews were conducted with child migrants aged 13 years and above, and migrant families with children of varying ages. These interviews aimed to gather rich and detailed data on child protection risks, needs, barriers to access and experiences in the child protection system, drawing directly from the perspectives and experiences of children and families themselves. Interviews included a mix of life history questions and questions that focused on experiences and perceptions of the child protection system, and their knowledge of and engagement with it.

**10 in-depth interviews** were carried out with children and / or parents.
2.3 Data analysis and validation

All qualitative data from interviews (KII and life history interviews), FGDs and participatory sessions were coded to identify key themes, patterns and relationships relevant to the research objectives. A thematic analysis\textsuperscript{43} was used to identify key themes that thread children's experiences in care, and the perspectives and priorities of different stakeholders in the care system. Data analysis aimed to situate the data findings in their broader social and cultural contexts and engage strong human rights and gender perspectives.

Where possible, data collected from interviews was triangulated based on the information provided by different types of stakeholders to ensure the accuracy of findings, analysis and interpretation.

Following the development of a draft report, a presentation of key findings was made to steering committee members and other key Government representatives and stakeholders in Bangkok in October 2019, in order to test the accuracy of the findings and elicit feedback to help further refine the report. Participants were also involved in developing initial implications or recommendations based on the study’s findings to ensure that recommendations were developed that are responsive and relevant to the context.

2.4 Limitations

The research was affected by a number of limitations. Limited access to migrant children and families who have had contact with the child protection system or child justice system and / or have been provided with child protection services was a challenge. This limited the ability for researchers to collect data on the experiences of a wide range of migrant children and families in the child protection system; however, this is perhaps unsurprising, given the considerable barriers for migrants in accessing Government child protection services, as detailed in this report. Access to participants from migrant communities – typically made through Migrant Learning Centres and NGOs, and therefore including participants who are already connected to systems or services, may have impacted on the ability for researchers to understand barriers and challenges facing more marginalised or ‘hidden’ migrant populations, with barriers to accessing child protection systems and services likely underrepresented in the data.

Given the sensitive nature of the research and the vulnerable and often precarious position of migrant children and families in Thailand, it is possible that the data collected was affected by reporting bias. Children and caregivers may have been unwilling to disclose experiences connected with irregular migration or criminal activity and may have been reluctant to identify themselves of victims of violence, given the fear and stigma associated with some experiences of violence – particularly sexual violence and exploitation. To mitigate against reporting bias, researchers took care to explain the purpose of the research carefully and emphasised that anonymity would be provided and that no negative personal or professional consequences would result from sharing any information. Interactions were participatory, allowing participants to direct the interview and elicit authentic responses; focus group discussions focused on hypothetical scenario-based questions in order to engage respondents in a non-confrontational manner.

The translation of information into English or Thai will have had some impact on the authenticity of the data collected. Some information will have inevitably been lost through the translation process, particularly with regard to complex, detailed and highly context or culturally specific information. However, the use of knowledgeable translators from relevant migrant communities and experienced national qualitative researchers provided some mitigation of these limitations.

\textsuperscript{43} Informed by the six-stage process outline by Braun, V. and Clarke, V. (2006) Using thematic analysis in psychology. Qualitative Research in Psychology, 3 (2). pp. 77-101
2.5 Ethics

A detailed ethical protocol was developed for this study (see Annex B), based on Coram’s and UNICEF’s ethical guidelines. The protocol passed a review by Coram’s independent ethical review board consisting of two external experts. In addition, the inception report, methodology and data collection tools were reviewed by UNICEF Thailand’s internal Research Review Committee and revised according to comments provided by the Committee.
3 CONTEXT: CHILD MIGRATION AND POLICY RESPONSES IN THAILAND

3.1 Dynamics of (child) migration

Large-scale labour migration into Thailand from neighbouring countries began in the 1990s, followed and fuelled by a decade-long economic boom in Thailand, which resulted in significant economic growth, a demand for low-skilled workers and greatly expanded wage differentials between Thailand and its neighbours. Thailand is now the main destination country for international migration within the Greater Mekong sub-region.\(^{44}\) It is home to an estimated 4.9 million non-Thais, including 3.9 million migrant workers from neighbouring countries,\(^{46}\) from which around 76 per cent come from Myanmar.\(^{46}\) This represents a substantial increase from 3.7 million in 2014.\(^{47}\) It has been projected that the increasing labour demand and reduction in the supply of local labourers as education levels grow in Thailand and the working age population declines, will only increase the need for migrant labour in the coming years.\(^{48}\)

Migrant workers play a significant role in the labour force, constituting over 10 per cent of Thailand’s total labour force, though rising to around 80 per cent in the construction and fishing sectors,\(^{49}\) making the economy (and particularly the construction and fishing sectors) highly dependent on migrant labour. It has been noted that, owing to the irregular status of many migrant workers, migrants are “an invisible yet integral part of the Thai economy.”\(^{50}\)

\(^{46}\) IOM Thailand, Assessing potential changes in the migration patterns of Myanmar migrants and their impacts on Thailand (2013).
\(^{48}\) IOM Hazard exposure 2016
According to data from the Thai Ministry of Labour, as at May 2016, approximately two million migrants from Myanmar, Cambodia and Laos PDR were documented in Thailand. This includes two-thirds who were fully regularised, most (77 per cent) under the National Verification process first established by the Thai Government in 2002/3 and a further 23 per cent formally under MoUs with neighbouring countries\(^\text{51}\) – processes designed to regularise low-skilled migrant workers from neighbouring countries (see below for further details). Almost 80 per cent of the two million documented migrants were from Myanmar, with the rest coming from Cambodia (487,000), Laos PDR (128,000) and Vietnam (no reliable statistics available).\(^\text{52}\) The majority of work permits (just over half) were issued for the Bangkok and greater metropolitan area; the largest destination for migrant workers.\(^\text{53}\)

While there are no official figures on the number of migrants in irregular situations / undocumented migrants in Thailand (and noting the discrepancies that exist between different data sources\(^\text{54}\)), the number is estimated to be between 1 to 2 million.\(^\text{55}\) Migrants may decide to enter and stay in Thailand without documentation or regularisation owing to costly, complex procedures or restrictive conditions associated with regularisation, as discussed below. According to a recent IOM study of migrants from Myanmar, the proportion of documented compared to undocumented migrants varies by province. In Samut Sakhon and Chang Mai, the majority of migrants reported having full documentation (67.8 per cent and 88.5 per cent, respectively). By contrast, in Tak province, the majority of respondents (63.1 per cent) reported having no documentation.\(^\text{56}\)

Thailand also hosts a population of displaced persons, mostly from Myanmar. As at November 2018, there were 97,439 refugees registered by UNHCR, the vast majority of whom live in nine camps / shelters on the Thai / Myanmar border, though a small minority (around 6,000) are “urban refugees,” who live within the community and are registered and provided with support by UNHCR and NGOs. As Thailand does not have a domestic legal process for refugee status determination, nor does it recognise ‘asylum-seekers’ as a legal status,\(^\text{57}\) refugees living outside the camps (“urban refugees”) are considered to be staying in Thailand “illegally.”

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56 IOM Thailand, Assessing potential changes in the migration patterns of Myanmar migrants and their impacts on Thailand (2013).
57 Though it is noted that the Thai Cabinet recently approved the development of a status determination mechanism: UNHCR, “UNHCR welcomes Thai Cabinet approval of national screening mechanism”, 26 December 2019: https://www.unhcr.or.th/en/news/general/pr/unhcr-welcomes-national-screening-mechanism
3.1.1 Profile of migration in the study locations

**Greater Bangkok**

Greater Bangkok consists of Metropolitan Bangkok; a large city of 8 million residents situated on the Chao Phraya River basin, along with a number of surrounding provinces (Nakhon Pathom, Pathum Thani, Nonthaburi, Samut Prakan and Samut Sakhon). There are 306,536 registered migrants in Bangkok and inland surrounding provinces and almost 500,000 in greater Bangkok; it is estimated that, including those with temporary permits, up to one million migrants are residing in Greater Bangkok. Approximately 40 per cent of all irregular migrant workers live in Bangkok and its surrounding areas. These areas are home to much of Thailand’s manufacturing, hospitality, tourism and sex industries; there are also 30,000 registered migrant domestic workers in the region (the vast majority of registered domestic workers in the country). Many migrants also work in the construction industry. Around Bangkok, there are a number of agriculture areas (e.g. Nakhon Pathom), hosting pig farms. Migrants in agriculture typically work in poor conditions, under the minimum wage. Many migrants with children work in the fishing and fish processing industries around the Gulf of Thailand, most concentrated in Samut Sakhon; many are thought to be unregistered and working in exploitative conditions.

Bangkok also hosts an estimated 6,000 “urban refugees” including children (this includes both those who are seeking asylum and those who have been processed by UNHCR) from Pakistan, Palestine, Syria, Sri Lanka, Viet Nam, Somalia and China.

According to research participants, children do not often accompany migrant parents in Bangkok but tend to stay behind in their country of origin. Some participants were ‘urban refugees’ from Somalia and Vietnam who reported being at risk of violence and persecution in their countries. Some of the research participants held UNHCR cards identifying them as ‘persons of concern’; however, these cards do not have legal status in Thailand.

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Ranong province

Ranong is a southern province located on the west coast along the Andaman Sea, bordering Kawthoung District in Myanmar’s Tanintharyi Region. It is the least populated province in the country with a total population of around 190,000. The province has one of the largest ratios of migrants to Thai population, with 53,835 registered (NV) Myanmar workers, and many more irregular migrants. Many migrants work in the fishing sector, on fishing boats, and also in the seafood processing industry either in processing centres or in their homes. Migrants also find agricultural work.

Exploitation of migrant workers and trafficking of migrants, predominantly from Myanmar, including Rakhine State, into the Thai fishing industry has been the subject of recent research by ILO.62

According to research participants, the vast majority of child migrants in Ranong arrive in Thailand to accompany their parents, who have migrated from Myanmar to pursue work opportunities. Many are working in fishing and seafood processing industries.

Sa Kaew province

Sa Kaew is a province in the east of Thailand, bordering Banteay Meanchey and Battambang provinces in Cambodia. Banteay Meanchey is home to Poipet: the main border crossing between Thailand and Cambodia. Many of the existing Khmer population in Sa Kaew are descended from migrants who crossed the border and stayed in villages on the border during the Khmer Rouge regime (1975 – 79) and Vietnamese invasion (1979 – 89). When the conflict ended in 1991, many returned to Cambodia, but some remained in Thailand and some married Thai nationals.63 Despite being in Thailand for decades, these migrant communities are still considered undocumented and residing in Thailand illegally. It has been noted that the option to register as migrant workers is not a viable option for these communities, as it grants only temporary status.64

62 ILO, Ship to shore: Baseline research findings on fishers and seafood workers in Thailand (2018), Bangkok: Thailand.
63 Chhon, PK, ‘Cambodian migrants’ social protection, local integration and multiple boundaries in the Thai border villages of Khok Sung, Sa Keao province’ (2014), Chulalongkorn University: Bangkok.
64 Chhon, PK, ‘Cambodian migrants’ social protection, local integration and multiple boundaries in the Thai border villages of Khok Sung, Sa Keao province’ (2014), Chulalongkorn University: Bangkok.
According to research participants, child migrants from Cambodia tend to accompany their parents, who travel to work mainly in the agriculture and construction sectors. Others travel over the border to sell goods on a daily basis. Children may also migrate or travel daily to attend school, and child interview participants tended to have 10-year identity cards, which allow them to study in Thai schools. While a number of migrants (adults and children) beg in Thailand, increased police enforcement has reportedly resulted in less migrants travelling in order to beg in the border area.

**Tak province**

Tak province shares a 300 km. border with Kayin State in Myanmar and is a major entry point for the many Myanmar migrants who enter Thailand. It hosts over 30,000 migrants with work permits, over 34,000 with temporary permits and an estimated 150,000 unregistered migrants from Myanmar. It is a mixed migration context, with many migrants entering Thailand to pursue economic opportunities, while others may be escaping conflict, persecution or environmental risks. Many migrants come from Kayin State, though some come from other areas in Myanmar, passing through Kayin State on their way to Thailand.

The majority of migrants in Tak live in Mae Sot and its surrounds; the Thai-Myanmar Friendship Bridge is an important entry point. Myawaddy, the town at the border, has become a Special Economic Zone and a number of factories have been set up by Thai business persons.

According to research participants, children tend to accompany their parents into the country from Myanmar, and many of Tak’s migrants work in factories and agriculture. Exploitative labour conditions have been well documented in factories, agriculture and among domestic workers in Tak.

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3.1.2 Profile and drivers of child migration

Knowledge and data on the numbers and situation of child migrants in Thailand are quite limited. Data on child migrants are not collected in a systematic way and children may cross the border in a covert manner. However, IOM has estimated that there are between 300,000 and 400,000 migrant children in Thailand as of 2018.68 Children are not counted in labour statistics and are less likely to be registered than adults of working age. Children from the age of 15 years may be registered / documented in the Nationality Verification process; however, based on figures from 2013, only a very small percentage of migrants registered under this process were under 18 years (0.7 per cent).69

According to a study of migrants from Myanmar by IOM, migrant families with children tend to be concentrated in certain provinces, particularly around the Thai border areas with Myanmar. The study found, of surveyed migrants with children, they were more likely to leave them behind in Myanmar (Samut Sakhon, 51.5 per cent; Surat Thani, 47.6 per cent; and Bangkok, 44.4 per cent), whereas those in border provinces were less likely to do so (Ranong, 23.8 per cent; Tak, 9.7 per cent; Chang Mai, 79 per cent; and Kanchanaburi, 3.2 per cent).70

Children's migration is dynamic and complex, with a multitude of context-dependent drivers. While, as set out above, adult migration has been fuelled by the demand for low-skilled migrant labour in Thailand, increased opportunities and higher wages (and economic development and wage disparities between Thailand and its neighbouring countries), poverty and limited economic opportunities in countries or communities of origin and, in some cases, conflict and displacement, the unique factors that drive and shape child migration to Thailand has not been the subject of extensive research. Research on migration has often focused on the economic drivers for adult migration, while children have been typically framed as powerless within the migration process. Clearly, and particularly with young children, the factors that drive the migration of children will be the same as for adults. However, there are unique factors that drive the migration of children and the decision-making by children around migration. Much of the research to date has framed child migrants in terms of vulnerability and risk and has focused heavily on trafficking and asylum-seeking and refugee children, at the expense of examining the dynamics that drive child migration more broadly. It has been noted that “assuming that children can only ever be forced or colluded into migrating is a falsehood that overlooks the reality of many children’s lives.”71 Children make decisions (though they do so within the limits of social and cultural expectations and family circumstances), and there is a need to move beyond framing child migrants either as vulnerable and completely dependent on and beholden to their parents and carers or as completely free and independent agents: “although there are constraints on what children can do, children are often active within these limits, and within their own capacities and needs.”72

While children's decision-making relating to migration may be constrained in ways that the decision-making of an adult is not, making them more vulnerable to exploitation and abuse, it is increasingly recognised that children often have the capacity and ability to make independent decisions and are actively involved in decision-making about their migration. It is important to recognise this agency and the complexity of experiences of child migrants in order to ensure that policies and interventions to protect child migrants are based on the realities of their lived experiences.73

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71 Farrow, C., A review of European research findings on children in migration DATE p. 6.
72 West, A., Children on the move in South-East Asia: Why child protection systems are needed (2008), Save the Children U.K (London), p. 23.
73 West, A., Children on the move in South-East Asia: Why child protection systems are needed (2008), Save the Children U.K (London), p. 2.
According to existing research, poverty is a core driver of (child) migration into Thailand. Families living in poverty may migrate in order to access better economic opportunities. However, other factors encourage migration as a coping strategy in the context of poverty. Social or family networks in Thailand can be a pull factor, along with the idea that migration is ‘the usual practice’ (that is, the ‘usual’ way to access economic opportunities in the event of hardship) in some sending communities. Improved communication technologies have likely increased the role of kinship and social networks in Thailand as a pull factor for migration. The excitement of the environment in Thailand and the different opportunities it provides for earning an income and the perception that Thailand provides a more ‘modern’ life has been found to be a draw for migrants, particularly those from Laos farming communities. For migrants coming from Cambodia, while the evidence suggests that seeking employment is a core driver for the vast majority, the interplay of chronic poverty, landlessness, lack of employment, lack of access to markets and materialism have been found to be driving migration to Thailand, along with a number of ‘pull’ factors, including demand for labour, peer example and encouragement, the lure of perceived ‘easy money’, aspiration to a perceived better lifestyle, independence and the excitement of an urban environment. The accrual of debt appears to be a key push factor as well. One recent case study-based research report found a typical pattern among Cambodian international migrants to Thailand involving the accrual of a substantial medical debt following a family member falling ill, followed by a decision to send adolescent and youth family members to Thailand to work and send back remittances.

For children, poverty interacts with a sense of familial obligation and notions of childhood that emphasise responsibility of children to their families. Migration of children is often a family strategy, with children, particularly girls, migrating for work to contribute to the family’s wellbeing. One Cambodian study, for instance, found that remittances can improve the economic situation of families in Cambodia. In Laos PDR, for instance, children’s indebtedness to parents for their upbringing was traditionally discharged by daughters through housework but may now be discharged through providing remittances. In addition, matrilineal inheritance gives girls an interest in growing the family’s capital. These factors are important drivers of child migration from Laos to Thailand. This is supported by data that, among migrants from Laos PDR, adolescent girls far outnumber adolescent boys.

Lack of access to quality services, including education and healthcare, can also be a driver of child and family migration, and has been found to be a particular driver for families from Cambodia. In some areas, children travel across the border on a daily basis to access education, while some children migrate across the border and end up in residential care such as in boarding houses or boarding schools. In addition, some children migrate in order to escape situations of abuse or family violence. It has been noted that education services are poorly developed in some parts of Myanmar, and there are limited opportunities for secondary and higher education, and this has driven many Myanmar children to search for educational opportunities in Thailand.

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81 West, A., *Children on the move in South-East Asia: Why child protection systems are needed* (2008), Save the Children U.K (London), p. 11.
82 West, A., *Children on the move in South-East Asia: Why child protection systems are needed* (2008), Save the Children U.K (London), pp. 6 – 22.
While many families and children entering Thailand are driven by economic opportunities, including vocational training and employment opportunities, there are a portion of migrants who have fled armed conflict in Myanmar over the past 30 years. These families have “fled form violence, detention, arrest and internal displacement, seeking to sustain their families in villages and towns in the borderland between Myanmar and Thailand.” Some migrants are also driven by the impacts of natural disasters in Myanmar, such as earthquakes, fires, floods and cyclones. These migrants may come to Thailand seeking security and stability; however, their motivations for migrating may be mixed – they may also be driven by the need to escape poverty and unemployment and ensure economic stability through accessing opportunities afforded in Thailand.

Thailand is also a recognised source, transit and destination country for trafficking in persons, including children, though data are limited (for further details on child trafficking, please see section 4.1).

**INFORMATION BOX:**
**Summary of drivers of migration for children**

**Children migrate to obtain:**
- Cash – paid work in factories, agriculture, restaurants, domestic households etc.
- Board and lodging – unpaid domestic and other work
- Education

**They migrate for a variety of reasons, including:**
- To support their parents and / or family household through remittances (e.g. to send a sibling to school)
- To support their parents by relieving the burden of their care, food costs etc.
- To go to school / boarding school
- To work and go to school – by working in the household of a relative or non-relative who pays for their schooling
- To accompany their parents who are migrating
- Because they have no parents and no guardian
- To escape violence and abuse at home or in school

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85 Ball, J. and Moselle, S.N., ‘Living liminally: Migrant children living in the Myanmar-Thailand border region, DATE
86 West, A., Children on the move in South-East Asia: Why child protection systems are needed (2008), Save the Children U.K (London), p. 6.
87 West, A., Children on the move in South-East Asia: Why child protection systems are needed (2008), Save the Children U.K (London), p.
3.2 Development of national policies on migration

The Government of Thailand regulates movement of migrants into and their stay in Thailand primarily through the Immigration Act 1979. The Act sets out a number of circumstances in which entering and remaining in Thailand will be considered “illegal.” This includes those who enter Thailand without the necessary documentation, those who enter in accordance with the Act and proper procedure but who stay beyond the period of time permitted and those who violate the terms of their entry and stay (e.g. those who work when not permitted etc.).

As set out above, the vast majority of migrants entering Thailand from neighbouring countries are those in irregular situations – i.e. they do not enter into the country in accordance with the Immigration Act 1979 and other relevant laws and policies that regulate movement into the country. The Government’s response to irregular migration has been characterised by attempts to regularize labour flows through bilateral agreements and ad hoc amnesties, coupled with immigration enforcement, including occasional large-scale sweeps. Recent crackdowns have exposed the extent of reliance of particular industries on cheap migrant labour and have typically been followed by attempts to regularise migration. Over the past few decades, the Government has attempted to regulate the flow of irregular migrants into Thailand and initiate a number of policies to improve the wellbeing of irregular migrants while in the country.

Two main channels for regularising the status of migrants and facilitating regular migration for low skilled workers from neighbouring countries are through the memorandum of understanding (MoUs) with Cambodia, Lao PDR, Myanmar and Viet Nam, which provide migrants with a legal channel for accessing job opportunities in Thailand, and the Nationality Verification process, which allows undocumented migrants already in Thailand to regularise their status temporarily without having to return to their country of origin, but after which they are supposed to return home to enter Thailand through the MOU process.

The MOU process was established in 2002/2003, according to the MOU on Cooperation in the Employment of Workers, which was signed with Lao PDR (in 2002), Cambodia and Myanmar (both signed in 2003). Following this, detailed procedures were developed for the recruitment of migrants in the countries of origin and hiring in Thailand. The initiative represented the first time that a legal channel was established for low-skilled migrants in these countries to enter Thailand. Migrants entered Thailand with a temporary passport, a Thai visa and a work permit valid for two years, renewable for an additional two years if they continued working. Revised MOUs, providing for a broader scope of labour cooperation and emphasis on skills development and social protection, were signed with the three countries in 2015/16.

The Nationality Verification process supplements the MOUs; its purpose was to assist in the temporary regularisation of irregular migrants from Cambodia, Laos PDR and Myanmar who were already working in Thailand. The process was intended to conclude in February 2012 but has been continually extended to offer migrants from the neighbouring countries a window for regularising their status. One Stop Service Centres were established in 2014 and are now located in every province to assist migrants in accessing the NV process. They provide a temporary “pink card” while migrants complete the NV process. While a large number of migrants regularised their status through the NV process in the most recent window in June 2018, 1,187,803 migrants completed the process and received work permits. However, a large number of migrants (811,437) accessed temporary registration at the One Stop Service Centres but were unable to complete full NV registration. There were also concerns that One Stop Service Centres provided an insufficient service, with queues of three days reported among migrants.

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88 Section 12, Immigration Act 1979.
While the number of migrants entering Thailand under the MOU process and those regularising their status under the NV process has been increasing in recent years, by far the majority of migrants enter and remain in Thailand irregularly. A recent study by ILO and IOM found that the majority of workers from Cambodia (73 per cent), Lao PDR (96 per cent), Myanmar (91 per cent) and Viet Nam (91 per cent) used irregular channels to enter Thailand.

According to recent research, the MOU process is costly, time consuming and bureaucratic and there is little evidence that it has contributed to improved working conditions for migrants. According to a recent UN report, a typical migrant from Cambodia going through an MOU process would be expected to pay USD 700 for documents and other fees, and wait three to six months for approval to migrate. While entering Thailand irregularly is risky and offers limited protection, it is often the best choice from a series of unfavourable options. Under the MOU, migrants lose their status if they change workplaces. Moreover, Laos PDR and Cambodia have enacted bans and restrictions on migrant women migrating for domestic work. This has increased the use of irregular migration channels, possibly increasing the vulnerabilities of these migrants.

Recent economic policies have sought to facilitate access to low cost migrant labour while ensuring that migrants remain confined to the border regions. Through the establishment of 10 Special Economic Zones in Thailand’s border regions in 10 provinces, the Government has sought to ensure industries have access to low cost labour while reconciling this with “public resistance to migrants visibly being part of Thai society.”

It is important to note that very limited options exist for children and other dependents to migrate to Thailand legally. Children under 15 years (and those under 18 years for certain types of work and sectors) are not permitted to work in Thailand and are not permitted to migrate under the MOU process, leaving child dependents without legal status even where their parent/s migrate through regular channels. There are also strong disincentives for children aged over 15 years to use regular migration channels, including that children will be tied to one workplace if they migrate through the MOU process. One of the recent development for legal status of migrant children is the issuance of a 10-year identity cards to children from neighbouring countries for the purpose of studying in Thai schools.

In addition, and as mentioned above, Thailand is not a signatory to the 1951 Refugee Convention, and does not have a domestic refugee determination process, meaning that persons entering Thailand in order to seek asylum will be considered in law to be residing in the country illegally. This denies asylum seeking children access to government assistance, support and protection and also places them at risk of arrest, detention and deportation.

References:
98 Section 44, Labour Protection Act B.E. 2541 (1998) (amendments introduced in 2017 increased the penalties for the breach of the provisions on child labour by employers).
101 The Institute of Peace Studies, Mahidol University, Mapping and analysing the protection situation of unaccompanied and separated children (USAC) in Indonesia, Malaysia and Thailand (2013), p. 23.
While migrants, including child migrants, face considerable barriers entering and residing in Thailand according to regular procedures, the Government of Thailand has progressive policies that aim to ensure migrant children access to services, regardless of their legal status. As will be explored further below, Thailand has progressive laws and policies that ensure access to children – including documented and undocumented children – access to education, health and child protection services.

Among the migrant research participants in this study that were in Thailand regularly (and it should be noted that some were irregular / undocumented, due to entering the country illegally or, more commonly, due to lapsed visas or passes or working on non-work visas), many had “pink cards” obtained after crossing the border using a border pass. Others were regularly travelling over the border to renew border passes. Some held passports and work permits. Some of the child participants held 10-year identity cards that permit them to study in Thai schools.
4.1 Protection risks facing migrant children

While the child protection risks facing migrant children will of course overlap with the risks and vulnerabilities of Thai children, the study focused on the particular risks facing migrant children and how a child’s status as a migrant (and the particular status as accompanied, unaccompanied, irregular, regular or displaced) is associated with increased or particular protection risks. The research found that the precarious position of migrant children – particularly for the vast majority of children who are undocumented – increases their vulnerability to particular child protection risks. Migrant children who are undocumented are largely hidden, and they are more likely to be working in unregulated, informal sectors, exposing them to additional risks and exploitation and imposing social and practical barriers on access to services. As discussed in the following section (4.2), considerable barriers to accessing formal law enforcement and child protection systems compounds their vulnerability and likely increases their exposure to violence and exploitation.

In addition to data collected during KIIIs and FGDs, the research in this section was informed by a desk review of existing studies. There have not been any robust national studies identifying the prevalence and types of child protection issues that migrant children are exposed to; however, the results from a small number of studies carried out with migrant children and families in particular locations are mentioned below, where relevant.
4.1.1 Parental separation and institutionalisation

Children can be separated from parents in Thailand for a number of reasons, though economic difficulties is considered a core driver. At times, parents will cross at a border point, and leave their children to move further into Thailand to find work while children are left in the care of a relative or friend or placed in a boarding school or institution. In these situations, children may be forced to look for work; the available literature suggests that many children are forced to fend for themselves and are vulnerable to exploitation and trafficking. As mentioned above, children who travel to Thailand to attend Thai schools and Migrant Learning Centres (MLCs) may also be separated from their parents – some schools have attached boarding houses, and children may reside there while studying.

According to a study of Myanmar migrant children and families in Mae Sot, parents may send payments back to children so they can attend school in Mae Sot while they work in a different location within Thailand. Parents may eventually remarry and make the separation from their child permanent.

It also appears that migrant children are particularly vulnerable to being without one or both parents: just over a third of child migrants in a survey in Mae Sot reported having lost a parent, mainly through illness or conflict in Myanmar before entering Thailand, or, once in Thailand, from accidents, being victims of crime and through HIV/AIDS. Pressures on the living parent to work may place a child at increased risk of separation. Thailand’s immigration system, which provides limited cost-effective and efficient processes for regular migration for low skilled workers can also be seen as a core driver of family separation: parents may be detained in immigration detention for entering and staying in Thailand illegally, or they may otherwise come into conflict with the law and placed in detention. After some time, it may become difficult for children to remember where they are from and to be able to provide authorities with sufficient evidence to trace their family and place of origin.

Research respondents detailed how arrests, particularly mass arrests that occur during ‘sting’ operations, can result in the separation of children from their parents / caregivers. Experts involved in the study provided examples of cases in which children had been referred into the child protection system following the arrest and detention of the parent/s or carer on immigration (or other) grounds. In addition, children sometimes appear to be left unaccompanied when parents are arrested, as illustrated by one expert interviewed in Tak:

“Migrant children living in the farm and community have high risks of being separated from their parents when their parents are being charged. Sometimes the police officers and immigration officers are not looking around carefully; it may cause children to be separated as there might be children sleeping in the room.”

105 Committee for the Protection and Promotion of Child Rights, Feeling small in another person’s country: The situation of Burmese migrant children in Mae Sot, Thailand (2009), p. 34.
106 Committee for the Protection and Promotion of Child Rights, Feeling small in another person’s country: The situation of Burmese migrant children in Mae Sot, Thailand (2009), p. 34.
109 KII with State Officer, Tak Province, 19 June 2019.
A research participant residing in the MSDHS Ranong Shelter for Children and Families provides an illustrative example of how arrest for lack of documentation can result in children becoming separated. The participant reported that she had been arrested in a police ‘round up’ in her community of Myanmar migrants in Ranong, when police found that she did not have valid documents to be residing in Thailand. She had entered Thailand legally, with her passport and a work visa. She returned to Myanmar for some time following a family problem during which time her passport and work visa expired. She re-entered Thailand on a border pass, but it lapsed. She was a single mother to five children and was not working, in order to take care of her six-month-old baby. She therefore could not afford to renew her passport and visa, or travel to renew her border pass. She had been arrested with her baby and transferred to the MSDHS Ranong Shelter for Children and Families after two days in the police station. However, the arrest caused her to be separated from her four other children, the youngest of which was only five years old. It appeared that no efforts had been made to locate and assess the living conditions of her other children, who were reportedly staying with a neighbour.110

Participants in Bangkok mentioned a police ‘round up’ of a large group (around 100 persons) of Vietnamese ‘urban refugees’ that occurred last year in Nonthaburi province. They held UNHCR cards identifying them as persons of concern; some were apparently arrested and placed in detention while their children remained in the community, causing separation and protection risks.

4.1.2 Child abandonment

According to research participants in Ranong and Tak, child abandonment is a significant risk, and child protection institutions regularly receive referrals of babies from Government hospitals and NGO service providers where their parent/s have abandoned them. The risk of a baby being abandoned appears to be heightened when they suffer a prolonged illness, and the mother may not be able to pay for treatment and/or survive for a period of time without an income. Limited access to social protection and social welfare, particularly for irregular migrants and/or those working in informal sectors, means that parents are not able to stay in the hospital to care for the baby, given their need to earn an income, possibly for other family members, as representatives from the OSCC in Ranong hospital illustrated:

“Most migrants from Kawthaung come over to give birth at the hospital here as the cost of treatment is quite cheap. For some parents, after giving birth, they just leave their children at the hospital. When the hospital finds out that the child has a disease – for example, breathing difficulties, we will send them to Ranong hospital. The treatment will take a long time and parents have to stop working and take care of the child at the hospital. It takes a long time and the financial problems of the parents become worse, and they can’t afford to take care of the children, so they leave.”111

Children who are abandoned may also be at risk of statelessness: without at least one Thai parent, a baby born in Thailand will not automatically acquire Thai nationality, and without proof of the nationality of the baby’s parent/s, it may not be possible to apply for birth registration in the country of origin of the baby’s parents. When abandoned children are referred to Government Shelters, the Shelter Director will bear responsibility for ensuring that the child’s birth is registered.

110 Life history interview, Myanmar migrant mother and baby, PSDHS emergency shelter Ranong, 4 June 2019.
111 KII with two Social Workers, Ranong, 6 June 2019.
4.1.3 Violence, abuse and neglect in the home

While all children in Thailand are at risk of physical, sexual and emotional abuse and neglect in the home, it appears that migrant children are at times at an increased risk. Migrant children’s parents and carers, particularly those that are undocumented, typically work in low paid jobs informal or under-regulated sectors where they are exposed to very long working hours and other labour law violations. The pressures of having to work long hours in low paid jobs with few breaks can result in limited parental supervision being provided to some migrant children. A recent Cambodian study, for instance, found that the most prevalent child protection concern among children who migrate with their parents was “the amount of time children spent [while in Thailand] without adult supervision,” owing to parents being at work, moving to other provinces to work and limited childcare options, exposing them to the risk of sexual and physical abuse.112

A study on factory workers from Myanmar found that the childcare options for migrant factory workers were restricted and shaped by factors in the global value chain that seek various ways of obtaining “cheap” labour, placing migrants in a difficult position of having to struggle to meet childcare responsibilities as they are being exploited by factories.113 Another study of migrant families from Myanmar in Mae Sot found that children were at times left unsupervised or left with others, placing them at risk of neglect. Conversely, some younger children accompany their mothers to work as there is no one to care for them, exposing them to possible health risks and an inability to access education.114

The same study found that work pressures, money problems and alcohol use by migrants from Myanmar living in Mae Sot were contributing factors to child abuse and family violence. Low levels of help seeking among parents who experience or are at risk of family violence also contribute to a child’s increased vulnerability to violence in the home (according to the study, 78.3 per cent of community respondents stated that they would not seek help from anyone if they or a family member had experienced violence). Low help seeking was attributed to “different cultural concepts of violence, the fear of authorities being involved or the stigma attached to this and the desire to keep it in the family.”115

While migrants involved in the study tended not to identify violence in the home as a key child protection risk, this may be owing to different understandings of what amounts to ‘violence’ (given, for instance, the accepting attitudes to corporal punishment, as examined below in section 4.3) and reporting bias, as children (and parents) may have been unwilling to disclose violence occurring in the household due to stigma and fear of repercussions.

114 Committee for the Protection and Promotion of Child Rights, Feeling small in another person’s country: The situation of Burmese migrant children in Mae Sot, Thailand (2009), p. 34.
115 Committee for the Protection and Promotion of Child Rights, Feeling small in another person’s country: The situation of Burmese migrant children in Mae Sot, Thailand (2009), p. 44.
4.1.4 Community violence

Migrants are also subjected to community violence and harassment, including by police. According to the study on Myanmar migrants in Mae Sot, undocumented migrants are vulnerable to arrest by police owing to their status as having entered Thailand irregularly. According to one research report (though not a finding that was made in this study), police may also attempt to extract bribes from migrants and / or subject them to physical violence.116 According to the small-scale study in Mae Sot, migrants often live in insecure, poor quality housing, which can increase their risk of community violence; discrimination and xenophobia by community members can also be seen to fuel violence against migrants.117

Migrant research participants in Bangkok mentioned community violence as a significant problem, detailing how members of their communities – who lived in unsafe and less secure areas and housing – were exposed to the risk of community violence, particularly given the discriminatory attitudes of their Thai neighbours to their migrant community. Urban refugees are particularly vulnerable; lacking status and living in fear of arrest, they also face considerable barriers to accessing services (see 4.3 for further details): “We are assaulted without any reason regularly. A group of Thai men and boys doesn’t like us [to see us walking on the street], so they regularly come and yell at us and hit us. People in the community know. My parents come to help but we cannot make a report to anyone. We do not have cards [documentation].”118

4.1.5 Child labour and economic exploitation

Child migrants, including those that are unaccompanied or separated and those that travel to Thailand with their parents, work in a range of industries across the country. While many migrants, including young migrants, work in Thailand without encountering serious problems, studies have found that children can experience a range of exploitative and abusive practices. A study by ILO (2006) focusing on child labour in Thailand’s agriculture, domestic labour, fishing and manufacturing industries found “exploitation ranging from non-payment or underpayment of wages, a requirement to work excessive hours sometimes involving the use of hazardous equipment – to even more serious violations of forced labour and trafficking. They are often prohibited from leaving their place of employment – they are effectively imprisoned and indentured slaves.”119 Many child migrants are undocumented / unregistered and work in under-regulated workplaces; they are therefore at heightened risk of exploitation and abuse and exposure to workplace hazards. Little is known of the true extent of child labour, with much of it taking place outside registration systems; however, existing research has identified a number of industries and workplaces in which children are routinely exploited.

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118 FGD, 5 Hmong Vietnamese migrant girls, 16 – 17 years, Bangkok, 29 June 2019.
Studies on child labour and exploitation in the fishing and seafood processing industries

A study of child labour in the Thai shrimp industry carried out in 2012 estimated that 6,000 to 8,000 children under 15 were employed in Thailand’s shrimp processing industry, as well as 20,000 to 30,000 adolescents between the ages of 15 and 17. Many of those in the Samut Sakhon region were working under conditions that made it impossible for them to go to school. Children often worked more than ten hours a day, six days a week and working hours and payment were dependent upon the number of the company’s orders. Children typically worked in small, unregulated shrimp processing plants; compliance issues made it impossible for children to work in large, regulated workplaces.120

However, an ILO study carried out in 2018 found that there had been improvements made in the conditions and treatment of workers in the fishing and seafood processing industries. While not representative, the study found that some progress had been made in improving the conditions for workers in this industry, including fewer reports of physical violence, fewer workers under 18 years, a greater proportion of workers with written contracts and higher average real monthly wages. However, it found that some challenges persisted, including a significant proportion of workers paid under the minimum wage, a wide gender pay gap, withheld pay (some for 12 months or more) and an inability to access identity documents.121

According to research participants, in some sectors, increased monitoring and enforcement of child labour regulations has had an impact in reducing the number of children involved in unsafe or harmful forms of labour. In Ranong, where many migrants work in fishing and seafood processing plants, it was reported that persons aged under 18 years are no longer working in this sector, given the legal minimum age of 18 years, along with increased enforcement of the law; however, according to some participants, children can still be found in smaller, less ‘formal’ workplaces (e.g. in seafood processing in small shops or in homes). It was reported by respondents that children aged 15 years and above typically work in restaurants and shops.

Participants in Sa Kaew frequently mentioned that child beggars and children who worked in the market were subjected to physical abuse by security guards and members of the public; however, it was noted by participants that the number of Cambodian (child) beggars had decreased significantly in recent years. The Thai Government has, in the past, taken a ‘law and order’ approach to child begging, and has engaged in mass round ups and deportations of beggars. In 2010, it rounded up and deported 570 Cambodian beggars, 200 of whom were children, without carrying out a child trafficking screening or best interests assessment.122

120 Terre des Hommes, Migrant child labour in the Thai shrimp industry (2015).
4.1.6 Child trafficking and sexual exploitation

Thailand is a documented source, transit and destination country for trafficking in persons, including children. The issue of trafficking and migrant smuggling to Thailand received international attention in 2015 when Thai authorities found barbed wire camps and mass graves in southern Thailand. It was thought that many of these persons, who were primarily ethnic Rohingya from Myanmar and Bangladesh, were being trafficked into the Thai fishing industry. Irregular migrants are considered particularly vulnerable to trafficking owing to “the migrants’ fear of deportation, the lack of knowledge of their rights and of the laws applicable to them, language barriers and limited access to authorities and to people outside their workplace.”

Reliable data on the extent and nature of human trafficking into Thailand are quite limited, due to the hidden nature of trafficking and the small number of victims who are formally identified. It has also been noted that it is not always possible to clearly and unambiguously identify instances of trafficking in persons among the groups of irregular migrants arriving from Cambodia, Laos PDR and Myanmar into Thailand, and there is general acknowledgement now that these phenomena exist on a continuum.

Nonetheless, it has been estimated that 451,000 migrants are smuggled into Thailand annually from Myanmar, 55,000 from Cambodia and 44,000 from Lao PDR. A publication by UNODC in 2012 estimated that between four and 23 per cent of these could be classified as victims of trafficking (however, reliance on these estimates was subject to a caution, given the limited reliability of both official and non-official data sources on human trafficking). Though as noted above, although different international frameworks and laws apply to smuggling of migrants and trafficking, in practice the distinction between smuggling and trafficking can be difficult to apply.

Most of the children who are trafficked to Thailand tend to be adolescents aged between 13 and 17 years, and most are 15 or 16 years old. The average age of trafficked girls tends to be slightly higher than boys. Children are trafficked from Cambodia, Lao PDR and Myanmar to Thailand for a range of purposes, including labour trafficking in various industries; sexual exploitation in brothels, massage parlours, bars, karaoke lounges, hotels and private residences; and forced begging. They, like adults, tend to be motivated by economic opportunities, which can make them vulnerable to being lured into trafficking. They may also be motivated by parents, elders and other community members. Trafficking may take place through a broker or it may involve a family member, neighbour or acquaintance.

Trafficking in children from Cambodia, Lao PDR and Myanmar to Thailand for the purpose of sexual exploitation is a longstanding issue. Migrant children may also fall into other groups that are particularly vulnerable to sexual abuse, including children who are street-based, children who are working and children who are out of school. Migrant children may be exploited in Thailand’s entertainment industry (in brothels, massage parlours etc.); many appear to have been trafficked into these industries (see below).

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132 Child sexual exploitation is child sexual abuse in which a second party benefits monetarily, socially or politically through sexual activity involving a child; it can include sexual solicitation and prostitution of a child, and the sexual exploitation of children online and in pornography.
They are also at risk of sexual abuse and exploitation in boarding houses and institutions by local and foreign staff. Privately-provided alternative care tends to be poorly regulated in Thailand, with very limited safeguards in place to screen and monitor personnel, which can place children (Thai and migrant children) at risk of violence and abuse. In this context, persons may also access children for sexual abuse and exploitation through ‘voluntourism’ programmes (where travellers participate in voluntary work), which are typically unregulated.134

According to available research, children exposed to sexual exploitation can often be classified as trafficking victims.135 Sexual exploitation seems to be the most common form of trafficking involving girls, who are typically 16 to 18 years of age;136 though adolescent boys are also trafficked into Thailand for sexual exploitation.137 According to the MSDHS’s latest report on Thailand’s anti-human trafficking measures, prosecutions in trafficking cases indicate that the majority of cases in Thailand (at least among those prosecuted) involve trafficking into prostitution: sex trafficking accounted for 84.4 per cent of registered cases (8.6 per cent involved forced begging and seven per cent involved forced labour).138 Though the majority of cases captured by these data involved Thai victims.139

Government data on trafficking only includes reported cases, so is a likely significant under-reporting of the extent of trafficking in Thailand. However, these data can be used to indicate the profile of trafficking victims. Data from MDSHS and registered NGO trafficking shelters indicate that a significant proportion of identified trafficking victims are under 18: from 1 January to 31 March 2019 (the latest published data available), 36 victims under 15 years and 54 victims aged 15 – 18 years were referred to trafficking shelters, compared to 123 adults.140 According to data on identified trafficking victims placed in MSDHS shelters, there is a pronounced gender dimension in trafficking cases (at least in the cases that are formally identified). Girls (particularly those aged 15 – 17) appear most likely to be trafficked for sexual exploitation while boys are more likely to be trafficked for labour exploitation.141

Children from Cambodia, Laos and Myanmar are also trafficked into Thailand for begging and other street work, mostly in Bangkok and other urban centres. There is limited information on this, and it is unclear to what extent children are trafficked into this work, or whether they, for instance, have accompanied their parents to Thailand and end up begging. It has also been pointed out that “begging” should be understood quite broadly as including children who sell flowers or small goods in the streets, either alone, in the company of other children or an adult, sometimes a parent. Children recruited from neighbouring countries to beg usually have to surrender most if not all of the money they receive and often only receive accommodation and food from their traffickers. Many children experience violence at the hands of their traffickers.142

The need to pay brokers to travel to a third country (some migrants crossing from Myanmar are heading for Malaysia) places some migrants at risk of trafficking. The vulnerability of girls to particular trafficking involving sexual exploitation was noted by respondents – both by key experts and community members. As illustrated in the case study below, trafficking can involve a complex network that can include parents...

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135 UNODC and TIJ, Trafficking in persons from Cambodia, Laos PDR and Myanmar to Thailand (2017).
137 The Institute of Peace Studies, Mahidol University, Mapping and analysing the protection situation of unaccompanied and separated children (USAC) in Indonesia, Malaysia and Thailand (2013), p. 17.
139 Note that the current practice in Thailand would automatically consider cases of sexual exploitation of children under 18 years old as human trafficking cases, due to the age below age of consent.
and other persons known to the child. Escaping a situation of trafficking for a child can be extremely risky and difficult, suggesting the need for proactivity among child protection and law enforcement institutions in identifying children who have been trafficked.

Case study: Trafficking of Myanmar child migrant for economic exploitation

I was born in Pa Ko, Myanmar. At the age of nine, I was with my mother. I studied in Grade three. A friend of my mother came by saying that there was a children’s job available in Thailand. The friend of my mother said that it would be housework, and I could also study. My mother took me to cross the border from Myawaddy to Mae Sot. We crossed at the river area to go to uncle’s home in Mae Sot. A Myanmar man rode a three-wheeler to pick us up and take us to my uncle’s home. At that time, I saw money, but I didn’t know how much. From my uncle’s house, I moved to another house on Islam road in Mae Sot. It was the house of the one who transferred me. I stayed there five days. My mother didn’t come to see me. She went back home. There was a van from Nonthaburi province coming to pick me up. Thinking that I could work for my mother, I had nothing to be afraid of and I fell asleep. When I woke up, we had already reached the house of the one who contacted us earlier. It was a woman. At that time, I didn’t know where I was and I didn’t know that it was Nonthaburi province. I thought that the workplace that my mother told me was not Nonthaburi. When I entered the house, the woman told me that I would go to sell flowers, 50 flowers a day, starting from 5:00 p.m. to 5 a.m. There were about 10 children in that house, both girls and boys. I worked quite long hours, but I didn’t know that it was human trafficking. When I couldn’t sell all flowers, they beat me. When I couldn’t give the expected amount of earnings, they beat me. After 1 or 2 years, I realised that I was possibly taken advantage of. I could eat at 3:00 p.m., one meal a day. I could sleep around two hours. I returned from work at 5:00 a.m. and had to get up at 7:00 a.m. I got up to prepare flowers, removing leaves, and putting plastic wrap on 100 flowers; and then sell them. When I sold flowers, I had to earn 2,000 Baht. I could not go to school. I stayed in the house and could not go anywhere else. I stayed in that house for four years. When I went to work, there would be someone who was hired to drop me off. He was her brother. He monitored me when I worked. I worked at Khao San Road. There was always someone who watched me.

Why didn’t you report to police?

I saw the police station, but I was afraid to make a report. I was afraid that the guy who kept an eye on me would see.

143 Life history interview, 15 year old boy from Myanmar, Tak, 19 June 2019.
Have you ever run away?

They beat me often, on my head and body. After two years, I tried for the first time to run away to Mo Chit [the Bangkok bus terminal for northern routes], but they caught me in time. That time, I was punished until my ribs were broken. Later, they kept beating me, so I dared not run away. Sometimes they beat me until my legs were broken. They used a piece of wood. While I lived at that house, I never had a chance to talk with my mother. I could not contact anyone. I didn’t know how my mother would receive the money I earned.

The second time was on 15 November 2016. On that day around 10.00 p.m., a foreigner bought all the flowers from me. Then, I went to a 7-11 store asking someone how to get to Mae Sot. They told me to go to Mo Chit, and then Tak province. The one who usually monitored me was not there. He had gone to drop other children off at another place. I went to see police at the station. The police called a taxi for me because I said I wanted to go back home. He waved a taxi down for me. When I reached Mo Chit, I got in the van that people told me would go to Tak province. That time, I had about 1,000 Baht. I reached Tak in the morning. Then, I took another van to Mae Sot. I reached the market in Mae Sot. I could remember only the school name, called Sa Tu Rey because my relative used to study there. I walked into the market, and then got on another vehicle telling the driver that I wanted to go to Sa Tu Rey school. I met a teacher. I asked him if there was any shop selling soup around there because I remember that my uncle used to sell soup. I could not find the place, however. Next, another teacher at Sa Tu Rey school helped me to search for my uncle until we found him. At first, my uncle and aunt could not recognise me. They were surprised because they thought I had already returned to Myanmar with my mother.

4.1.7 Children coming into conflict with the law

Irregular child migrants are vulnerable to arrest, detention and deportation on immigration grounds; however, child migrants are also vulnerable to coming into conflict with the law for other reasons. While there are limited data on the vulnerability of migrant children to arrest, the study of Myanmar migrants in Mae Sot found that child migrants may be targeted for arrest where an offence (e.g. a theft) has taken place in the community. Child migrants are often more visible, as they are more likely to be working, and perhaps spending more time on the street. This visibility, and discriminatory attitudes by some police and community members can make them susceptible to arrest and detention for suspected crimes.

According to the annual data from the Department of Juvenile Observation and Protection (2019), there are 263 non-Thai cases out of 20,003 of total cases under the care of the Juvenile Observation and Protection nationwide. The data represents 1.18% of total cases and they are under the care of the centers. According to information from justice partners during consultative meeting, most of the cases involving children committing crime will not be granted bail because they lack a permanent residence and guardian. Most of them are also convicted and are eventually transferred to the Juvenile Training Center. There is no clear durable solution for this group of children but the practice is they will be handed over to the immigration police for deportation to their home country following their time in the Juvenile Training Center.

144 As noted above, vulnerability to arrest and detention on immigration grounds is outside the scope of the study.
4.2 Gaps and challenges in delivering child protection services to migrants

Child protection systems are the set of laws, policies, regulations and services needed across all social sectors, including education, welfare, justice, health etc. to support prevention and response to child protection-related risks. Core components of a child protection system include:

- **Laws and policies** that protect children from abuse, and clearly set out the obligations of institutions and individuals who have the responsibility to prevent and respond to abuse;
- **Structures and financial and human resources** with the capacity to implement laws and policies;
- **A justice system** that is accessible and can enforce child protection laws;
- **Quality services** to support child victims and children at risk;
- **Communities** that are aware of child protection risks and are responsive (with knowledge, norms, attitudes etc. that are supportive of child protection and child rights); and
- **Child protection systems also require effective data collection and monitoring** of service provision.

Thailand has developed a robust legal, policy and institutional framework for the protection of children in need or at risk of harm. The key law which provides for the administrative framework for the child protection system is the Child Protection Act 2003. The Act sets out a comprehensive set of procedures and services to respond to child victims of abuse and exploitation.

The Child Protection Act 2003 applies to all persons aged under 18 years, including migrant children regardless with their legal status (though it does not apply to children who have “attained majority through marriage”). The Act provides prohibits “any discrimination of an unfair nature” in application of the Act. The child protection system therefore applies equally to all children in law, regardless of their immigration status.

The Act sets out a framework for the investigative process, case referral and management mechanisms, and child placement procedures for children at risk or in need. It provides two intervention routes, according to the level of risk to the child and the urgency of the need for intervention. Chapter 3 sets out the framework for the provision of ‘welfare assistance’ to children who are neglected, abandoned, without a guardian able to care for them effectively (e.g. due to being ill, in prison, poor, or in a harmful profession etc.), where the child is being used in criminal activities, where the child is disabled or facing hardship).

Primary responsibility for implementation of the child protection response system, according to the Act, rests with “competent officials.” Under Article 30, the Competent Official has a series of powers and responsibilities for protecting a child, some of which include: entering premises to search for a child and explore the circumstances of the child; questioning the child; issuing a summons to the guardians to give statements on the child’s living conditions and welfare; returning a child to the guardians with a warning about the treatment of the child; and preparing a report for the placement of a child in a temporary facility.

Competent Officials are State officials or NGOs who hold at least a bachelor’s degree in social welfare, psychology, law, medicine or education with two years of child-related experience and have passed an examination by the National Child Protection Committee. In practice, the position of “Competent official” is filled by existing staff in the PSDHS Office.

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147 Section 4, Child Protection Act 2003.
The Department of Children and Youth (DCY) is the principal government body with responsibility for child protection, and for addressing violence against children in Thailand. The Child Protection Act (2003) (CPA) assigns the Ministry of Social Development and Human Security, the Ministry of Interior, the Ministry of Education and the Ministry of Justice as the main agencies responsible for its enforcement.149

The Provincial Social Development and Human Security Office (PSDHS) has lead responsibility for ensuring the wellbeing and protection of children in each province. PSDHS is responsible for coordinating amongst relevant government agencies, non-governmental actors and communities to prevent and respond to families and children at risk of, or suffering abuse, neglect and exploitation. The head of PSDHS sits as the permanent secretary of the provincial level ‘Child Protection Committees’, established by section 17 of the CPA; which serves as the primary mechanism for facilitating coordination amongst relevant agencies. Provincial Child Protection Committees are chaired by the Provincial Governor.

Key provincial authorities with the legal mandate to protect children and specific statutory duties under the CPA include the Provincial Social Development and Human Security Office, the Provincial Police, the Education Department, Welfare Homes, the Public Health Office, MSDHS Shelters for Children and Families, Observation and Protection Centres and Competent Officials.150

Multi-disciplinary teams (including social workers, doctors, nurses, psychologists, police, prosecutors and other individuals involved in overseeing and co-ordinating child protection work) operate at the provincial level to exchange experiences in order to better assess emerging situations, and to coordinate service provision to victims and those in need. Multi-disciplinary teams have also been piloted at sub-district level in some areas. At sub-district level teams include social development officers, health volunteers, teachers, local officials and service providers.

Over the past two decades, efforts have been made to devolve responsibility for child protection to Tambon Administrative Organisations, the administrative authority at Tambon or sub-district level;151 though progress has been limited. In particular, executives of sub-district authorities (SAOs) have been designated as Competent Officials under the Child Protection Act 2003 based on their position as Local Administrative Authorities, and therefore have responsibility to “provide assistance to any child that is reported to be at risk of harm, including assessment and referral to welfare and protection services,” among others.152 They have also been given broad safeguarding duties, including inspection and monitoring powers. The revised CPA (in process) aims to introduce clear child protection responsibility at sub-district level.

As part of a pilot project, some sub-districts have established Child Protection Committees - a child protection working group, chaired by the head of the SAO and staffed by 10 to 30 members, who are active in the local community. Services and interventions delivered at sub-district level are relatively minimal; however, several Child Protection Committees provide basic material support, mediation, unspecialised psychoeducational services, group activities and parenting coaching.

However, according to the results of the research, considerable barriers exist for migrant children and families in accessing the child protection system, and gaps and challenges exist in implementing child protection systems and services at the local level in a way that responds to the needs of migrant children.

149 Article 6, Child Protection Act 2003.
151 A Tambon in Thailand is a local governmental unit in Thailand, sitting beneath an “amphoe” (district) and “changwat” (province), in size. The Department of Provincial Administration report of 2008 identified 7255 tambon in Thailand.
4.2.1 Identification and referral of children at risk

According to international standards, when a migrant child is first detected by immigration authorities, child protection or welfare officials should immediately be informed and be in charge of screening the child for protection, shelter and other needs. Mechanisms to identify a child as separated or unaccompanied must be in place and identification must be done as a matter of priority, as soon as the child enters the country or as soon as he or she is identified. An initial assessment must be carried out, during which the best interests of the child must be a guiding principle. The assessment should involve an initial interview conducted in an age-appropriate and gender-sensitive manner in a language the child understands by professionally qualified persons. The assessment should determine the identity of the child, their citizenship and the identity of parents and siblings. Where age is in doubt, an age assessment should be carried out in a scientific, safe, child and gender-sensitive manner. Further assessment should involve determination of the reasons for being separated or unaccompanied, any particular vulnerabilities of the child (health, physical, psychological, past trauma etc.) and the protection needs of the child. It is important that border staff and government officials receive adequate training in identifying risk factors and acting appropriately when they are confronted with an unaccompanied child.

In Thailand, while a robust legal framework, which includes mandatory reporting obligations on the part of professionals and community members and identification and referral procedures (set out above), referrals into the system appear to be quite low. Limited numbers of social workers or trained staff in communities or at the sub-district level, along with a reluctance among the population to approach formal child protection services, has impeded the identification and referral of both Thai and non-Thai children into the system.

It should be noted at the outset that, as examined in section 4.3, migrant children and families appear to be very reluctant to approach the formal child protection systems and services. It is likely that a significant number of child protection issues do not enter the formal system. Where they do, migrant children tend to be identified and referred at the border by immigration officials or by a range of service providers once in Thailand. Immigration officials carry out routine screening to identify victims of trafficking using a standardized form (see below). However, it is not clear the extent to which unaccompanied children who are not victims of trafficking are identified and referred into the child protection system. According to several research participants, while immigration officials have capacity to screen for victims of human trafficking, limited knowledge of child protection among immigration officials, in addition to tension between their national security mandate and the need to protect migrant children, may result in other vulnerable children not being identified and / or an inappropriate or harmful response: “We know soldiers (border officials) are only there for national security and protection. Child protection isn’t thought of, so maybe more knowledge of child protection is needed. People think about protecting property more than protecting children.” This is likely exacerbated by the absence of clear guidance on how to refer unaccompanied children and mechanisms to receive these children.

154 UN Committee on the Rights of the Child, General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin, 1 September 2005, CRC/GC/2005/6, para. 31.
155 UN Committee on the Rights of the Child, General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin, 1 September 2005, CRC/GC/2005/6, para. 31.
156 Coram International, Quantitative and qualitative baseline indicators related to the Thailand child protection system (2018).
157 KII with representative of SAO, Sraakaew, 6 June 2019.
It was reported that, in Ranong, unaccompanied children around the age of 16 years and above that are identified by immigration officials are immediately deported (there will be a trafficking screening, but no assessments as to their vulnerability and welfare and care arrangements in place over the border when they are returned, as called for by international standards).\(^{158}\)

As noted above, there are considerable access barriers for migrant children, and it is likely that many cases of violence, abuse and neglect – particularly that occurring within the family and involving irregular migrants – are unlikely to be identified and referred into the child protection system. In addition, child protection systems rely on identification and referrals by institutions and professionals who work with children or are in contact with children on a day-to-day basis (schools, healthcare providers etc.). According to the data, migrant children face challenges accessing education, in particular, Thai schools (though it is noted that there are around 130,000 migrant children in Thai schools) and health care, owing to cost barriers and fear of detection as an irregular migrant. The limited access to basic services, such as healthcare and education, can therefore be seen as an access barrier, as these institutions are typically common referral routes into formal child protection services; however, it should be noted that there are capacity limitations in the ability for the education sector to identify and respond effectively to child protection cases, including those involving Thai children. It should also be noted that some MLCs have child protection identification and referral systems in place.

The cases that are identified and referred into the child protection system reportedly typically come through community leaders and community volunteer social workers / health workers, along with One Stop Crisis Centres and, apparently less frequently, police and teachers.

‘One Stop Crisis Centres’ (OSCCs) provide intense support to the implementation of the Child Protection Act 2003 and the Protection of Domestic Violence Victims Act 2007; their principal role is to assist women and children who are victims of violence, through a multidisciplinary team of professionals. These centres have been carved out of the emergency units of state hospitals, both at the district and provincial level. They are staffed with a multidisciplinary team of professionals including medical doctors, nurses, counsellors and social workers, and they provide children and women with physical, psychological and social services. The staff have the mandate to report to competent officers in accordance with the Child Protection Act 2003 if child protection cases are detected. As with social workers from MSDHS Shelters for Children and Families, assessment findings suggest that OSCC social workers play an on-going role in case management for children who were originally referred to their service, in collaboration with provincial authorities. In addition to the OSCC, hospitals in general will typically refer cases of abandoned babies.

Other cases are referred from immigration detention centres: where parents are detained, children, sometimes with their mothers, will be referred to MSDHS Shelters for Children and Families for accommodation and an assessment. Prisons also refer children to emergency shelters where a child’s parent/s or carers have been arrested and detained (by law, children are not permitted to be held in some detention facilities with their parents).

The “1300” hotline (‘Prachabodi Centre’) – a 24-hour telephone service operated by MSDHS providing services to victims of abuse and violence, including migrant children \(^{159}\) is another route for children into the child protection system. It provides interpretation services to callers, though concerns have been expressed that migrant children continue to face language barriers to accessing the service. Operators can refer callers to appropriate services, including medical care, legal assistance and other services. However, capacity of 1300 to pick up all the calls might be limited.

\(^{158}\) KII with State Officer, Ranong, 6 June 2019.

When cases of violence, abuse and neglect are identified, the multi-disciplinary team, led by a PSDHS Social Worker, will carry out an assessment, separating the children from the family by the competent officer where this is deemed necessary for the protection of the child.

While there are clear frameworks and mechanisms and trained personnel for the referral of child trafficking cases and cases involving violence or abuse of children in Thailand, other cases involving vulnerable migrant children appear to fall through the gaps. For instance, there is no established procedure for referring cases of unaccompanied or separated migrant children (though it is noted that there is a procedure in place for abandoned, orphaned or lost Thai children), as illustrated by the following comment by officers at an organisation in Ranong:

“The family and child shelter [MSDHS Shelter for Children and Families] accept all cases regardless of migration status. After an initial period, it depends on which legal framework the case falls into – child abuse; trafficking – then it will follow a proper referral mechanism. If it’s another type of case – e.g. an unaccompanied child who is not a trafficking victim – it is very difficult to refer them, for instance to the long-term shelter that provides assistance to orphans as they are not Thai and there is no law saying they can accept children who are non-Thai. So, this shelter does not know how to accept unaccompanied children.”

As noted above, the provisions of the Child Protection Act apply to migrant children as they do to Thai children; the perception that long-term shelters are unable to accept non-Thai children may therefore be a result of the shelter’s policy, the structure of its budget or general budget limitations, or perhaps limited awareness of the law. While it appears that cases of children at risk of harm are typically referred into the child protection system, it was noted by a research participant in Rangsit (Greater Bangkok) that cases involving migrant child beggars will be referred to the police for arrest and possibly deportation, without any assessment being carried out by PSDHS.

### 4.2.2 Assessments and decision-making

Assessments and decision-making about a migrant child should, in accordance with Article 3 of the CRC, take into account the child’s best interests as a primary consideration. In the context of immigration, the CRC Committee has confirmed that Article 3 requires that States ensure the best interests of the child are taken fully into account in all aspects of immigration law and processes, along with decisions as to access to social rights by children and their parents and guardians and in decisions regarding family unity and child custody, through best interests determination processes. A best interests determination is "a formal process with strict procedural safeguards designed to determine the child’s best interests"; it is also a “unique activity” required in relation to the specific circumstances of each child and their case, to be applied in all legislative, administrative and judicial proceedings and decisions by trained professionals that are independent of the migration authorities. Best interests assessments should be done in a multidisciplinary way, involving child protection and welfare actors and other professionals.
For migrant children at risk of violence, abuse or neglect who enter the child protection system, assessments will be typically carried out by a multi-disciplinary team. However, it is not clear that a robust best interest determination is being carried out and that a migrant child’s best interest is guiding decision-making in child protection cases involving migrants. For example, care and placement decisions appear to be guided by the interests of the immigration system and by the policies of shelters, rather than based on a robust, individualised assessment of the best interest of the child.

Also, it is well established that, where it is safe and does not place children at risk, it is in the best interests of children to remain with their families. Separation of a child from his/her parents against their will should only be allowed in exceptional circumstances, for instance, where there is a risk of severe harm from the parents. However, as mentioned above, children are separated from parents where parents are detained in immigration detention. If parents are placed in immigration detention, children may be placed in MSDHS Shelters for Children and Families or left in the community, where there is someone to care for them, while they await their legal process (which will typically take place within several days for migrants from neighbouring countries), or while they await reunification and return. The Government’s recent policy against detaining children in IDCs has resulted in the separation of children from their parents, as it appears that, unless mothers have very young children, parents will not be placed in shelters with their children. However, according to the recent MOU (ATD), mothers will be released on bail with their children and placed in the community or the mother and children will be placed in a Shelter for Children and Families.

An example of the separation of children by the immigration system was mentioned by expert and migrant research participants in Bangkok and involved the arrest of around 100 Vietnamese refugees. The adults possessed UNHCR ‘person of concern’ cards but these do not have status in Thai law, and they were arrested en masse and placed in prisons temporarily before they could be moved to the Immigration Detention Center. The children were not detained, in accordance with the law that does not allow children to be placed in prisons with parents, and some were placed in shelters. MSDHS did not receive any notification of the arrest and the MSDHS shelters struggled to place the children, as they did not have a system in place to respond to a mass referral of children into the shelters. The placement of children was therefore carried out in a way that was guided by the reception policies of shelters and their ability to cope with this influx, rather than according to any best interest determination. As a result, siblings were separated: children 0 – 6 years were sent to one shelter (Phaya Thai Welfare Centre), girls aged 7 – 14 years were referred to Nontaburi Children and Families Shelter and boys were referred to Baan Phumvej reception shelter for boys.

There is a clear need to develop the capacity and skills and of professionals to carry out best interests determinations in the cases of migrant children, and to integrate best interests determination processes in the immigration and child protection systems at any point at which a decision is made as to the care of children. It should also be noted that, while the need to carry out best interests determinations in child protection cases is contained in the Child Protection Act, this has not been properly implemented for Thai children, as well as for migrant children.

4.2.3 Age assessments

It is important to conduct an age assessment where age of a suspected unaccompanied and separated child is in doubt, in order to ascertain whether the person is entitled to child-specific rights and procedure.\textsuperscript{167} CRC General Comment No. 6, para. 31 (i) calls for any additional age assessment measures to be objective and fair, child and gender-sensitive and to avoid any risk of violating the individual’s physical integrity, giving due respect to his or her human dignity. The Separated Children in Europe Programme (SCEP)’s Statement of Good Practice recommends that age assessment procedures are only undertaken as a measure of last resort where there are grounds for serious doubts and where other approaches have failed to establish the individuals age. In cases of doubt, there should be a presumption that someone claiming to be under 18 provisionally will be treated as such.\textsuperscript{168}

It is also noted that the CRC Committee’s new General Comment (No. 24) on children’s rights in the justice system provides guidance to States on age assessments. It provides that, where a child is unable to produce a birth certificate, all documentation that can prove age should be accepted (e.g. notification of birth, extracts from birth registries, baptismal or equivalent documents or school reports), along with testimony by parents, teachers, religious or community leaders who know the age of the child. Only if these measures prove unsuccessful may a physical or psychological age assessment be carried out, and this should be conducted by a specialist pediatrician or other skilled professional. States are advised not to use only medical methods based on bone density or dental analysis, which is often inaccurate and can also be traumatic.\textsuperscript{169}

As noted above, migrant children in Thailand may not have identification required to prove their age; children have incentive to inflate their ages in order to access the formal labour market. Age assessments in Thailand rely on dental and / or bone density methods. However, it was report that, in Tak, for instance, there are no health professionals specialized in carrying out bone density assessments, so there is a need to rely on dental assessments. The margin of error is three years.\textsuperscript{170} Age assessments are not, therefore, carried out according to best practices, which requires them to be multi-disciplinary, drawing on relevant multi-sector experience and involving the least physically invasive option.\textsuperscript{171}

4.2.4 Appointment of guardian or advisor

As soon as an unaccompanied or separated child is identified, States should ensure that a guardian or advisor, with suitable experience in the field of childcare, is appointed to the child until they have reached the age of majority or until they leave the State. The guardian’s role is to represent the interests of the child and act as a link between the child and the agencies to which they will come into contact, and to provide the child with a continuum of care.\textsuperscript{172} In order to ensure effective participation in decision-making processes, children must be provided with child-friendly information, timely access to a guardian and an interpreter if required.\textsuperscript{173} Legal representation should also be provided where the child is involved in court or administrative proceedings.\textsuperscript{174}

\textsuperscript{167} IOM, Protecting children in the context of the refugee and migrant crisis in Europe \url{http://www.iom.hu/childprotection} 31.
\textsuperscript{168} The Separated Children in Europe Programme (SCEP)’s Statement of Good Practice, 2004, available at: \url{https://www.unhcr.org/4d9474399.pdf}
\textsuperscript{169} UN Committee on the Rights of the Child, General Comment No. 24 (2019) on children’s rights in the justice system, 18 September 2019, CRC/GC/24, paras. 33 and 34.
\textsuperscript{170} KII with State Officer, Tak province.
\textsuperscript{171} The Separated Children in Europe Programme (SCEP)’s Statement of Good Practice, 2004, available at: \url{https://www.unhcr.org/4d9474399.pdf}
\textsuperscript{172} UN Committee on the Rights of the Child, General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin, 1 September 2005, CRC/GC/2005/6, para. 33.
\textsuperscript{174} UN Committee on the Rights of the Child, General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin, 1 September 2005, CRC/GC/2005/6, para. 39.
According to the data, it does not appear that guardians are appointed in cases of unaccompanied migrant children in Thailand, representing a significant gap (though it is noted that Directors of MSDHS Shelters for Children and Families are designated under the CPA as ‘guardians of safety’ for children placed in the shelters). Guardians or advisors could perform a crucial role in the child protection system for separated or unaccompanied children. They can help to ensure that all decisions taken are in the child’s best interests; that a separated child has suitable care, accommodation, education, language support and health care provision; that a child has suitable legal representation to deal with her or his immigration status or asylum claim; and can contribute to a durable solution in the child’s best interests and provide a link between the child and various organisations who may provide services to the child, and can help the child keep in touch with his/her family.175

4.2.5 Care placements and services

According to Thai law, if a Competent Official considers a child to be in need of protection or welfare assistance, there are a number of options available. Under Article 33 CPA, one option is to support the guardians to take better care of the child in their home environment. However, the other options are essentially placements out of home, for example: guardianship; foster care; adoption; placement at a Children’s Reception Centre; placement at a welfare centre; or placement at rehabilitation facility.

The majority of child protection services in Thailand are located at provincial level. These include a number of provincial shelters for children and families, or ‘reception centres’, run by the Department of Children and Youth operating in the provinces. The centres offer essential services, including emergency accommodation to children and women who are victims of violence, sexual harassment, negligence and exploitation. Services provided relate to “child development, medical treatment, physical and psychological rehabilitation, [and] education.”176 The shelters are accountable to provincial authorities: under the CPA, the person in charge of the child’s safety within a reception centre must submit their views “regarding measures for welfare assistance and safety protection for each individual child... to the Permanent Secretary or the Provincial Governor.”177 In 2019, there were reported to be 77 MSDHS Shelters for Children and Families (short-term care); 30 MSDHS Shelters for Children and Families (long-term care), and 434 private shelters, only 246 of which were registered.

Placements in reception centres are intended as a measure of last resort, and a child cannot remain in a shelter for longer than three months.178 According to the CPA, reception centres should be controlled by a single ‘Guardian of Safety’179, who derives authority from the Permanent Secretary of the MSDHS or the Governor of the Province. The Guardian of Safety has the duty to take into their care “a child in need of welfare assistance or safety protection,” to arrange for their physical and mental health examination, and to give advice and provide assistance to the child’s guardian where the child is deemed in need of welfare assistance.

Long-term alternative care placements are available across the country, including kinship care, foster care and institutional / residential care options; however, family-based options appear to be very limited in practice.

177 Section 37, Child Protection Act 2003.
179 Section 54, Child Protection Act 2003.
In addition to these services, there are many NGOs providing child protection services, both in collaboration with governmental bodies and independently. The numbers of NGOs present in the different provinces varies significantly; some provinces have large numbers of NGOs and others have very few. Some services are targeted to migrant children. For example, a number of boarding homes have been established along the Thai/Myanmar border to provide care for abandoned or orphaned migrant children, or migrant children who have experienced abuse, exploitation or neglect. Some provide care to children ‘left behind’ by parents who work in other parts of Thailand. In addition, a number of dormitories exist, attached to Migrant Learning Centres to provide residential care for migrant children. It has been noted that the standards and quality of care vary among these institutions, and that not all meet the standards required by the government for institutional care facilities;180 many, as noted above, are not registered with the MSDHS, as required by law.

There are considerable gaps in the provision of services and care placements in practice, which results in migrant children being separated from parents and siblings and residing in care placements that appear not to meet their needs.

**Very limited (access to) prevention services**

The CRC Committee has emphasised the importance of prevention programmes, particularly in the context of family separation. In this regard, it has emphasised the importance in supporting parents in their child rearing functions, including providing social benefits and child allowances and other social protection measures, regardless of the parent’s / carer’s immigration status. While not within the scope of this study, it is important to note that the Committee has commented that States should ensure that regular and non-discriminatory migration channels are available for parents in order to reduce the risks inherent in irregular migration.181

It has been noted that there is an absence of provisions in the CPA relating to prevention and risk mitigation, and a focus on the individual needs of the child rather than on broader welfare needs of families and communities.182 The Thai child protection system is heavily focused on response, and prevention services (for instance, services to strengthen families and support them to raise children and prevent separation) are limited. The services that are available appear to be inaccessible to non-Thai children and parents. Participants reported that it is difficult to get financial and other support and other services (e.g. drug and alcohol rehabilitation, food assistance etc.) from the Government without children having a 13-digit identification number that is required when accessing social services – most migrant children do not have this identification number.

According to research participants, while some prevention programmes are provided by State service providers, including for example, financial and other welfare assistance, anger management programmes and drug and alcohol treatment services, these are not available to migrants: “for programmes, like alcohol rehabilitation, Thailand can’t cover the cost of these for migrants.”183 Though, this participant noted that, where possible, they will refer vulnerable families to NGOs who provide these services. Another participant from an SAO in Ranong province stated that, “for non-Thai families, we cannot do anything except inform relevant (non-government) organisations to ask for assistance, but for Thai families, we can help – we can ask for food and some funds from the Government to help them. This happens because of some policies

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183 KII with Social Worker, Ranong, 7 June 2019.
of the SAOs.” In practice, this gap is less problematic in areas where there are a strong network of NGOs providing a range of services tailored to migrant children and families (e.g. Mae Sot), but it is a significant gap in areas in which there are a more limited number of NGOs.

**Limited care placements and reliance on institutions**

According to international standards and best practice guidance, the full range of care options shall be available to migrant children and when selecting from these options, States must ensure that the particular vulnerabilities of the child who has not only lost connection with family, but are also outside their country of origin, as well as the child’s age and gender, are taken into account. The CRC Committee sets out a number of principles to guide the placement of unaccompanied and separated children in alternative care:

- Children shall not be deprived of liberty, as a general rule;
- Changes in residence shall be limited to instances where such changes are necessary in the best interests of the child;
- Siblings shall be kept together;
- Children in the company of adult relatives shall be allowed to remain with them unless this is not in their best interests;
- Children must be regularly assessed in their placements by qualified persons;
- Children must be kept informed of care arrangements and their opinions must be taken into consideration.

In practice in the research locations, care placements for unaccompanied and separated children at risk are quite limited, with a lack of family-based placements and overreliance on institutions. According to a study carried out by UNICEF in 2015, limited alternative care options are a gap in the child protection system more generally, though it is a gap that impacts heavily on migrant children, who may be more at risk of separation from parent/s or carers. Most of the resources for alternative care are being used for residential care with limited focus on preventing family separation or supporting family-based care. This was found to be exacerbated by socio-cultural perceptions of residential care and long-term institutionalisation as a necessary and often only option to provide care for children in need of alternative care. Foster care remains confined at the periphery of the alternative care system and limited to a few small programmes, which are fragmented and have never been fully integrated with kinship or residential care.

The research confirmed these points, finding that the accommodation options for children at risk, including migrant children, in all provinces are very limited and there is a notable gap in non-institutional options, such as foster care; it was also noted that the very limited private foster placements are very difficult to allocate to non-Thai children. This means that accommodation options are unsuitable for young separated children; according to extensive research and best practice guidance, foster care is the preferred accommodation type for under 12 year olds because the security of living with a family enables quicker integration. A family environment helps with the uncertain and stressful scenario a child may be suffering.

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184 KII with State officer, Ranong, 5 June 2019.
185 UN Committee on the Rights of the Child, General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin, 1 September 2005, CRC/GC/2005/6, para. 40.
187 KII with 2 Field Officers, organisation in Ranong, 3 June 2019.
Limited family-based placements has led to situations in which babies and very young children are being placed in inappropriate and harmful care placements. For some children and babies who are abandoned or separated, Thai authorities will trace family members (see below) and place the child with a relative in Thailand or their country of origin, where possible. However, where children cannot be returned (e.g. where it is not safe or family cannot be traced), there are no suitable care options for babies and young children. For example, a 3-year-old child has been placed in the emergency shelter in Ranong since he was a baby. Originally placed with his mother, the mother was removed due to behavioural problems (she was trying to ‘escape’ and may have had some mental health problems). She was referred to immigration police and has been placed in an IDC. The child cannot be returned to Myanmar as he is Rohingya. The mother and child are awaiting a decision as to resettlement to a third country (USA) and the child will reside in the emergency shelter until the decision has been made – a placement that will have negative impacts on his emotional development, as noted by one respondent: “the environment of the shelter is not suitable for raising babies or infants. There is no budget for [providing for the needs of] babies. There is only a budget which is 57 baht per meal per head which currently comes from donations.”

Several research participants noted the limited skills in PSDHS shelters for working with young children, as several research participants in Greater Bangkok illustrated:

“Shelter staff have not received proper training regarding taking care of these groups of children, for instance, taking care of a toddler in case of absence of the parents. It requires skill and knowledge for child caring including a suitable place to care for children in early childhood. We do not have staff to mentor and stimulate child development.”

“Shelter services should be ended, because the children in the shelters lack affection. The children do not get full attention because there are too many children compared to the number of caretakers….at the shelter, children do not feel love.”

In addition, shelters cater to young children with mothers; adolescent boys and men (fathers) will need to go to different shelters, causing family separation in some cases. There is no community-based family placements which would allow families to stay together. As noted above, children are being separated from parents and siblings owing to the policies of shelters and lack of family placements, despite guidance that it is generally in the best interests of migrant children to ensure siblings are not separated. Vietnamese migrants who participated in the research in Bangkok reported that, during a mass arrest, a 14-year-old boy was separated from his parents and younger siblings and placed in a shelter for five months, during which time he only communicated once with his parents (by phone). Another girl reported being separated from her parents and younger sister and placed in a Children and Family Shelter for seven months, during which time she only spoke with her parents once (by phone).

Children also appear to be placed in residential institutions attached to schools for the duration of their schooling, rather than for the time needed to ensure a safe placement back with their family or in an alternative community placement. For example, a nine-year-old boy facing physical abuse in the home by his father in Ranong was placed in an emergency shelter while the PSDHS carried out an assessment of the family. A ‘contract’ was made between the father and PSDHS detailing the steps he was required to take before his son could be placed back with him. His son was placed at a residential school and shelter that provides services to victims of violence and abuse. However, the boy will stay there until he finishes school, rather than according to a case plan that has been developed around his best interests, or when his father is assessed as being able to provide safe care for his child.

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190 State Officer, Nontanburi province, 26 June 2019.
191 KII with four State staff members, Greater Bangkok, 27 June 2019.
192 Interview with representatives of Save the Children, Bangkok, 7 February 2019.
193 FGD, 4 Vietnamese child migrants, 1 girl and 4 boys, 13 – 17 years old, Nonthanburi province, 28 June 2019.
194 KII with Social Worker, Ranong, 6 June 2019.
In addition, State institutions are typically at capacity, and many migrant children are placed in non-State shelters. State registration and monitoring of these private institutions, which should ensure a standard of quality and protection of child residents, does not appear to function properly in practice. Boarding houses along the Thai-Myanmar border operate independently from the Thai Government’s regulatory system. In addition, many Migrant Learning Centres (MLCs) have attached boarding houses for unaccompanied and separated migrant children and these are largely unregulated; allegations of abuse have been made by children residing in MLC boarding houses.

NGO shelters are not properly monitored and there were some concerns in shelters run by faith-based organisations that they may be driven by religious mandates and ideology, rather than assessing and acting in the best interests of each child. For example, in Ranong, participants reported the case of a 17-year-old girl from Myanmar who had been raped and fallen pregnant in Myanmar. She was denied access to an abortion at the hospital on ‘moral’ grounds. She was referred to a Catholic-run NGO shelter; however, the shelter did not ‘support’ abortion and actively tried to dissuade the girl from accessing an abortion, offering to ‘take care’ of the baby once it is born. This is concerning: the girl should be offered all options and provided with impartial and objective information in order to empower her to make an informed decision as to whether to continue the pregnancy.

While efforts have been made in recent years to register the many NGO shelters and provide more effective monitoring, some child migrants involved in the study reported incidents of violence and abuse occurring in shelters. This is illustrated by a child migrant interviewed in Tak, who had recently moved out of a shelter in which he reported to have experienced physical and emotional abuse:

“I had a schedule to help do the cleaning, but I did not do so. So, I got hit. The caretaker would use a wooden stick to hit me. Sometimes it was so hard until I cried. I got hit many times. Other friends also got punished, but nobody dared making any complaints…If it was beyond the fixed sleep time, I would be disciplined by standing the whole night. Sometimes I stood until the morning came. The hardest one was to let me carry heavy things, and to look after the goats.”

State registration and monitoring of these private institutions, which should ensure a standard of quality and protection of child residents, does not function properly in practice. Boarding houses along the Thai-Myanmar border operate independently from the Thai Government’s regulatory system. In addition, it was reported by several interviewees during the inception visit that many Migrant Learning Centres (MLCs) have attached boarding houses for unaccompanied and separated migrant children and these are largely unregulated; allegations of abuse have been made by children residing in some MLC boarding houses.

NGOs seem to run a parallel system and services that are not effectively integrated into the Government framework. It was mentioned by a research participant in Tak, for instance, that NGO services do not fit the CPA legal framework – it is not clear whether NGO shelters are emergency or long-term and which groups of children they are targeting. There also appears to be ineffective partnerships and a lack of effective cooperative working between NGOs and Government service providers in Tak.

A process to facilitate MSDHS shelter registration for private shelters commenced in Tak in 2017 and efforts to improve monitoring of NGO shelters by PSDHS have been strengthened recently, which is a welcome initiative. However, many NGO shelters in Tak have closed as a result of the registration process that

196 Life history interview, 17-year-old migrant boy from Myanmar, Mae Sot, Tak province, 22 June 2019.
198 KII with representatives of Save the Children, Bangkok, 7 February 2019.
199 KII with officer at IRC, Mae Sot, Tak province, 20 June 2019.
commenced in 2017, leaving significant gaps in the supply of placements for children at risk. The closed NGO shelters have not been replaced with Government or other registered care placements. For example, in one case mentioned by participants, the OSCC referred a child to the MSDHS Shelter for Children and Families in Tak and required that they pick the child up from the OSCC, because they could not find a placement for her in Mae Sot. However, staff from the Tak shelter did not pick the child up in a timely manner, and she remained in hospital for two weeks.

**Limited emergency response and placements**

Research participants, particularly in Tak, where the PSDHS office is located some distance from Mae Sot (where a lot of migrant families live) and there is no PSDHS emergency shelter, delays were reported in providing an emergency response to child protection issues. Finding emergency placements suitable for children are reported to be very difficult. It was noted that the response time from Government shelter staff was quite slow and unsuited to an emergency situation, which may take two days, during which time, a child will remain unprotected. These challenges are illustrated by the following statement from a representative of an NGO in Tak:

“PSDHS and the Shelter do not take a proactive approach to their work. Children on the move are neglected or abused by their parents. We cannot take them to an NGO shelter as long as we do not get approval from PSDHS [as competent officer]. At the same time, PSDHS and the Shelter take a long time to respond to emergency cases. For example, when we report to them about a case, they may come two days later. Children would then have not been protected because they did not have anywhere to go.”

4.2.6 Resourcing and coordination

While a relatively comprehensive and protective legal framework for child protection is in place in Thailand, capacity gaps and challenges have been identified that have impaired the implementation of the law, impacting negatively on migrant children. According to a representative of Save the Children in Bangkok, there are an insufficient number of social workers positioned at the local level, and they lack proper training to address the needs of migrant children, and have only limited understanding of the legal framework for child protection. The Social Worker Profession Act 2013 requires “competent officers” to be licensed social workers (with university qualifications, minimum experience requirements, and passed accreditation process). This means in practice that only a limited number of persons can be responsible for implementing the duties and protections contained in the Child Protection Act 2003, which has created a shortage of competent officials on the ground.

Staff shortages were reported in Ranong: “Sometimes, there are two or three cases happening at the same time and they [PSDHS] don’t have staff to participate in the investigation at the same time. They need more staff. In one area, there is only one PSDHS Social Worker and a big police station with many cases happening at the same time. They need more staff to participate in the investigation [of child protection cases].”

200 KII with lawyer, organization, Mae Sot, Tak province, 14 June 2019.
201 KII with representatives of Save the Children, Bangkok, 7 February 2019.
202 KII with representatives of Save the Children, Bangkok, 7 February 2019.
203 KII with State Officer, Ranong province, 6 June 2019.
In Tak, there is only one active PSDHS ‘competent officer’, and the officer is not based in Mae Sot. As a result, investigation and follow up is not carried out effectively.\textsuperscript{204} Representatives from an NGO in Tak gave the following example of lack of effective planning and response by PSDHS. The case involved an undocumented 14 year old girl with a disability who was sexually abused by a neighbour; community members reported the case to Mae Tao clinic: “\textit{When they sent the child [PSDHS], they only dropped her. There was no work plan. PSDHS only referred to us. The rest, we have to manage by ourselves.}”\textsuperscript{205}

Another case was mentioned by the OSCC in Pathumthani Hospital in Bangkok, in which PSDHS did not take prompt action in relation to a case of violence against a migrant child:

\textit{“The child is not safe to live in the community. The primary carer has informed the shelter, but they refused to come to assist the child. The shelter’s operations procedure and Social Development and Human Security coordination does not support the referral process and is not willing to accept migrant children and also shelter staff are not conductive to support child protection.”}\textsuperscript{206}

It was reported that shelter staff have limited skills and knowledge of how to work effectively with migrant children. The trauma some children have experienced is not being addressed, and there are language barriers. Representatives of IOM in Bangkok provided an example of two unaccompanied Afghan migrant boys from a shelter who had psychological problems – one had medical problems he could not communicate, so these issues were not addressed in a timely manner, causing considerable challenges to the child.\textsuperscript{207}

Limited coordination among key agencies, fuelled by siloed working practices, is also reported to be a challenge: for example, police think issues should be dealt with by the justice system, but according to law and good practice, services and responses should be multi-disciplinary, and there is a need to improve coordination of agencies (police, PSDHS, health services, NGOs etc.).\textsuperscript{208} According to an IOM representatives in Bangkok, there is limited coordination between Government service providers and NGOs, with NGOs doing their own case management, and cases not being referred into the State child protection system.\textsuperscript{209}

There are no specific guidelines for working with migrant children in the child protection system (apart from victims of trafficking). As suggested by one research participant, there is a need to develop “\textit{a clear procedure for organisations working under PSDHS in terms of service provision to child migrants. This is because we do not have a work manual on how to do this, where to refer, and what to do.}”\textsuperscript{210}

### 4.2.7 Informal child protection mechanisms

As examined below (section 4.4), there are significant barriers to migrant children and families accessing formal child protection services. Many child protection matters are addressed through informal means, typically involving migrant community leaders. Community leaders may signpost to relevant organisations or seek to resolve the matter themselves: “\textit{For most of the migrants, they know how to get assistance and from which organisation. Inside each of the Myanmar communities, there is one community leader. When the case [of violence or abuse] is happening, there is a leader who will inform the organisation.}”\textsuperscript{211}

\begin{itemize}
\item \textsuperscript{204} KII with 2 Child Protection Advocates, Mae Sot, Tak province, 20 June 2019.
\item \textsuperscript{205} KII with 5 staff members, organization, Mae Sot, Tak province, 16 June 2019.
\item \textsuperscript{206} KII with Social Worker, Pathumthani, 28 June 2019.
\item \textsuperscript{207} KII with representatives of IOM, Bangkok, 6 February 2019.
\item \textsuperscript{208} KII with representatives of IOM, Bangkok, 6 February 2019.
\item \textsuperscript{209} KII with representatives of IOM, Bangkok, 6 February 2019.
\item \textsuperscript{210} KII with Social Worker, Nontaburi, 26 June 2019.
\item \textsuperscript{211} KII with SAO officer, Ranong, 5 June 2019.
\end{itemize}
However, some participants noted that informal processes may be corrupted by nepotism and poor notions of justice and provide unsuitable or ineffective responses that do little to protect vulnerable children. For instance, migrant parents expressed concern at the way cases are managed by community leaders in their areas:

“[The village headman is Thai. He let Myanmar and Kayin people run their communities on their own. If we have any issue, we make a report to the Kayin village headman. He does not make fair justice. If they are people he knows, he will protect them. For example, there was a couple fighting. He let some people bring the man to him and attacked him by covering his head with a bag and then hitting him.]”\textsuperscript{212}

The use of mediation in cases of child abuse was also identified as a matter of concern:

“In my community, there was a 13-year-old girl abused by a Thai who had power in the area. The girl went to report the abuse to the village headman so the man could be arrested, but the village headman made a mediation, asking the wrong-doer to pay compensation for damages. After the payment, the girl ran away from the village because her family dared not live there. They felt embarrassed, so they moved to another place.

\textbf{Do you know what you can do when this kind of sexual abuse occurs?}

We have to contact a child protection organisation such as Save the Children to come to manage it. Because if we report to the village headmen, they do not know what to do. If we reported to the village headmen, they would try to mediate. Not many of them made a report to police. Most of the time, they mediate, and everything stops there. Some village headmen do not even care.”\textsuperscript{213}

The use of mediation in cases of sexual violence against children is problematic. Mediation tends to focus on reaching a ‘settlement’ among adult parties, rather than focusing on justice for the child. It also does not address the protection needs of the child or community. It is important for the Government to work with community leaders, given their prominent role as gate-keepers into the child protection system, in order to encourage referrals for cases of children in need or at risk of violence, abuse or neglect.

In addition to community mechanisms, some cross-border child protection cases will be resolved entirely by NGOs, without any involvement from MSDHS or other State agencies. According to the UNICEF Myanmar study, Myanmar children who are identified in Thailand may be provided with protection by NGOs and not referred to Government services. The NGO may organise short-term accommodation for the child and repatriation through an NGO in Myanmar, without any involvement of Government agencies on either side of the border; these children will not be provided with Government services and may never be ‘formally’ identified.

\textsuperscript{212} FGD, Myanmar migrant parents / carers, female, 23 – 47 years old, Mae Sot, Tak province, 21 June 2019.
\textsuperscript{213} FGD, Myanmar migrant parents / carers, female, 23 – 47 years old, Mae Sot, Tak province, 21 June 2019.
4.3 Response to trafficking and other cross-border protection cases

The CRC Committee, in its General Comment on the rights of undocumented and separated children, set out a number of “necessary measures” that States must take to prevent these children from becoming victims of trafficking. These include: identifying unaccompanied and separated children; regularly inquiring as to their whereabouts; and conducting information campaigns that are age-appropriate, gender-sensitive and in a language and medium that is understandable to the child. The ASEAN Convention Against Trafficking in Persons, Especially Women and Children, also provides a range of protections for victims of human trafficking, and places an obligation on parties to establish national guidelines or procedures for the proper identification of victims of trafficking. The ASEAN Convention sets out a number of areas of cooperation including to strengthen prevention measures that address the root causes of trafficking, strengthen bilateral, multilateral and regional cooperation for the investigation and prosecution of trafficking cases, to exchange and share information on children’s vulnerability to trafficking, promote capacity building through training and holding regional coordination meetings, among other areas. The Parties also undertake to develop cross-border communication channels and exchange information and intelligence to prevent and detect trafficking, and to ensure the identification, protection, cross-border repatriation and return of trafficking victims.

Thailand has developed a number of laws and procedures relating to human trafficking, including a Memorandum of Understanding with Cambodia, Laos PDR and Myanmar on cross-border cooperation in trafficking cases. The Anti-Trafficking in Persons Act 2008 defines trafficking of a child as including the following actions: procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harbouring, or receiving a child...[for the purpose of exploitation]. Section 4 defines exploitation as including: forced begging and labour; sexual exploitation, pornography and prostitution; and organ removal. Chapter 4 relates to the assistance and protection of safety of trafficked persons. Section 33 imposes an obligation on the Ministry of Social Development and Human Security to consider and, where appropriate, provide assistance to trafficked persons, including food, shelter, medical treatment, physical and mental rehabilitation, education, training, legal aid, return to country of origin or domicile and assistance in legal proceedings to claim compensation. It also gives competent officials the power to place trafficked victims in shelters, including children’s shelters.

The Government provides a range of services to victims of trafficking in partnership with NGOs, including economic empowerment programmes, access to legal support, access to health care and education and repatriation processes. In 2017, the Regulation Permitting NGOs to Establish Shelters to Assist Victims of Trafficking, B.E 2560 (2017) was passed, which is aimed at expanding the capacity of the social welfare / child protection system to respond to cases of trafficking.

214 UN Committee on the Rights of the Child, General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin, 1 September 2005, CRC/GC/2005/6, paras. 52.
215 ASEAN Convention Against Trafficking in Persons, Especially Women and Children
216 ASEAN Convention Against Trafficking in Persons, Especially Women and Children, Article 10.
217 Articles 14 and 15.
A Memorandum of Understanding on Cooperation Against Human Trafficking in the Greater Mekong Sub Region was signed in October 2004 by the Governments of Cambodia, Laos PDR, Myanmar, Thailand and Viet Nam. The Memorandum calls for, among other national-level actions, improved regional and bilateral cooperation in addressing human trafficking.

In addition, the Government of Thailand has signed MOUs with the Governments of Cambodia, Laos PDR, and Myanmar which set out a series of rights and obligations with a particular focus on cross-border working arrangements in the response to cases of human trafficking. The MOUs oblige the State parties to ensure bi-lateral cooperation among law enforcement and in judicial proceedings, including the exchange of relevant information, evidence and data on trafficking cases and cooperation in supporting victims to give evidence in judicial processes. They also place an obligation on the States to ensure the protection of victims of trafficking, including that they are recognised as such and not subject to detention and that they are provided with age-appropriate and gender-responsive services (education, healthcare, safe shelter, psycho-social support, access to legal assistance).

The MOUs provide some detail on procedures relating to cross-border repatriation and reintegration of victims of trafficking. This includes duties to notify relevant authorities in the country that the victim is being returned to and cooperation in the organisation and implementation of safe and supportive repatriation. The MOU with Myanmar explicitly requires Thailand to develop, implement and follow up on individual reintegration plans, and appoints the DSW (Myanmar) and DSDW (Thailand) as the focal points for repatriation and reintegration of victims of human trafficking.

All MOUs require the establishment of a cross-border working group mandated to develop and review plans of action in combating trafficking and bi-lateral guidelines and standard operating procedures and carry out meetings in order to combat cross-border human trafficking.

4.3.1 Child trafficking responses

In Tak, Ranong and Sa Kaew, cross-border anti-trafficking mechanisms are in place and are used to respond to suspected cases of trafficking. According to key experts, potential trafficking victims will be identified on the border by immigration officials or Police Officers from the Anti-Trafficking Division, through a screening tool. The tool is essentially a checklist used to determine whether a child (or adult) is likely to be a victim of human trafficking (though participants noted the challenges in making a determination as to whether a case involves trafficking as, at the point of entry, the exploitation may not yet have occurred in the case). The checklist examines the entrant’s travel route, type of transport used, etc. in order to screen for suspected human trafficking. It was noted that ‘brokers’ are often persons with a connection to the migrant who have previously travelled to and worked in Thailand.
Once potential victims are identified, they will be referred to MSDHS Shelters for Children and Families for an initial assessment and, within 24 hours, will be transferred to specialised trafficking shelters. In specialised trafficking shelters, a range of services will be provided to children while they await reintegration / return (health checks, rehabilitation activities, psychological treatment etc.). The case will be reported to the Anti-Trafficking Division of the Police for criminal investigation. The Anti-Trafficking Division will also work on a plan for return of the child to their family / child protection services in their country of origin. PSDHS have a special budget to cover the return and specialised services for victims.

For unaccompanied children who have been identified as victims of trafficking, family tracing will be carried out, led by the Anti-Human Trafficking Division, and through the cross-border mechanism. Cross-border mechanisms appear to be functioning relatively well, though there are some gaps and challenges (see below), and a reliance on personal, less formal connections in order to deal expeditiously with cases. In Myanmar, cross-border collaboration is carried out through the Border Cooperation on Anti Trafficking in Persons (BCATIP) (a Government to Government mechanism, headed by MSDHS and Myanmar’s Social Development and Human Security Department) in order to locate the child’s family members and assess whether the child has a safe place to which they are able to return, along with a range of other measures to facilitate cross-border cooperation in the investigation and prosecution in cases of trafficking and protection of victims. In both the study provinces bordering Myanmar, there is reportedly a cross-border meeting twice a year (Ranong) / once a year (Tak) at main border crossing points where the agencies discuss coordination problems, trafficking concerns of both governments at the local level and so on.

There also appears to be an established process for identifying and responding to suspected victims of human trafficking from Cambodia. Routine screening is carried out by immigration officials, and the Sa Kaew PSDHS Social Worker attends the police station to assist in screening / identifying possible victims of trafficking. When a child is returned to Cambodia, Sa Kaew PSDHS will be responsible for coordinating and making arrangements with the cross-border officials. The Poi Pet Transit Centre (a Government emergency / reception shelter in Cambodia) carries out an assessment with the children to elicit background information to assist in family tracing and identify placement options.

A multi-disciplinary team meeting is held every three months involving the shelters on either side of the border to help improve cooperation. However, there are no Government shelters on the Cambodian side of the border, so there is a heavy reliance on NGOs as implementing partners. Tracing and reintegration work in Cambodia is carried out through NGO networks.

In Cambodia, the ‘Big C’ network also provides a coordination mechanism for cross-border trafficking cases. It involves a cross-border meeting four times a year to discuss children’s issues and child protection with Government institutions and NGOs working along the border. Staff from shelters and NGOs also meet to carry out case conferences. The network is run by the Poi Pet Transit Centre and World Vision International and involves, from Thailand, OSCC, Sa Kaew Provincial Office of SDHS, and the Children and Family Shelter.228 Meetings are also held twice a year between Banteay Meanchey and Sa Kaew provinces, and also a meeting is held at district and village level.

Systems and mechanisms for responding to human trafficking between Myanmar /Thailand and Cambodia /Thailand were generally described by research participants as involving clear guidelines, well-established working procedures and effective coordination (though gaps were noted).

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228 Staff member, Friends International, Sa Kaew province, 6 June 2019.
Gaps and challenges

However, a number of challenges or gaps were identified in cross-border cooperation in human trafficking cases. Coordination between government agencies in Thailand is reportedly somewhat limited, due by fragmented and unclear mandates. The Division on Trafficking in Persons (under MSDHS) are mandated to cover all cases, but DCY also provide relevant services (e.g. shelters). There is a lack of coordination between the Division of TIP and DCY as to who is going to do child protection assessments, with reports that each agency tends to pass the case and the responsibility to the other. Procedures are reportedly complex and overlap the mandates of several departments. For example, it was reported that, in Tak, the Immigration Department is required to seek permission from the Provincial Governor, through a letter detailing the reasons for the request for a child to remain in an MSDHS shelter for Children and Families; in addition, the PSDHS must approve the decision to place a child in an MSDHS shelter. This can cause delays in processing cases, having a negative impact on child victims.

The care and protection of child victims in trafficking cases does not appear to be subject to and guided by a best interests determination. This has the effect of other considerations potentially trumping what is best for children. For example, children who are suspected victims of human trafficking are required to stay at welfare shelters, sometime for years, where they are witnesses in criminal proceedings. This is problematic: decisions as to a child’s care and welfare should be made using the best interests paramountcy principle (i.e. according to what is in the child’s best interests), rather than for practical reasons related to justice processes. Children who stay in shelters unnecessarily (i.e. where it is safe for them to be reunited with their parents), particularly where it is for a long period of time, will experience difficulties reintegrating into their communities when they are released and reportedly may face stigma when they return to their community in Myanmar / Cambodia.

A challenge in Thai / Myanmar cross-border working is that Myanmar and Thailand have different child protection standards and systems. While the Thai system is decentralized, the system in Myanmar is centrally managed and coordinated with limited devolution to the local level. This has made it difficult to develop standard procedures for cross-border case management at the province level. As a result of these challenges, cross-border coordination typically relies on personal connections. The administrative structure is decentralised in Thailand, so provincial governments can make arrangements with cross-border counterparts. However, in Myanmar, the government is centralised and direct sub-national agreements cannot be made officially, so they have not developed localised guidelines on how to handle cross-border cases.

The need for permissions and authorization at the central level in Myanmar also causes substantial delays in case processing, which can be harmful for children involved, perhaps causing them to stay in shelters for a longer period of time and delaying their reunification with family and reintegration into their communities. According to a participant in Tak, the Myanmar Anti-Trafficking Division needs 45 days’ notice before a case conference can be undertaken, as they need to report the matter to the central Government; case conferences cannot happen expeditiously, and one-off conferences relating to particular cases are not easy to arrange.

"In Thailand, the PSDHS agency has authority to make decisions in the field better than in Myanmar. They can make decisions because they have a clear work guidelines. They work fast and can assist in cases better. Myanmar’s Anti-Trafficking Division has limitations. For example, it should be informed 45 days prior to a case conference. They have to report to Naypyidaw first. Then, Naypyidaw will pass an order to them on how much they can say. This makes it impossible to have only a one-time [informal] meeting. There have to be many more meetings. The work becomes slower. Thai PSDHS will have to refer children to NGO shelters because there is no government shelter in Mae Sot.” 229

229 KII with Field Coordinator; organisation in Mae Sot, Tak province, 18 June 2019.
Government-to-Government coordination between Thailand and Myanmar is reportedly quite slow, with Thai authorities tending to rely heavily on NGO shelters in Myanmar to care for unaccompanied child migrants: “The [BCATIP] mechanism usually coordinates with an NGO in Kawthaung. It makes it easier to protect the children. If we were using the Government shelter in Kawthaung, it would take ages! It is very centralised in Myanmar and they would have to go through the central level in Myanmar in order to refer the child to the Government shelter.”

According to immigration officers that participated in the research in Mae Sot, while there is a robust mechanism for cross-border coordination between Myanmar and Thailand, in order to expedite the process, officials tend to rely on personal, less formal connections in order to process cases: “In order to coordinate with the Myanmar side, it is faster and more feasible if the coordination is informal. The coordination should be unofficial without documentation otherwise we will need to get approval from Naypyidaw which will causes delays, it is not flexible and the work won’t be carried out.”

In Tak, it was also reported that different screening tools and processes are applied to suspected victims of trafficking by Thai and Myanmar authorities. As a result, at times, Myanmar authorities do not accept the determination by the Thai authorities that a person is a victim of human trafficking. This was also noted by the UNICEF Myanmar study which found that, sometimes, Thai authorities may determine that a child is a victim of trafficking, but on the child’s return to Myanmar, the ATIPD / ATTF (anti-trafficking police) will carry out their own screening and may determine that, according to Myanmar law, the child is not a victim of trafficking.

In Tak province, it was reported that there is limited ability for Thai authorities to follow up cases after children have been transferred to Myanmar. Again, this was attributed to the centralised system in Myanmar (with permission required from central government in order to allow Thai authorities to follow up on cases), along with the lack of procedures in place to manage cross-border child protection cases:

“Myawaddy doesn’t give authority to follow up cases; we cannot visit a [returned] child. We can only ask for information from the Myawaddy Social Development Officer, without knowing their system and how efficiently they can manage the case after returning.”

However, this appeared to be less of a challenge in Ranong, in which cases are discussed during the twice-yearly cross-border BCATIP meetings. For children placed in the NGO (Catholic) shelter in Kauwthang, the PSDHS emergency shelter reported that they receive information on the child’s progress direct from the shelter.

This challenge was also noted in the UNICEF Myanmar study: once a Myanmar child victim of trafficking is transferred from Thailand to Myanmar authorities at the border, MSDHS does not hear anything further regarding the reintegration progress of the child and is not able to carry out any follow up on the case.

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230 KII with 2 Field Officers, organisation in Ranong, 3 June 2019.
231 KII with 3 State Officers, Tak Province, 19 June 2019.
232 KII with Social Worker, Tak province, 19 June 2019.
4.3.2 Non-trafficking cases with a cross-border dimension

As noted above, there are no clear guidelines or mechanisms in Thailand, and no established processes and budgets for responding to child protection cases that have a cross-border dimension but do not meet the legal definition of child trafficking (e.g. vulnerable unaccompanied children who are not victims of trafficking and children who are separated from parent/s or carers as a result of immigration or criminal processes, or as a result of risk or harm). As a result, there are no assessment tools and no standardised procedures, forms or tools to help social workers manage non-trafficking child protection cases that have a cross-border dimension. Duties and procedures exist in child protection law, but there is nothing to help operationalise the law. As a result, there is no mechanism for coordination between government departments and they need to rely on NGOs to provide services.233

There appears to be some reluctance to use the existing cross-border mechanisms for non-trafficking cases, especially in Myanmar. Myanmar has a centralized, formal process, and the use of BCATIP in non-trafficking cases is challenging for authorities in the border provinces. Regulations/standards are needed in order to expand on BCHTIP so that it may be used in non-trafficking child protection cases where there is a cross-border dimension.

As a result of the lack of cross-border mechanism for responding to non-trafficking child protection cases, service provision is done in an ad hoc way, relying on the personal relationships of staff in the relevant agencies. There is no established system or referral process. However, in some areas, Government counterparts have established a good system: case workers from Myanmar will visit children in Thailand to assess them and help family tracing and returns. However, it was reported that, in both countries, there is a lack of knowledge on how to deal with migrant children and how to do removals of children; countries lack a clear, agreed central mechanism on how to do returns. It was also reported that there is no effective system for family tracing in non-trafficking cases, resulting in migrant children spending a long time in shelters.

A participant from the DCY Reception Centre for Boys in Pak Kred district reported that rehabilitation activities in the shelter are provided to migrant and Thai children alike; however, in terms of family tracing and returns, there are clear guidelines for trafficking cases, as set out above, but there is no clear guidance on cross-border cases that do not amount to trafficking. There is no budget and no established processes to do family tracing and returns for this group. He provided the following example illustrating the challenges faced by the lack of process, mechanisms and budgets for responding to these cases:

“An example can be seen in Cambodian cases [Cambodian children in the shelter]. They include both victims of human trafficking, and children at risk [unaccompanied children]. After they pass through the rehabilitation procedure, victims of human trafficking will be under the responsibility of the Anti-Human Trafficking Division. The Division will trace the families in order to send children back. They will make an appointment. They will make use of the available budget and send children back in accordance with a clear social work guideline. Children at risk [unaccompanied] however, are under the responsibility of DCY, which does not have any procedure to send children anywhere. These days, we give children data to the Protection Division of DCY. They receive the report, and the next process is unknown. We do the data collection and fact-finding, but we do not see any responses. There is no progress on their return.”234

233 Interview with representatives of IOM, Bangkok, 6 February 2019.
234 KII with Officer, Nontaburi province, 27 June 2019.
However, the same participant noted that this process is not able to be utilised in the case of resident children from Laos PDR as they do not currently have any Laos children who are human trafficking victims, only those that are ‘at risk’ (i.e. vulnerable to human trafficking) and there is no budget to coordinate their return. The shelter reportedly submitted a report to DCY three months ago but has not heard back, and there are no clear guidelines for implementation. The overriding problem is that there is no clear implementation guidelines, no clear responsible persons and no clear referral framework with countries of origin for unaccompanied children who are not victims of trafficking. Also, while there is funding available to facilitate the return of victims of trafficking, “there is no funding for the at-risk groups so we do not know how to do it….referral work of DCY is the limitation that has to be resolved urgently.”

The UNICEF Myanmar study found that there is no mechanism in Myanmar for the referral to, and provision of protection services for returned child migrants who are not victims of trafficking. These children receive only limited protection – typically accommodation in DSW facilities. Many migrant children rely on the support of NGOs, which is usually ad hoc and only provided on a short-term basis.

Nonetheless, some limited examples have emerged in the research locations of the cross-border mechanism being utilized to respond to child protection cases with a cross-border element, showing the potential of this mechanism if it were expanded or formally operationalized to work beyond trafficking cases. In Ranong, there was a case in which a woman from Myanmar was arrested by police on a drug charge while pregnant – she had her baby while in prison, but according to Thai policy, the baby was only allowed to stay with her mother for three months in prison. BCATIP was utilised in order to carry out family tracing in Myanmar and in the meantime, the baby was accommodated in the MSDHS Shelter for Children and Families in Ranong, though the shelter did not have the mandate to accept the child long-term. The PSDHS then coordinated with the Thai and Myanmar agencies and found a shelter in Myanmar to care for the child long-term. The shelter in Myanmar traced the child’s family in Myanmar. The process took six months, and the PSDHS organises visits from the girl to her mother in prison. The PSDHS receives information about the child from the shelter and, through BCATIP, the PSDHS carried out a visit to the NGO shelter in Myanmar to follow up on the child.

Another case involved twin 10-year-olds whose mother, a migrant from Myanmar, was imprisoned following conviction for a drug charge. The children were referred to the MSDHS Shelter for Children and Families in Ranong, where they displayed violent and anti-social behaviour. They took part in behavioural therapy at the Centre and the Centre’s staff used BECHATIP to locate the children’s relatives in Myanmar. After no relatives were located, NGOs in Myanmar met and signed an agreement to provide protection and care to the children in Myanmar, and the children were sent to live in a private shelter in Myanmar.

BCATIP appears to be used for cross-border family tracing, while children stay in PSDHS shelters. In Ranong, it appears that there is good coordination between PSDHS and Government agencies in Myanmar, and this has facilitated the use of the BCATIP mechanism to do family tracing and cross-border coordination in non-trafficking cases. In Ranong, it was also noted that the Township Border Committee (TBC), which was established to discuss national security concerns in both countries, can assist in linking Thai agencies to relevant authorities in Myanmar in particular cases.

In Tak, in the case of an unaccompanied child, the PSDHS Office will issue a letter to the Social Development Office at Myawaddy and the staff will take the child across the border to Myanmar and return the child to the Social Development Office for family reunification. Where children cannot be returned, the Social

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235 KII with Officer, Nontaburi province, 27 June 2019.
236 KII with Officer, Nontaburi province, 27 June 2019.
237 KII with Officer, Nontaburi province, 27 June 2019.
238 KII with Social Worker, Ranong province, 4 June 2019.
Development staff from Myawaddy will visit the PSDHS in Tak for a multi-disciplinary team meeting in order to develop a care plan for the child. Children will stay at the PSDHS shelter while awaiting reunification with their family.239

In Ranong and Tak, it appears that the BCATIP mechanism is also used in cases of abandoned babies with mothers from Myanmar. In these cases, the multi-disciplinary meeting will inform relevant authorities in Myanmar through the BCATIP mechanism – pictures and information about the baby will be sent to Myanmar, and the BCATIP mechanism will carry out family tracing and take responsibility for finding the baby’s relatives. In the meantime, the child will reside in the MSDHS Shelter for Children and Families in Ranong.

However, these cases are challenging as BCATIP is formally used only in trafficking cases. At government-to-government meetings, Myanmar authorities in both provinces are reportedly quite resistant to non-trafficking cases being discussed and are very reluctant to use BCATIP in non-trafficking cases. In the case discussed above, the collaboration was with an NGO shelter in Kawthaung (rather than a Government-run shelter), which made the process a little easier and expedient. It was reported that, as the system is very centralised in Myanmar, they would have to go through the central level in Myanmar in order to refer the child to the government shelter, which would take a considerable amount of time. Even in Ranong, in which BCATIP has been utilised in non-trafficking cases, the use of the mechanism in these cases appears to rely on the personal relationships between social workers involved in the mechanism on both sides of the border. Other agencies (policy, military, immigration etc.) appear very reluctant to use BECHATIP for non-trafficking cases.

Perhaps due to the lack of guidelines and mechanisms for responding to non-trafficking cross-border child protection cases, considerable delays were reported in resolving these cases. One respondent mentioned a case in which a child’s mother and father were being prosecuted for forcing the child to work as a beggar. It took over four months to coordinate with Myanmar authorities to search for the child’s relatives and prove the child’s nationality. The child had to stay in the Shelter for Children and Families for longer than the maximum length of time permitted (three months).240 In Cambodia, it was reported that the prosecution of parents (on immigration charges) can take a long time, and sometimes, child migrants are returned to Cambodia ahead of their parents. The shelter in Thailand will work with Cambodian Government authorities and NGO service providers to identify family members or a shelter in which a child can be placed while awaiting their parent’s return.241

Another challenge mentioned by some research participants in relation to child protection cases with cross-border dimensions was the inability to follow up on cases once children have been returned, particularly in Tak and Sa Kaew provinces. It was reported by the Director of the Juvenile Observation and Protection Center (JOPC) in Sa Kaew that, “in cases of Cambodian children, we do not know how to work with them after deportation. When we had already worked with children and deported them, we did not know if the Cambodia side would continue working with them or would help solve their problems correctly.”242

239 KII with Social Worker, Tak province, 19 June 2019.
240 KII with representative from private shelter, Tak province, 17 June 2019.
241 KII with Social Worker, Sa Kaew, 10 June 2019.
242 State Representative, Sa Kaew, 11 June 2019.
Assessment of Child Protection Services for Migrant Children in Thailand

Cases ‘falling through the gaps’

While migrant children have the same access to the child protection system and services as Thai children in law, the system is structured in a way that has meant some cases involving migrant children fall through the gaps of the ‘regular’ child protection process and the specialised anti-trafficking system. Owing to the lack of standards and procedures on cross-border management of non-trafficking child protection cases, the study found cases of vulnerable children that have fallen through the cracks of the existing frameworks and systems.

Where migrant children are separated from their families (e.g. through arrest on criminal charges, arrest of a father in a male-headed single parent family, or through parents having mental health or substance abuse issues) the lack of process and limited accommodation options suitable for very young children (in particular, the lack of a national foster care system) mean that babies may be placed in temporary shelters (MSDHS shelters and NGO shelters) while family tracing is done and, in some cases, after tracing does not identify any family members to care for the child. For example, the MSDHS Shelter for Children and Families in Ranong reported the case of a three-year old child who has been in the shelter since infancy, while his mother was in an IDC, having been removed from the shelter after attempting to ‘escape.’

Another case in Ranong involved a 17-year-old Myanmar girl living with her family in Thailand who had fallen pregnant through a rape that occurred while she was visiting Myanmar. She reported the crime in Thailand and received services from the OSCC. The police report that they are not able to follow up on this case – as the case occurred in Myanmar, they are unable to take any action. Police also reported being unable to notify authorities in Myanmar or communicate / coordinate with them in the arrest of the perpetrator as there is no mechanism for coordination on this (being a non-trafficking case).

The UNICEF Myanmar study noted that ‘failed victims of trafficking’ (children who were identified in Thailand as victims of trafficking but on repatriation to Myanmar, assessed by ATIPD / ATTF as not being victims of trafficking) are not permitted under Myanmar law to access free accommodation in the Government shelters in Myanmar, and will be referred to a DSW training school where their family cannot be traced.
4.4 Access barriers to child protection systems and services for migrant children and families

“If we were Thai, we would be able to report this act [of violence] to the police. It was abuse. We know that it was not good and we should take action. However, owing to our status, we should not make a report. Otherwise, legal action may be taken against us.”

The data indicate that significant barriers exist to migrants accessing ‘formal’ (State) child protection services, particularly in the case of violence occurring within families in which parents and/or children are undocumented. According to migrant research participants, migrants are very unlikely to approach authorities or child protection services directly, even for more serious cases of violence. Instead, community leaders appear to play a prominent role. Migrants who experience challenges relating to child protection or violence in the home or community reported that community members tend to seek help from community leaders or familiar CBOs working within communities. In some areas (e.g. Tak), community volunteers, working under PSDHS, also refer migrant children into the child protection system. Research participants also reported accessing services through Thai neighbours, who appear to act as entry points into the formal system, given their relative familiarity with the system and lack of communication barriers.

4.4.1 Access barriers

Exclusion caused by migration system

The migration system itself, which provides very limited options for children to migrate to Thailand lawfully, creates considerable barriers to migrant children accessing child protection and other services. Migrant children frequently lack documentation and this can place them in a precarious position, where they may be afraid to approach authorities and report a child protection issue for fear of being arrested and deported, or having their parents arrested, or due to a perception that they would be denied services on account of their status. Accompanied children may be reluctant to report cases of violence, abuse and neglect by their parents or carers, particularly where parents lack legal status, for fear of their parents being arrested or deported. Migrant children also have limited social support systems, particularly for those not in school, which can compound this dependency on adult caregivers and create increased barriers to reporting. This is illustrated by the following responses made by key experts:

“When a case (of violence or abuse) happens, most migrant children chose not to report it to the police because some children are not documented and sometimes, not just the children but also the family members do not have documents, so they are afraid of reporting to the police if something happens in their community. They would solve the problems themselves.”

“Most migrants are living illegally, so when they have a problem, they are not informing the police or anyone as they are worried. When abuse is happening, migrants don’t pay attention to it. They fear the authorities and they might go back to their home in Myanmar.”

245 KII with State representatives, Bangkok, 5 February 2019.
246 KII with representatives of SAO, Ranong province, 6 June 2019.
247 KII with Social Worker, Ranong, 4 June 2019.
Participants reported that the changing rules around required documentation were confusing and expensive, making it difficult to be properly documented, which compounds their vulnerability to arrest and appears to compound barriers to accessing services.

“Thailand has different policies for workers and workers are using different types of documentation. It is difficult and expensive to change between documents. We want Thailand to have just one document and the same document for all workers. Then it will be easier to access documentation. At the moment, some are using passports, some Certificates of Identification, some are using border passes. Each document has a different policy and that becomes a problem.”

A number of expert participants reported that, on referral to child protection services, families often abscond before a PSDHS Social Worker is able to carry out an assessment, for fear of detection and arrest as irregular migrants.

For children who are registered, the status of many of these children will be dependent on their employer and continued employment at a workplace. This places a considerable barrier on the ability of children to report ill treatment at the hands of their employers. Participants reported that migrants are reluctant to report exploitation and violence in the workplace for fear of losing their jobs or “getting into trouble” with the authorities.

During FGDs, participants were presented with a number of scenarios involving child migrants faced with child protection risks and asked what options the person in the scenario would have for seeking services. The responses illustrate the reluctance of research participants to approach Government authorities and services for assistance. It indicates that research respondents would initially seek help from within their communities, including from community leaders. In some locations, where well-known NGOs are operating (e.g. Sa Kaew), research participants also reported being able to approach these organisations to report incidents of violence or seek financial or material assistance. For instance, one scenario involved physical abuse: “There is a boy in your community aged around five years. He always has bruises and you often hear violence in his home, where he lives with his parents and older sister. You’re worried about him getting seriously injured but you also know that the family is living in Thailand without any documentation / visa etc.” Respondents expressed strong reluctance to report this matter to Government service providers. For example, in an FGD with adolescents in Ranong, respondents stated:

“We would ask the child ‘what is the problem?’ and ‘what is happening?’ and ask about what happened with the child. Also, we could let the child express his feelings.

Would a community member go to the police?

No [all shaking heads].

Why not?

If we inform the police, the parents of child might be arrested by the police as they are undocumented.”

The responses to this scenario also illustrate the reliance on community assistance in providing an informal child protection response to children at risk or in need. For example, a group of parents from Ranong stated:

248 FGD, migrant parents from Myanmar, 5 women and 1 man, community in Ranong, 5 June 2019.
249 KII with State Officer, Tak province, 19 June 2019.
250 FGD, migrant adolescents from Myanmar, 2 girls and 4 boys, 16 – 17 years, Ranong, 4 June 2019.
“In this neighbourhood, if we see this case, we would encourage the child and if it is possible, we would take care of the child – give them food and give them some accommodation or maybe find another relative or people that can be responsible for the child.

Would you ever report this type of case to the police or to child protection services?

No [all shaking heads]. I don’t think we would ever report it to the police or any organisation. The community would just take care of the child by ourselves as much as we can.

Why is that? Why would you not go to the police?

We are afraid of reporting to any organisation or the police and we worry that the organisation will do something to the parents of the child. So, we would take care of the child by ourselves as much as we can.”

Community perceptions of violence

Interestingly, in other scenarios (those involving abuse or exploitation of children in the workplace or sexual exploitation by non-family members), respondents tended to be less reluctant to involve Government authorities and service providers, even where the child or child’s family are undocumented or otherwise working unlawfully. Respondents expressed increased confidence in the willingness of police and justice institutions to respond appropriately in cases of non-family violence. This suggests that respondents could perceive family violence as a private or less serious matter for which it is not appropriate for authorities to intervene and / or the perception (and perhaps reality) that police are less likely to respond to acts of violence occurring in the family than violence occurring in workplaces or in the community or realize the importance of the family to the child and the consequences of reporting to the child’s family. Respondents also tended to express supportive attitudes to corporal punishment of children in the home in some circumstances (e.g. where it was used to punish and involved light physical contact), suggesting that migrants may not consider all types of physical violence in the home to be abuse (though this may be consistent with dominant beliefs and practices among the Thai population more generally), and therefore they may not report these matters.

“Do you think it’s OK when parents hit you?

It’s giving a lesson; if it’s not hard it’s OK. If it’s not bleeding, it’s OK.

What is violence for you?

Hitting very hard until the skin bleeds. Rape and murder. If someone gives you a lesson like teachers and parents, it is not violence but a well-wish.”

There also appears to be a perception that police are not supportive of migrants; participants reported low confidence in police, as illustrated by the following exchange between five 13/14 year old Cambodian migrants participating in an FGD:

251 FGD, migrant parents from Myanmar, 5 women and 1 man, community in Ranong, 5 June 2019.
252 FGD with Cambodian migrant children, 5 boys aged 13 – 14 years, Sa Kaew province, 6 June 2019.
“I have seen parents hitting. If I saw these incidents, I would tell police to arrest them and report to child protection.

But it would be impossible because they are not Thai children. They do not protect Cambodian children.

I know about a Foundation, but I don’t know whether they ‘protect’ Cambodian children by sending them back to Cambodia.

I don’t think they will help. As soon as they are arrested they will be deported to Cambodia. If I were to witness this type of violence, I would inform my teacher and ask them to visit their home. It would be better to let the teacher talk with the parents.”

Very vulnerable position of “urban refugees / asylum-seekers”

It was reported during an interview with the Director of an asylum seekers support NGO that, as ‘refugees’ / displaced persons have no legal status in Thai law, they are afraid of accessing services and reporting crimes to the police as they are afraid of being deported. She advised that migrant children are vulnerable as community members know they have no effective recourse as they cannot report offences to the police, due to their legal status. Displaced migrant children therefore have little choice but to avoid reporting incidents to the authorities and instead seek support from NGOs; however, there are gaps in the service provision provided by NGOs that work with asylum seekers in Bangkok, and none specialise in child protection issues.

The research demonstrated the very vulnerable position of “urban refugees / asylum-seekers”; constant fear of arrest and detention (and deportation) place them in a position in which they are extremely reluctant to report any violence, abuse or neglect and access services. Urban refugees / asylum-seekers cannot work lawfully and are placed in a position of being unable to provide for themselves and their families without working unlawfully – perhaps increasing their risk of arrest and compounding their reluctance to report violence – or relying on financial and other assistance from NGOs, which have limited resources. UNHCR cards issued to refugees who have gone through a UN determination process do not always offer protection from arrest as they do not have status in Thai domestic law. The following statements from participants in FGDs in Greater Bangkok illustrate these challenges and their impacts:

“We cannot return to our country. Yet we cannot find another country to go to. We cannot work. We cannot do anything. Our living situation is bad.

We do not have a visa. We only have the UNHCR card, but we are considered to be illegal persons. We cannot work. My family receives 4,500 Baht a month for rent, food and everything. The rent is already 3,000 Baht. I do not know how to cope with the food costs for children in school. We cannot make money.”

The lack of legal status provided to refugees creates a formidable barrier to reporting violence and abuse and to accessing child protection and other services, as illustrated by the following quotes from an FGD in Bangkok with Somali refugees:

253 FGD with Cambodian migrant children, 5 boys aged 13 – 14 years, Sa Kaew province, 6 June 2019.
254 KII with representative of organization, Bangkok, 7 February 2019. Though it is noted that the Thai Cabinet recently approved the development of a status determination mechanism: UNHCR, “UNHCR welcomes Thai Cabinet approval of national screening mechanism”, 26 December 2019: https://www.unhcr.or.th/en/news/general/pr/unhcr-welcomes-national-screening-mechanism
255 Interview with Representative of organization, Bangkok, 7 February 2019.
256 FGD, 5 Somali mothers with UNHCR cards, Bangkok, 27 June 2019.
“We have to be tolerant because we cannot report [violence] to anyone. If the police knew, they would arrest us.

…we are scared. We know that refugee cards are illegal in Thailand. Police can arrest us whenever they want.” 257

Participants from FGDs involving urban refugees/asylum-seekers in Bangkok provided a number of examples of instances of violence and abuse that they did not report to authorities and for which they did not seek any support.

“[Following an incidence of violence at school] my child’s eye turned red. The wound was serious. The officials (UN) responded that I should report it to the police. The police would probably arrest us because we do not have a legal permit to stay. Police would arrest my family and detain my family at the Immigration Detention Centre, and it would cause greater problems. We do not have any status to claim any rights when we are refugees. We cannot do anything. If we reported to the police and we were arrested, what could we do?” 258

…

“One female friend of my older brother had a problem. The owner of the house asked her to sweep the fallen leaves. He abused her and attempted to rape her. She asked for help. The Vietnamese around the area went to help her. She could escape. We could not make a report to police; we are scared of the police. The abuser kicked her out and she had to find new accommodation.

Do you think this kind of situation should be reported to anyone?

We do not know to whom we should make a report. Police will not be on our side. Our parents said that we have to stay quiet. We cannot make a report. If we reported them, they would arrest us instead because we do not have cards [documentation].” 259

In addition, participants reported mass arrests in refugee/migrant communities in Bangkok, and detention of fathers, removing family livelihoods, separating children from families and causing children to work unlawfully:

“My father has been arrested… Normally our fathers make money. We know that we cannot work [lawfully], but we do not have money to sustain our lives… some people secretly work. I am 14 so I go and do some construction work.” 260

257 FGD, 3 Somali girls (13, 13 and 17 years old), Bangkok, 27 June 2019.
258 FGD, 5 Somali mothers with UNHCR cards, Bangkok, 27 June 2019.
259 FGD, 4 Vietnamese child migrants, 1 girl and 4 boys, 13 – 17 years old, Nonthanburi province, 28 June 2019.
260 FGD, 4 Vietnamese child migrants, 1 girl and 4 boys, 13 – 17 years old, Nonthanburi province, 28 June 2019.
Awareness and communication issues

Migrant children and parents / carers may have limited knowledge of how and where to get help in relation to a child protection issue, and this is likely exacerbated by challenges communicating in Thai. Unaccompanied children may be especially vulnerable due to the likelihood of them having very limited family and social networks to help them navigate services and systems of support. According to the IOM representatives interviewed during the inception visit, very limited awareness raising initiatives are carried out to ensure that migrants know how to access services. This was also noted by a number of experts during the data collection, in which it was suggested that PSDHS officers lack proactivity in reaching out to migrant communities to raise awareness of services and remove access barriers.

Limited translators, and the lack of a Government budget allocated to fund the work of translators in the child protection system is a challenge that was noted by many key informants, as illustrated by the representatives of the Juvenile Observation and Protection Centre in Tak:

“Translation work has caused a lot of problems in communication. There is no specific position for translator. It is difficult to communicate. Sometimes, working with people of different ethnicities who use different languages, such as Karen and Mon, we have to find someone outside to help us.”

Language, and lack of qualified interpreters to support service delivery, is a considerable barrier in accessing the child protection system and for the ability of the system to provide effective services, particularly for more in-depth or intensive services, such as therapeutic counselling:

“Language is the main problem in child protection procedures involving migrants, especially in-depth therapy. It is hard to conduct psychological assessments with them because we cannot completely understand each other. It can be worse when conducting in-depth service delivery for them because the procedure requires ongoing communication, spending time together and asking them to understand rules.”

Age-based protections and lack of age identity documents

Migrants children may experience difficulties accessing the specialised processes and procedures that children are legally entitled to. Children without identity documents have no ‘automatic’ access to the special legal processes for child victims and children in conflict with the law that are available to persons under 18 years. They will need to wait for a medical exam / age verification as an additional process, which are not precise and can result in delays in the criminal justice process.

While not the focus of the study, it should be noted that absence of a birth certificate, while not necessary in order to access child protection services, will make it difficult for some children to demonstrate that they are under 18, and can therefore be a barrier to accessing specialised services for children. It also creates challenges for authorities in tracking and identifying missing children.

262 KII with representatives of IOM, Bangkok, 6 February 2019.
263 KII with 3 Officers, Tak province, 17 June 2019.
264 KII with 3 Officers, Tak province, 17 June 2019.
265 Interview with representatives of IOM, Bangkok, 6 February 2019.
Also, participants, particularly during the KIIs, noted the tendency for some migrant children to inflate their age – including on official documents - in order to get access to the labour force. This may deny children access to the special protections afforded them by child protection services and within child justice systems: “Burmese migrant children will tell you that they are over 16 years, but actually they are 12 years old. We must try to find information and cross-check.”

Social norms and gender inequality

As mentioned earlier, there appears to be a strong reluctance to report cases of domestic violence or child physical abuse in the home, as this is considered a private matter and not sufficiently ‘serious’ to warrant reporting to authorities. Migrants are also likely to have low confidence reporting to police as police appear to be reluctant to assist in cases of family violence and in sexual violence cases: some respondents reported that police tend to disbelieve complainants in sexual violence cases and may refuse to investigate the case. It should be noted, however, that these barriers may not be unique to migrants.

The economic dependence of migrant women on men and unequal gender power relations were mentioned as a barrier to reporting acts of violence in the family. For instance, as stated by an expert in Mae Sot, Tak province: “People are afraid of making reports relating to domestic violence. There was a case of a Myanmar woman who was slashed with a knife and she got 10 stitches. She eventually went back to live with her husband. It is more difficult, especially when women have Thai husbands because women tend to rely on men...it is shameful to take legal action against a husband – otherwise, families will be in ruin.” The impacts of gender power differences are likely heightened for migrant women, who lack access to social protection and social networks and may fear contact with authorities particularly where they or their family members are undocumented.

4.4.2 Policies and attitudes of service providers as a barrier to access

Some key institutions that have a mandate in the child protection system to provide services, in particular SAOs, appear to have the view that they are not mandated to provide services to migrant children and families. This was typically expressed by research participants as being about budgeting, with budgets not available for children who do not have Thai identity documents.

“As for the national policy, the child protection system is provided for everyone, but for sub-district services, the policy is different. The policy is only to provide for Thai families. For non-Thai families, we cannot do anything.”

“There are policies that highlight ‘every child receives the same treatment’, but when activities were organised, it was impossible to reimburse the costs relating to child migrants. This makes it difficult to work with child migrants.”

Migrant children may be denied access to services on account of not having a 13-digit identification number required to access social services. While Thai children will have this number, many migrant children do not. For instance, while a Government emergency shelter will accommodate a child regardless of immigration status, access to services after this placement will depend on the legal category they fall into. If they do not fall into a legal category in which specialized systems and processes follow, accessing services will be challenging for non-Thai children. For example, a research participant from an organisation in Ranong reported that:

266 KII, Social Worker, Ranong, 4 June 2019.
267 KII with Consultant, organisation in Mae Sot, Tak province, 2 July 2019.
269 KII with staff member, IRC, Mae Sot, Tak province, 20 June 2019.
“It takes a lot of effort on our part to have government officials accept non-Thai cases. It’s not that they don’t want to provide assistance; it’s because they don’t know how. Somewhere along the way, they [service providers] have to enter the 13-digit identity number. If they can’t provide this, they can’t accept the case, as they will have no budget to cover the costs of the case. The Thai government official system requires the 13-digit number as part of the registration process – agencies do not know how to operate without this.”

According to respondents who participated in KIIs, budget allocations for some services are tied to the Thai 13-digit identification number. While there is a specialised system for responding to victims of trafficking in persons, the absence of a policy on responding to more vulnerable children generally (those that are unaccompanied, neglected by parents etc.) has meant that children and parents / carers who do not have the 13-digit identification number cannot access some essential services as the service provider’s per head budget will not cover it. One SAO participant provided a case illustration: a 10-year-old boy from Myanmar had been left by his parents in Thailand with a neighbour who was taking care of him. While the SAO provides social welfare for poor households – the boy did not have a birth certificate and the SAO could not provide money directly to the boy as he did not have a 13-digit identification number.

Also, in the case of some service providers (e.g. OSCCs in hospitals), internal budget reallocation and alternative budgetary sources (e.g. from private donations) will need to be used where children do not have the 13-digit identification number. For instance, while Mae Sot hospital spent almost sixty percent of its OSCC 900,000 Baht spending in 2019 on migrant patients, there was still a case reported by a respondent in Tak that the OSCC did not provide free services to migrant victims of sexual abuse, including a child aged 13 years who was sexually abused in her home by a community member. For this case, when the costs of an examination and treatment are not covered by the hospital, the community and the child’s mother gathered the money to pay for the examination. Without a State budget to cover the costs of OSCC services for migrants, provinces with high numbers of migrants face significant challenges in providing these services.

Since budget for some of the services are allocated based on the number of users with 13-digit identification number, if children need specialist services following violence, abuse or neglect (e.g. referral for specialist treatment), the 13-digit identification number will be required in order to receive free services. With many migrants living on low wages, this may effectively prevent them from accessing specialist services. The perception that payment is required for specialist services has, according to some respondents, prevented child victims of rape from accessing an abortion (in one case in Ranong, the community hospital refused to carry out an abortion in the case of a 17 year-old rape victim, and the child required 13-digit identification number in order to be referred to a specialist provider). In Bangkok it was reported by a participant from an OSCC that there is no budget line available for non-Thai children in some institutions – e.g. the hospital provides food for patients, but they cannot get reimbursed from the Government for providing food to migrant children.

In provinces in which there are a large number of NGOs (e.g. Tak and Bangkok), participants reported receiving some financial assistance and other material assistance and services from these organisations. However, funding from NGOs is diminishing, and there appears to be a significant gap in other areas, with migrants reporting having to rely on generous community members to assist them, as illustrated by the following statement by a Myanmar migrant mother in Ranong:

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270 KII with 2 Field Officers, organisation in Ranong, 3 June 2019.
271 KII with representative of SAO, Pathumthani province, 26 June 2019.
272 Information provided by State Officer, Tak.
273 KII with Lawyer, Mae Sot, Tak province, 14 June 2019.
275 KII with Social Worker, Pathumthani, 28 June 2019.
“What do migrant parents do if they are having financial difficulties?

There are no NGOs or any organisation that we can get help from.

If you can’t buy food or clothes for your children, what would you do?

I cannot do anything – I just have to live like this. But the children are lucky, because the neighbours will bring food and nappies for the children.”

Some respondents demonstrated challenging attitudes towards migrant children, suggesting that they are ‘outsiders’ or ‘burdens’ and that there is no mandate, and insufficient funding, to assist them. The view was at times expressed that vulnerable Thai children should be the ‘priority’ rather than migrant children and families who ‘choose’ to come to Thailand and do not contribute to the economy, as illustrated by the following statement from representatives from one of the Municipalities in Greater Bangkok and a SAO in Tak:

“We do not have any authority to take care of migrants. We have to take care of people having household certificates registered in our areas first. The city municipality, under the Ministry of Interior, does not have authority under the law to take care of migrants…we collect tax from our locality to develop our area. We have to help our people first. If outsiders came to receive services, we would not be able to provide sufficient services.”

“As for the work with children on the move, the attitudes of workers should change. They should be aware that child migrants have the same rights as Thai children. When we make a field visit in communities, we find poor child migrants and poor Thai children; but we have to assist the Thais first. Seeing child migrants as non-Thai and considering them as a burden make it impossible to assist them.”

276 Life history interview, mother with baby (and 4 children in community), Ranong, 4 June 2019.
277 KII with State Officer, Bangkok, 25 June 2019.
278 KII with members of SAO, Tak province, 20 June 2019.
4.5 Access to child-friendly justice for migrants in contact with the law

Special protections apply, under the CRC, to children in conflict with the law.\(^{279}\) As noted above, while there are limited data on the extent to which migrant children come into conflict with the law in Thailand, some migrant children appear to be particularly vulnerable – this is especially the case for children who are ‘visible’ to police (those living / working on the streets and in marketplaces and other public locations, child beggars etc.). International standards and norms require States to prevent and respond to violence against children in conflict with the law. Such prevention and response mechanisms are provided for in the extensive international framework for juvenile justice, including Articles 37 and 40 of the CRC. According to these provisions, States are required to develop specialised justice systems, institutions and processes that respond to children “in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which takes into account the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society.”\(^{280}\) A range of special protections apply to children from the point of arrest to their sentencing and placement in detention, and after care.

Thailand has a specialised, child-friendly process and system has been established for children in conflict with the law, and for child victims and witnesses. This is set out largely in the Juvenile Family Court and Juvenile and Family Procedure Act 2010. The Act sets out special processes and protections for children (under 15 years) and juveniles (under 18 years) throughout the criminal justice process. All children – Thai and migrant children alike – are entitled to the special protections under the Act.

The Act also established specialised institutions for children who are in conflict with the law. The public prosecutor and police established under the Act on Juvenile and Family Court 2010 and the Criminal Procedure Code (with revisions), are responsible for operationalising child friendly justice from arrest to sentencing. Juvenile and Family courts hear criminal cases involving perpetrators under the age of 18, and welfare protection cases for children. There is a Juvenile and Family Court in each province. Public prosecutors of juvenile and family cases are assigned to ensure child protection issues are addressed and central to the prosecution. The Penal Procedural Code also contains provisions which provide protections to children in contact with the law; for example, section 133 provides for multi-disciplinary child-friendly witness examinations.

The Department of Juvenile Observation and Protection, which falls under the Ministry of Justice, runs two types of juvenile justice institutions. Juvenile Observation and Protection Centres (JOPC) are institutions where juveniles accused of an offence may be housed at the pre-trial stage. At present, there are 77 JOPCs in operation across all provinces in Thailand. The operation of the Observation and Protection Centres is governed by the Juvenile and Family Court and Procedure Act 2010 which dictates that when a child is arrested, the police must send the child to the Centre within 24 hours. The Director of the Centre has the discretion to recommend a non-prosecutorial order to the prosecutor, or to refer the child for prosecution in the Juvenile Court. Juvenile Training Centres are custodial centres that provide education and rehabilitation for children convicted of offences under the Penal Code. At the Centres, children have access to a range of services including medical treatment, education and vocational training. There are 19 such centres across Thailand.

\(^{279}\) Children “alleged as, accused of, or recognized as having infringed the penal law”.

\(^{280}\) CRC, Article 40(1).
4.5.1 Access to protections for migrant children in conflict with the law

While the protections afforded to all children in conflict with the law also apply to migrant children, some access barriers were identified. As examined above, children who lack documentation may be unable to present evidence of their age, and risk being denied access to the special protections afforded to children. Age determination processes in Thailand, which seem to rely on bone density or dental tests, have a wide margin of error, which can mean that children are assessed as adults and that they process through the regular criminal justice system.

In addition, migrant children who are unaccompanied may, in practice, be denied access to bail and to community sentencing options. This can result in migrant children being placed in pre-trial detention or detention, where this is not strictly necessary. Usually, bail will only be granted if a child has a primary residence – though it was noted that sometimes a child’s employer can post bail.281 Also, some community sentencing options require the involvement of guardians, effectively excluding unaccompanied children from participating and making them more at risk of being deprived of liberty. For example, according to a Judge in Sa Kaew:

“The disadvantage for Cambodian children is that it is difficult to find their guardians. When we go through the rehabilitation decision [sentencing options], we need the participation of the child’s guardians. Putting children in JOPC is not our first choice; we would rather try to encourage them to improve themselves. And it means that their guardians have to bail them out, too. In Cambodian cases, it is hard to find their guardians. That is why we tend to place them in JOPC during the legal proceedings. In the past, the consular would help search for family, but these days, even obtaining information from children can be difficult.”282

It was also noted that rehabilitation programmes involving referrals to some service providers (e.g. for training and skills development) may not be available to migrant children as they do not have identity documents.283

Where child migrants are placed in detention, limited access to interpreters can make them quite isolated, and unable to communicate with staff, placing them at risk. In some cases, they may also be unable to engage in rehabilitative programmes within detention centres.

Several research participants noted the lack of planning for and follow up on release from the JOPC: “Children released without guardians – we do not know where they will go. Every time we release a child, children receive some expenses for their travel and food. We do not know where they will go. We have the latest case coming because a child re-offended. There should be a temporary shelter for children who are released and have nowhere to go.”284

Another participant noted the challenges in planning for and implementing after care plans for migrant children on release from the JOPC, and the limited support provided by PSDHS in carrying out family tracing and reintegration:

281 KII with Officer, Ranong, 6 June 2019.
282 KII with Judge, Sa Keaw Juvenile and Family Court, 11 June 2019.
283 KII with Judge, Sa Keaw Juvenile and Family Court, 11 June 2019.
284 KII with 4 Officers, Tak Provincial JOPC, 17 June 2019.
“For the past four years, we have had difficulty taking care of two children who were referred to us by the Juvenile Observations and Protection Centre. They used to steal. When they refer complicated children to us, they do not provide us any work plans informing us on what we can do with these children. One of these two ran away from our shelter, however. We then decided to refer another child back to PSDHS. PSDHS suggested to us that when we can’t take care of them, just let them go. These two children came from Dawei. They had nowhere to go after getting released from the JPOC…they have no families or relatives. Therefore, the ones who disappeared, we had to just let it be. No one follows up on them, and we can’t be responsible for this.”

Careful consideration should be made as to how cases involving migrant children in conflict with the law are resolved, particularly where these children are unaccompanied or separated. On the one hand, these children may be denied child-friendly protections and community-based rehabilitative sentencing options, as they do not have a guardian in Thailand with whom they can be placed while undergoing programmes. However, consideration should also be given to criminal justice processes in their country of origin and to whether returning these children to their country of origin will result in them being further denied access to child-friendly justice, for instance, through placement in adult detention facilities. There is currently no cross-border mechanism or processes in place between Thailand and neighbouring countries to ensure that protections are provided to migrant children in conflict with the law.

This is inconsistent with the ASEAN Guidance for the Treatment of Children in Conflict with the Law Across Borders, which has not been properly implemented in Thailand. The Guidance calls for cross-border collaboration in the sharing of information about migrant children in conflict with the law, implementing the right of the child to have his or her parents or carers informed and in carrying out an individual assessment of the child’s needs and best interests. According to these Guidelines, the child’s best interests and the primary need for the child to be reintegrated shall guide decision-making. The Guidelines also set out the child’s right to legal advice and assistance throughout the criminal process and to an interpreter and to all documentation being translated. They also call for the mutual recognition of judicial decisions across national jurisdictions.

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285 KII with 5 staff members, Organization, Mae Sot, Tak province, 16 June 2019.
4.5.2 Access to special protections for migrant child victims / witnesses

Thailand appears to have operationalised special protections and process for child witnesses, according to a key informant interview with representatives from the Office of Attorney-General in Bangkok. Multi-disciplinary teams carry out investigations in a child-friendly manner, using special rooms and intermediaries (psycho-social professionals). Taped, pre-trial witness examinations can be used in courts, along with video conferencing, for child witnesses. For migrant children, interpreters will be used, and an interpreter roster is available containing a list of certified individuals / organisations that can be used for non-Thai nationals.

There was some evidence that specialised child-friendly procedures and mechanisms are available to child migrants in the research locations, including pre-trial examinations; video conferencing, restrictions on how evidence is given by children etc. as detailed by the following account by a lawyer at a Shelter for Children and Families in Bangkok:

“In investigations involving child victims, the interview will be pre-recorded in a video because the judge and the child will not be questioned again in court. When the statement has been made, it will be submitted to the prosecutor. The prosecutor will submit the evidence to the court. In the case of child migrants, we have to work quickly. Children stay in the shelter for three months. When we finish with the investigation, we will take the children to court. There is a separate room for them, and children will see everyone in the courtroom on the TV screen. The ones in the room will respond through a microphone. A social worker or psychologist will be there with the children…in the case of children, asking them to re-tell their statement about what happened is forbidden.”

However, there were some reports that these special protections are not always available to child victims or witnesses. A participant mentioned a recent case in Tak province, for instance, in which a girl from Myanmar who was a victim of sexual abuse was asked to given evidence live in court, despite having recorded a pre-trial interview, and she did not appear to have any support in court: “she was shocked and dared not say anything” when she confronted the suspect in court.

While special provisions apply in trafficking cases (see below), vulnerable migrant children (e.g. those who are undocumented but are not victims of trafficking) appear to be excluded from seeking financial remedies for criminal acts of violence or abuse. Victims of non-trafficking crimes (including child victims of violence, abuse, neglect and exploitation) may apply for state remedies under the Damages for the Injured Person and Compensation and Expense for the Accused in the Criminal Case Act 2001 (Damages Act 2001). According to this Act, victims of crime, including Thai residents and citizens and migrants, may apply for remedies through an application to a Committee (‘Compensation Committee’) established under the Act. However, in 2015, the Compensation Committee issued a decree prohibiting undocumented (irregular) migrants from accessing the fund. Therefore, child migrants who are undocumented are unable to access this fund. As illustrated by one participant: “It is very difficult for this case to receive a remedy…The Committee will not give a financial remedy to non-Thai citizens, and people with illegal status. There was a claim that illegal entry is partly a cause of the wrongful act.”

286 KII with Lawyer, Bangkok, 30 June 2019.
287 KII with Consultant, organisation in Mae Sot, Tak province, 2 July 2019.
289 KII with Lawyer, Mae Sot, Tak province, 14 June 2019.
One participant illustrated this with the following example of a recent case involving a 14-year-old undocumented girl from Myanmar with a disability who was the victim of sexual abuse: “The case was in court. But the child did not have any documents; therefore, she could not receive any financial remedy. The child lost this opportunity. The legal proceeding finished before she obtained her card.”

This denies access to a financial remedy for migrant child victims of violence who do not have identity documents.

**Specialised framework for child victims / witnesses of trafficking**

The Procedures for Human Trafficking Cases Act 2016 elaborates criminal procedures for trafficking cases. This involves protections to (child) witnesses, including expedited cases and options to give evidence via video link, including from another country. Sections 13 to 15 set out the process for claiming compensation for victims of trafficking. According to an interview with a representative from the Office of the Attorney General carried out during the inception visit, witnesses are also able to give evidence via pre-trial witness examinations and these will be carried out expeditiously. The PSDHS will assist in the repatriation of child victims and in remitting money granted following a compensation claim. According to the MSDHS’s most recent report on anti-trafficking measures, the capacity to give evidence via video link and pre-trial witness examinations has increased and is available in all Courts across the country.

In practice, prosecution for trafficking cases can be a lengthy process, and child witnesses appear to be kept in Thai shelters while the process is carried out (with no evidence of best interests determination); it could take up to one year, making return and reintegration more challenging.

> “The rehabilitation procedure in Thailand takes time. Some children have to stay in Thailand for years before they can return home. When they stay in the protection shelter for victims of human trafficking, they do not have money. When they return to Myanmar, they are stigmatised as victims of human trafficking. Many victims are aware that staying in the protection shelter for victims of human trafficking is not different than staying in prison... the services provided are not likely to meet their needs.”

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290 KII with 5 staff members, Organization, Mae Sot, Tak province, 16 June 2019.
291 Section 8, Procedures for Human Trafficking Cases Act 2016.
292 Section 9, Procedures for Human Trafficking Cases Act 2016.
293 This is in accordance with sections 172, 173(2) and 237 of the Criminal Procedure Code.
294 Interview with representative of the Office of Attorney General, Bangkok, 5 February 2019.
296 KII with Prosecutor, Sa Kaew, 11 June 2019.
297 KII with Field Coordinator, organisation in Mae Sot, Tak province, 16 June 2019.
Also, while trafficking victims have a legal right and access to an explicit process allowing them to claim compensation (under the Anti-Trafficking in Persons Act 2008\textsuperscript{298} and the Procedures for Human Trafficking Cases Act 2016\textsuperscript{299}), and multi-disciplinary trafficking teams have reportedly been provided with training on how to assist victims of trafficking to access compensation, it has recently been reported that perpetrators have been able to avoid complying with compensation orders and have not paid in the vast majority of cases. According to a data from the Office of the Attorney General, since 2014, Courts have ordered convicted traffickers to pay more than 130 million THB (US$4.3 million) in relation to 1,335 cases; however, payment had only been made in five cases (a total of 5.6 million THB), according to data from Thailand’s Division of Trafficking in Persons.\textsuperscript{300} It appears that the Government’s role in assisting victims to pursue compensation claims is unclear.\textsuperscript{301} While the MSDHS is mandated to assist victims of trafficking in enforcing compensation orders against traffickers, the process is complex and the MSDHS lack capacity to take necessary action.\textsuperscript{302} Victims of trafficking may also be compensated automatically through a Government fund which provides living and rehabilitation expenses and compensation for lost wages; however, it has been noted that the amounts received are insufficient to enable victims of trafficking to rebuild their lives.\textsuperscript{303}

\textsuperscript{298} Section 35.
\textsuperscript{299} Sections 13 – 15.
\textsuperscript{301} Ibid.
\textsuperscript{302} Ibid.
\textsuperscript{303} Ibid.
5.1 Key findings

5.1.1 Vulnerability of Migrant Children: Legal Status

The study found that migrant children in the study locations - particularly for the vast majority of children who are undocumented – have increased vulnerability to particular child protection risks. Labour policy and the immigration system play a part in this situation due to the limited viable options for migrant children and their families to remain documented in Thailand, and due to parents’ continued practice of bringing children to the country despite these policy restrictions, has increased vulnerability to family separation (for instance, where parents are arrested and detained on immigration grounds) and exposed children to a range of risks, including to trafficking and sexual and economic exploitation. Not only has the labour policy and the immigration system heightened the exposure of migrant children to protection risks, it has also caused considerable barriers to accessing protection (and other) services. Migrant children who are undocumented are largely hidden, and there are considerable social and practical barriers to them seeking help and accessing services. The considerable barriers to accessing formal law enforcement and child protection systems compounds their vulnerability and likely increases their exposure to violence and exploitation. On the other hand, general gaps in the provision of child protection services, and administrative and attitudinal barriers in relation to migrant children in particular, have created substantial gaps in the delivery of child protection services, in addition to those limitations already enduring by any children in the country.
5.1.2 Access of migrants to the child protection system

The data indicate that significant barriers exist to migrants accessing State child protection services, particularly in the case of violence occurring within families in which parents and / or children are undocumented. Migrants involved in the study were unlikely to approach authorities or child protection services directly, even for more serious cases of violence. This was linked to their lack of legal status and fears around being arrested / deported on approaching authorities. Instead, community leaders and CBOs appear to play a prominent role in child protection reporting, and many cases appear to be addressed informally through support from neighbours and / or mediation among families – an approach that often focused on restoring community harmony or mediating between families, rather than on addressing the needs of the child.

“Urban refugees / asylum-seekers” appear to be in a particularly vulnerable position: constant fear of arrest and detention (and deportation) place them in a position in which they are extremely reluctant to report any violence, abuse or neglect and access services. Urban refugees / asylum-seekers cannot work lawfully and are placed in a position of being unable to provide for themselves and their families without working unlawfully – perhaps increasing their risk of arrest and compounding their reluctance to report violence – or relying on financial and other assistance from NGOs, which have limited resources.

Migrant children and parents / carers involved in the study appeared to have limited knowledge of how and where to get help in relation to a child protection issue and this is likely exacerbated than the situation for Thais by challenges communicating in Thai. Unaccompanied children may be especially vulnerable due to the likelihood of them having very limited family and social networks to help them navigate services and systems of support. While most services require a 13-digit number (for service providers to receive budget allocation), and not a birth certificate, the lack of birth certificate can have long-term implications for the child, even when migrate back to the country of origin.

Perhaps in a similar way to the Thai population, respondents involved in the study appeared to perceive family violence as a private or less serious matter for which it is not appropriate for authorities to intervene and / or the perception (and perhaps reality) that police are less likely to respond to acts of violence occurring in the family than violence occurring in workplaces or in the community. The economic dependence of migrant women on men and unequal gender power relations appear to be additional barrier to reporting acts of violence in the family – migrant women may be reluctant to report cases of violence and abuse where this might involve arrest of the family ‘breadwinner’ in the context of limited access to support networks and services. While this is likely to be a barrier relevant to both Thai and migrant women, the impacts of gender inequality are likely heightened in the case of migrant women, given their limited access to social protection, limited social safety nets and barriers accessing services.

5.1.3 Gaps in the child protection system for migrant children

Despite quite a comprehensive child protection legal framework that applies to all children regardless of their migration status, gaps and challenges exist in implementing child protection systems and services at the local level in a way that responds to the needs of migrant children. Certain gaps were identified in the child protection system that apply to the system in general (i.e. to Thai and migrant children alike), including an insufficient number of social workers at the local level in study locations and limited coordination among key agencies, fuelled by siloed working practices. There is also limited coordination between Government service providers and NGOs, with NGOs doing their own case management, and cases not being referred into the State child protection system.
Other gaps were identified that are specific to the system’s response to migrant children. Social workers appear to lack proper training to address the needs of migrant children and have only limited understanding of how to apply the legal framework for child protection to migrant children. There are no guidelines or SOPs for professionals on working with migrant children in the child protection system (apart from victims of trafficking). Communication can be a challenge for those migrant children and families, especially in the area where NGOs and interpreting services are absent. And as noted above, some front-line professionals appear to have challenging attitudes or limited knowledge of their obligations towards migrant children.

In the study locations, the limited numbers of social workers or trained staff in communities or at the sub-district level, along with a reluctance among the population to approach formal child protection services, has impeded the identification and referral of both Thai and non-Thai children into the system. Routine border screening and referral systems exist in the case of trafficking victims; however, there is an absence of referral procedures for other child protection cases including unaccompanied migrant children more generally, and a likely practice (at least for those who are older e.g. over 16 years) to deport them or deny them entry at the border. In addition, limited knowledge of child protection among immigration officials and tension between their national security mandate and the need to protect migrant children, may result in other vulnerable children not being identified and / or an inappropriate or harmful response (such as deportation without family tracing etc.).

For migrant children at risk of violence, abuse or neglect who enter the child protection system, assessments will be typically carried out by a multi-disciplinary team, which operate at provincial level and have been piloted at selective sub-district level. However, it is not clear that a robust best interest determination is being carried out and that a migrant child’s best interest is guiding decision-making in child protection cases involving migrants as there seems to be no system in place to monitor or assure that this happens. In study locations, care and placement decisions appear to be guided by the interests of the immigration system and by the policies of shelters, rather than based on a robust, individualised assessment of the best interest of the child.

Age assessments, where carried out, do not follow best practice: age assessments rely on dental and / or bone density methods (where there is a margin of error of three years), rather than in a multi-disciplinary manner, drawing on relevant multi-sector experience and involving the least physically invasive option.

It does not appear that guardians are appointed in cases of unaccompanied migrant children in Thailand, representing a significant gap (though it is noted that Directors of MSDHS Shelters for Children and Families are designated under the CPA as ‘guardians of safety’ for children placed in the shelters).

The research found considerable barriers to service delivery: budget allocations for some services are tied to having a 13-digit identification number, which many migrant children do not have. While there is a specialised system for responding to victims of trafficking in persons in which this number is not required, the absence of a policy on responding to more vulnerable children generally (those that are unaccompanied, neglected by parents etc.) has meant that children and parents / carers who do not have the 13-digit identification number have difficulty accessing some essential services as the service provider’s per head budget will not cover it, and will contribute to the budgetary burden of the agency. Prevention services, in particular, appear to be inaccessible to non-Thai children and parents: it is difficult for service providers to deliver financial and other support and services (e.g. drug and alcohol rehabilitation, food assistance etc.) without children having a required 13-digit identification number.

In addition, some respondents demonstrated challenging attitudes or limited knowledge of their obligations towards migrant children, suggesting that they are ‘outsiders’ or ‘burdens’ and that there is no mandate, and insufficient funding, to assist them. This appears to have an impact on the provision of services to these children.
In practice in the research locations, care placements for unaccompanied and separated children at risk are quite limited, with a lack of family-based placements and overreliance on institutions. Accommodation options for children at risk, including migrant children, appear to be very limited and there is a notable gap in non-institutional options, such as foster care; it was also noted that the very limited private foster placements are very difficult to allocate to non-Thai children, with language considered as one limitation. This has led to situations in which babies and very young children are being placed in inappropriate and harmful care placements, particularly in cases in which family cannot be traced or where a child cannot return home (as is the case, e.g. for Rohingya children).

In addition, shelters cater to young children with mothers; adolescent boys and men (fathers) will need to go to different shelters, causing family separation in some cases. There are no Government community-based family placements which would allow migrant families to stay together.

5.1.4 Cross-border management of trafficking and other child protection cases

Thailand has developed a number of laws and procedures relating to human trafficking, including a Memorandum of Understanding with Cambodia, Laos PDR and Myanmar on cross-border cooperation in trafficking cases. Systems and mechanisms for responding to human trafficking between Myanmar/Thailand and Cambodia/Thailand were found to be working quite well, with clear guidelines, well-established working procedures and effective coordination, though gaps were identified. The care and protection of child victims in trafficking cases does not appear to be subject to and guided by a best interests determination. This has the effect of other considerations trumping what is best for children. A challenge in Thai/Myanmar cross-border working is that Myanmar and Thailand have different child protection standards and systems. While the Thai system is decentralized, the system in Myanmar is centrally managed and coordinated with limited devolution to the local level, which has created challenges in developing standard procedures for cross-border case management at the province level. The need for permissions and authorization at the central level in Myanmar also causes substantial delays in case processing, with possible negative implications on children.

There is no clear guidelines or mechanisms in Thailand, and no established processes and budgets for responding to child protection cases that have a cross-border dimension but do not meet the legal definition of child trafficking (e.g. vulnerable unaccompanied children who are not victims of trafficking and children who are separated from parent/s or carers as a result of immigration or criminal processes, or as a result of risk or harm). As a result, there are no assessment tools and no standardised processes, forms and tools to help social workers manage non-trafficking child protection cases that have a cross-border dimension.

As a result of the lack of cross-border mechanism for responding to non-trafficking child protection cases, service provision is done in an ad hoc way, relying on the personal relationships of staff in the relevant agencies. However, there is a lack of knowledge on how to deal with migrant children and how to do removals of migrant children; countries lack a clear, agreed central mechanism (and budgets) on returns. It was also found that there is no effective system for family tracing in non-trafficking cases, resulting in migrant children spending an unnecessary long time in shelters.

Nonetheless, some limited examples have emerged in the research locations of the cross-border mechanism being utilized to respond to child protection cases with a cross-border element, showing the potential of the trafficking mechanism if it were expanded or formally operationalized to work beyond trafficking cases. Regulations/standards are needed in order to expand the cross-border mechanisms so that they may be used systematically in non-trafficking child protection cases where there is a cross-border dimension.
5.1.5 Child-friendly justice for migrant children in conflict or contact with the law

All children – Thai and migrant children alike – are entitled to the special protections when they come into contact with the law as a suspect or victim / witness. However, the way that these protections are implemented has resulted in migrant children being excluded from accessing some of these special protections.

Migrant children in conflict with the law who are unaccompanied may, in practice, be denied access to bail and to community sentencing options, on account of having no primary residence or guardian. This can result in migrant children being placed in pre-trial detention or detention where not strictly necessary. Also, some community sentencing options and rehabilitation programmes require the involvement of guardians, effectively excluding unaccompanied children from participating and making them more at risk of being deprived of liberty. Where child migrants are placed in detention, limited access to interpreters can make them quite isolated, and unable to communicate with staff, placing them at risk. There does not appear to be any cross-border mechanism for responding to cases of migrant children who are in conflict with the law (e.g. consideration of whether to refer the child to their country of origin in order to carry out their sentence or follow up on a case).

Thailand appears to have operationalised special protections and process for child victims/witnesses, including pre-trial witness examinations and the ability to give evidence via video link etc. and special protections are available, in law, for victims of trafficking. However, these protections are not always implemented in practice. Also, vulnerable migrant children (those who are undocumented but not victims of trafficking) appear to be excluded from seeking financial remedies for criminal acts of violence or abuse. Victims of non-trafficking crimes (including child victims of violence, abuse, neglect and exploitation) may apply for state remedies. However, undocumented (irregular) migrants are unable to access this fund.

While a specialised framework is in place for child victims/witnesses in trafficking cases, barriers exist in practice. Prosecution for trafficking cases can be a lengthy process, and child witnesses appear to be kept in Thai shelters while the process is carried out (with apparently no best interests determination); it could take over a year in some cases, making return and reintegration more challenging. Also, while trafficking victims have a legal right and access to an explicit process allowing them to claim compensation, perpetrators have been able to avoid complying with compensation orders and have not paid in the vast majority of cases. Victims of trafficking may also be compensated automatically through a Government fund, which provides living and rehabilitation expenses and compensation for lost wages; however, it has been noted that the amounts received are insufficient to enable victims of trafficking to rebuild their lives.
5.2 Policy recommendations

This section sets out suggested policy recommendations in relation to the key findings set out above. Recommendations were guided by the assessment of international standards and best practice guidance set out in Annex C and informed by stakeholders’ feedback provided during a workshop in Bangkok in October 2019.

The recommendations are summarised in a table at the end of this section, indicating the key responsible Ministry / Agency for each recommendation, along with whether it is recommended that they are carried out in the short-, medium- or long-term.

5.2.1 Policy, procedures, and guidance

Operationalisation of laws and policies

- **Revision of Child Protection Manual**: In Thailand, the Child Protection Act already provides a relatively comprehensive legal framework for the protection of children, which encompasses migrant children. The National Child Protection Strategy has also included migrant children as one of the priorities. However, insufficient guidance is in place to operationalise the provision of child protection systems and services to the specific circumstances of migrant children. The Child Protection Manual has only minimal reference to special considerations for migrant children. It is recommended that the Manual be revised, based on some of the additional recommendations mentioned below. Revisions could be incorporated into an Annex of the Manual so as to link new guidance to the core guidance already in place and so as to avoid the development of a parallel or special standalone system / procedures for migrant children.

- **Incorporation of migrant children’s needs into child protection tools and forms**: The unique needs of migrant children, including those that are unaccompanied or separated, should be integrated into the standardised tools and forms used by PSDHS Social Workers. A review of the forms could be carried out as part of the process of revising the Manual (e.g. by incorporating an Annex on migrant children), and, where necessary, key steps required for migrant children (e.g. family tracing processes; appointment of a guardian; sourcing of a translator etc.) could be incorporated into these tools and forms (with reference to the recommendations below).

- **Operating procedure for cross-border child protection**: An Inter-Ministerial Standard Operating Procedure linked to Inter-Governmental Cross-Border Child Protection Mechanism should also be considered for addressing cases of unaccompanied and separated children.

Legal status

- **Viable solutions for documenting low skilled workers**: As a root cause of the protection risks that migrant children are exposed to, there is a need for Thailand to develop viable avenues for low skilled migrants and their families to remain in Thailand with documentation. Current avenues (such as the MoUs) are time consuming and costly, and revisions should be made to these mechanisms to simplify and expedite them and reduce their cost. The development of these viable avenues could be aided by effective cross-border collaboration between the Government of Thailand and the Governments of neighbouring countries.

- **Status for ‘urban refugees / asylum-seekers’**: In addition, in order to address the extremely vulnerable situation of ‘urban refugees / asylum-seekers’, it is strongly recommended that Thailand develop routes to legal status for asylum-seeking and refugee children and their families. It is noted that the Thai Cabinet recently approved the development of a status determination mechanism for
refugees and asylum-seekers in Thailand. It is important that this mechanism follow international law and guidance in ensuring that a rights-compliant system is put in place. It is also important to ensure that migrant children and families who are in a position to claim asylum / refugee status have access to this mechanism, and access to legal or other expert assistance and representation to make applications to the mechanism. Also, it is important that rights to work and access basic services flow from the granting of asylum-seeker / refugee legal status and that long-term durable solutions are developed for refugee / migrant children and families, including long-term settlement in Thailand or resettlement in a third country. Special protections should be afforded to unaccompanied or separated child refugees / asylum-seekers, as set out below in relation to unaccompanied or separated migrant children.

5.2.2 Administrative and operational considerations

**Budget**

- Removal of 13-digit identification number for accessing services: There is a need for child protection service provision, including for all prevention, response and support services delivered at Provincial, District and Sub-district level, to remove possession of the 13-digit identification number as a pre-condition of service delivery (and for budgets to be attached to these identification numbers). For child protection case management, a budget for child protection work should be allocated to case PSDHS Offices and Shelters, which covers costs of service provision, including transport to conduct home visits, basic material support required by service users / beneficiaries, and other costs. It should be made clear that budgeting covers all children (Thai and non-Thai) and is not dependant on possession of an identification number. It should allow for discretionary spending where necessary, in order to facilitate individualised, tailored child protection responses.

- Or develop avenues for migrant children to receive a 13-digit identification number: Alternatively, all children and families / carers who are referred for child protection services should be allocated an identification number to facilitate the service providers access to budgetary allocations for the child/family members. It is noted that Thai schools are currently able to generate 13-digit identification numbers for non-Thai students. It is suggested that a similar system be developed for PSDHS Shelters and Offices, in order to allow them to assist migrant children and families to receive an identification number. In order to ensure that children and families have access to preventative services (where possible), it is important that SAOs and other service providers are able to refer children and families to PSDHS Offices so that they may receive an identification number. Migrants are entitled, in law, to the child protection system and its services: it is imperative that administrative systems that operationalise service delivery do not exclude migrants.

**Administrative data**

- Strengthening data collection systems: There is a need to improve the collection of administrative data on the nature and extent of child migration and the issues and challenges faced by child migrants.

**Improving access**

- Addressing fear among migrant communities: Ensure that migrant children and families are not deterred from accessing child protection services through the use of ‘firewalls’ in which information about the status of migrant children and families who access child protection services and have irregular status is not shared with immigration officials.
Good practice illustration: ‘Firewalls’ to improve access to child protection and other services in some EU countries

‘Firewalls’, which keep information from being shared between service providers and immigration authorities, are recommended for use in the Council of Europe’s ECRI General Policy Recommendation No. 16 on Safeguarding Irregularly Present Migrants from Discrimination 2016. These firewalls promise confidentiality and security and can encourage migrant children – even those without the documentation – to access quality services without fear. The Recommendation calls for the creation of firewalls, which it defines as effective measures to prevent state and private sector actors denying human rights to migrants whose presence is irregular prohibiting the sharing of the personal data of, or other information about, people suspected of irregular presence or work, with the immigration authorities for purposes of immigration control and enforcement.304

Child Protection and Related Personnel

- **Training and capacity building:** Border staff and government officials working in areas where migrant children may be present should receive adequate training in identifying risk factors and acting appropriately when they are confronted with an unaccompanied child. In-service training should be carried out to build their capacity to identify, carry out an initial assessment and refer a migrant child to PSDHS Office social workers where he or she is unaccompanied or separated. To support the identification of unaccompanied children, checks could be added into the trafficking screening tool that is currently used by border officials.

- **Awareness Raising Among Personnel:** There is a need to sensitise ‘front line’ professionals, including police, OSCC staff, immigration officials, border police, key SAO staff and social workers on the rights of migrant children to access child protection services and their responsibilities to migrant children. Efforts should be made to integrate training on child protection and the needs and rights of migrant children into pre-service and in-service training for these professionals.

- **Translation:** It is imperative that an adequate number of interpreters are available to support migrant children and families in accessing the child protection system and in enabling them to access appropriate support services. PSDHS could support the identification and training of a group of interpreters in migrant communities who could then provide services, on a roster, within the child protection system when required. However, care should be taken to ensure that interpreters are not from the child’s immediate community where this would breach a child’s privacy and / or place the child at risk. Alternatively, CBOs could be approached to identify, allocate and train a group of interpreters in migrant communities.

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5.2.3 Child protection systems, services and case management

Organisation of child protection services and case management

- **Improve case management of all child protection cases (including those involving migrant children):** As part of a more general discussion on the structure and mode of delivery of child protection services in Thailand, consideration should be given to how the Government child protection system works with and utilises a range of private service providers (e.g. services provided by NGOs and CBOs). It is recommended that a single lead agency (PSDHS) be appointed for each child protection case (including those involving Thai and non-Thai children) and, within this, a lead professional should be allocated responsibility for the coordination of the case (ideally, a trained social worker, such as a competent officer) from start to finish in order to establish clarity, prevent drift and promote continuity of care. The lead professional, or case manager, should be responsible for ensuring the initial risk assessment has taken place appropriately (e.g. in a case where it has been undertaken by another professional), and leading the process of assessment, care planning and care plan implementation, including engaging other relevant agencies and ensuring that timescales for reviews are met, with participation from all professionals involved in the child’s care. The case manager should arrange and lead multidisciplinary team sessions, including through inviting professionals with expertise relevant to the particular case. Even with the designation of a responsible agency and lead professional, the multi-disciplinary team should remain involved in the child protection response.

- **Consider the development of robust public-private partnerships / outsourcing to expand services:** While it is recommended that case management be carried out by PSDHS Offices, in order to increase the capacity of child protection services, and to ensure that a range of preventative, response and rehabilitation services are available to respond in an effective and tailored way to each case, the Government should consider how private service providers can be utilised. As part of a broader discussion involving the child protection system more generally, consideration should be given to the development of an effective model for public-private child protection service delivery. Service delivery could be carried out through outsourcing to private providers, or through public-private partnerships, both of which could leverage private finance and result in the more rapid expansion of services for migrant and other children. However, as part of discussions to develop this model for service delivery, it is imperative that clear contracting criteria are developed, that private service delivery is clearly budgeted for (detailing how public finances are allocated), that quality criteria are set out, and that services are effectively managed with robust oversight mechanisms. It is important that a separate or parallel system is not developed, but rather, that private service delivery is incorporated effectively into the existing child protection system based on particular needs or gaps in the current system.

Detection/Surveillance and Referral

- **Capacity Building in the Community:** Community leaders and CBOs working in migrant communities should be provided with training and information packages on how to refer children and families to child protection services and how to identify and respond effectively to child protection cases about which they are notified. CBOs and community leaders should be advised to refer migrant cases to the PSDHS and the PSDHS could carry out an initial assessment and, where the family requires preventative services (e.g. cash assistance, material assistance, counselling), referrals could be made by PSDHS to a range of service providers.

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305 This recommendation is consistent with recommendations set out in a baseline study on the Thai child protection system, focusing in particular on case management, carried out by UNICEF and Coram International in 2018.
• **Awareness Raising in the Community**: Community mobilisation or awareness raising campaigns should be carried out with migrant communities to encourage child protection identification and reporting and encourage help seeking in cases of violence, abuse, neglect and exploitation. This should aim at ensuring migrants are aware of their rights and entitlements to access child protection services regardless of their status, how to identify and report violence, abuse, neglect and exploitation, along with practical information on seeking help.

**Assessment**

**Age assessments**

• The process and methods for carrying out age assessment should be revised in order to comply with best practice. There are a plethora of reports and guidelines which emphasise the importance of a formal, regulated procedure to ascertain the age of a potential minor where age is in doubt. CRC General Comment No. 6, para. 31 (i) calls for any additional age assessment measures to be objective and fair, child and gender-sensitive and to avoid any risk of violating the individual’s physical integrity, giving due respect to his or her human dignity. The CRC Committee’s General Comment 24 on the rights of children in the justice system calls for age assessments to involve assessment of documents and testimony from a child’s family, teachers and community leaders, rather than through medical processes. The Separated Children in Europe Programme (SCEP)’s Statement of Good Practice recommends that age assessment procedures are only undertaken as a measure of last resort where there are grounds for serious doubts and where other approaches have failed to establish the individuals age. In cases of doubt, there should be a presumption that someone claiming to be under 18 provisionally will be treated as such.³⁰⁶ Other requirements provided within the SCEP Statement of Good Practice include:

  o Informed consent is obtained.
  o The procedure is multidisciplinary and draws on relevant expertise.
  o Examinations should never be forced or culturally inappropriate and must respect the individual’s dignity at all times.
  o The least invasive option is followed and balances physical, developmental, psychological, environmental and cultural factors.
  o Assessments are gender appropriate.
  o Assessments are overseen by an independent guardian who is present if requested to attend by the individual concerned.
  o The procedure, the outcome and consequence are explained to the individual in a language they understand.
  o There is a procedure to appeal against the decision as well as the necessary support to do so.³⁰⁷

• In order to implement these guidelines, it is recommended that: a consent form is developed (in a range of languages) to allow a child to provide informed consent to a particular age assessment method; forms and checklists are developed to aid in observational psychological age assessments; forms and checklists for acquiring relevant documents (this could involve cross-border collaboration

with relevant authorities in order to attain any records of a child’s birth or medical records) and testimony from parents, teachers and community leaders; and a decree is issued by MSDHS that, where an age range is established for a child, the age that is in the child’s best interests is selected. Further, it is important that training and sensitisation is carried out with key professionals in child-friendly and best practice age assessment processes.

- Age assessment processes and relevant forms should be incorporated into guidance or Standard Operating Procedures and annexed to the Child Protection Manual.

### Good practice illustration: Guidance for conducting age assessments

In 2015, the Association of Directors of Children’s Services in the U.K developed a best practice guidance for local authority social workers on carrying out age assessments. The Guidance was developed by experienced social workers, health workers, police, NGOs and legal experts, in consultation with young people who have had experience with age assessments, under the guidance of a multi-disciplinary expert oversight group.

The Guidance sets out how to plan and prepare for an age assessment interview, including setting out rights to and the role of interpreters and appropriate adults (persons who are independent from local authorities and experienced working with children who accompany the child in order to represent their interests and safeguard their wellbeing during the age assessment process); a guide and checklist on how to conduct an interview; and guidance on decision-making. It also elaborates special guidance on working with children who are suspected trafficking victims, those who have uncertain migration status and those with special vulnerabilities.

The Guidance is available [here](#).

### Best interests determinations

- There is a clear need to develop the attitude and capacity of professionals to carry out best interests determinations in the cases of migrant children, and to integrate best interests determination processes in the immigration and child protection systems at any point at which a decision is made as to the care of children. Best interests determination processes should not ‘stand-alone’, but should be integrated into the child protection system at key points in the process. They should be carried out by the Multi-disciplinary teams and be used to guide all decision making throughout the child protection process and the development of plans, responses and service provision. UNHCR’s *Guidelines on Determining the Best Interests of the Child* identify three instances in which a best interest’s determination should be conducted in relation to children:

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(a) Wherever there is no clear lasting solution, and one is, therefore, needed to adequately address a child’s protection needs (This may include – but is not limited to – return, resettlement or local integration. The process will help in determining the most appropriate solution and identify the right time for the implementation of such solution, and can also contribute to successful family tracking and family reunification);

(b) Wherever there is a need to determine or make temporary care arrangements for the child, including where there are reasonable grounds to suspect abuse and/or neglect, and/or exploitation, as well as where there are reasonable grounds to expect that existing care arrangements are not suitable for other reasons;

(c) Wherever there is a possible separation of a child from his/her parents against their will, though this should only be allowed in exceptional circumstances, including where there is a risk of severe harm from the parents, including (but not limited to) neglect, abuse, or sexual and gender-based violence, parental separation or where the child is abandoned.309

- In cases involving migrant children, it may be appropriate to involve cross-border agencies (e.g. social welfare professionals from the child’s country of origin) in the multi-disciplinary best interest determination assessments. The process for this should be set out in guidance or Standard Operating Procedures and annexed to the Child Protection Manual.

Good practice illustration: UNHCR’s and IRC’s Field handbook for the implementation of best interests determinations

UNHCR and IRC have developed a practice guide to the implementation of international standards and best practice guidance in best interests determinations. While the guide applies to assessing the needs of children of concern within UNHCR’s processes, it provides useful, practical guidance on how to carry out and how to embed best interests determinations into child protection systems and in the determination of durable solutions. It sets out a step by step process for carrying out best interests determinations and practical guidance on communicating with children. It also provides sample SOPs and a sample best interests assessment form.

The Guide is available here. UNHCR has recently revised and provisionally released update BID guidance; available here.

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As noted above, in the delivery of services to migrant children (and within the child protection system more generally), it is important for the Government to consider how child protection services, including prevention services, response and rehabilitation services can most effectively be delivered. In particular, it is important to consider how services delivered by private service providers (e.g. NGOs, CBOs) can be most effectively organised and implemented.

In relation to migrant children, particular gaps were noted in terms of prevention services and alternative care options.

**Prevention services**

**Mapping of local service providers:** There is a need to develop increased and improved prevention services to support vulnerable families, including family strengthening programmes that include family-focused counselling which can be delivered to at-risk children who live in a home environment by a skilled professional through a case management model; drug and alcohol counselling; economic empowerment and family economic strengthening; parenting skills development; and other support to prevent family separation and violence, abuse, neglect and exploitation of children. In order to increase the availability of prevention services in the shorter term, it is recommended that a comprehensive mapping of local service providers could be carried out in communities with high numbers of migrants and a compendium of service providers could be provided to PSDHS Offices in order to support increased help seeking and access to appropriate preventative services for migrant children and families. Given the reluctance of migrant families to access formal services, and the budgetary and attitudinal barriers of service providers such as SAOs (it is also noted that the Child Protection Act, which applies to migrant children, does not focus on prevention services) means that direct referrals to preventative services from CBOs / community leaders could be considered (at least initially) to encourage direct referrals to preventative services.

**Consideration of public-private partnerships / outsourcing:** In the longer term, the development of preventative services could be aided through models such as public-private partnerships or outsourcing, as indicated above, noting that these models must consider how these services can form part of the broader child protection system and processes (rather than developing as completely separate or parallel services and systems), including through the allocation of State budgets and effective oversight mechanisms.

**Alternative Care**

- **Developing family-based alternative care options for migrant children:** In order to ensure that a range of care placements are available that are appropriate and suitable to children of all ages, family-based alternative care services should be strengthened, such as a foster care service. This should form part of the national / general development of foster care, and in efforts to improve foster care, the needs of migrant children shall be considered and included. Standards for Foster Care should be developed and responsibility for recruiting, selecting, training and supporting agreed. The structure of the fostering service and the quality standards need to be agreed by Government and services managed at provincial level. Such services could either be organised and provided by Government or Government could consider commissioning NGOs in each province to provide fostering services. It is recommended that, in areas containing a high number of migrants, a selection of foster carers be provided with specialised training on the risk and needs of migrant children; in order to address communication barriers, a selection of foster carers could be recruited from within migrant communities. Special family placements (and training) should be provided for cases of abandoned or separated babies. This could be carried out by PSDHS Offices.
Avoiding separation of migrant families: Consideration should be given to the development of family placements for migrant (and other) families in order to avoid separation (e.g. of fathers or 12-year-old boys from parents and siblings).

Ensuring contact between family members: Where parents are arrested (on immigration or criminal grounds), and children are unable to be returned and reunited with other family members, the parent should be permitted regular visits to the child and this should be arranged through effective coordination with PSDHS shelters / family-based care placements and police or immigration officials.

5.2.4 Cross-border child protection case management

Development of guidance for management of cross-border cases

As part of the cross-country collaboration agreement (MOU), clear guidance should be developed for child protection professionals on how to identify and respond to migrant children, including, in particular, those protection cases that have a cross-border dimension but do not amount to human trafficking (i.e. how to respond to cases involving separated, unaccompanied or otherwise vulnerable migrant children who have been exposed to violence, abuse or neglect and who are not trafficking victims). The guidance should set out clear processes and roles for each agency / professional in each of the three types of cases: (a) Suspected trafficking cases (cross-referencing the trafficking law and guidance); (b) Where a child is at risk of harm (violence, abuse, neglect, cross-referencing the child protection law and guidelines); and (c) In the case of any unaccompanied or separated migrant child. The Governments of neighbouring countries should be engaged in the development of the guidance. The guidance should be consistent with international guidance and best practice (summarised in Annex C of this report) and could draw on the good practice elements of the cross-border trafficking agreements and mechanisms. It should include: the designation of a lead agency and professional for each case (ideally a trained social worker, such as a competent official) and their role in managing the case, coordinating the multi-disciplinary team sessions and developing and implementing care plans; the designation of the development of standardised timescales for risk assessments, in-depth assessment and follow-up, family tracing, returns and reintegration and review; the development of risk assessment and holistic case management tools; and the allocation of budgets for case management work, which includes services that meet the needs of migrant children (including for family tracing, returns and cross-border follow up processes). In relation to unaccompanied or separated migrant children, it should include the following processes:

(a) Initial assessment: As a component of regular case management or in child protection surveillance in the immigration administration system mechanisms to identify the child as separated or unaccompanied as a matter of priority (ideally as soon as the child enters the country or becomes separated, e.g. through the arrest of his or her parent or carer). The initial assessment should determine the identity of the child, their citizenship and the identity of parents and siblings. The initial assessment should include the process for multi-disciplinary age assessments (where age is in doubt / disputed). Where a child is identified as unaccompanied or separated, a referral should be made to the PSDHS office to carry out a further, in-depth assessment which should involve determination of reasons for being separated or unaccompanied, any particular vulnerabilities of the child (health, physical, psychological, past trauma etc.) and protection needs of the child. Where an adult accompanies a child but is not the child’s caregiver in law or custom, officials should consider the relationship as part of the anti-trafficking screening and establish whether it would be in the child’s best interests to stay with the accompanying relative or other adult as child protection services are enlisted.
(b) Appointment of a guardian and legal representative: Guardians should be appointed to all migrant children who are identified as being separated or unaccompanied, ideally at the point at which they are identified. The guardian should have suitable experience of childcare. Guardians or advisors could perform a crucial role in the child protection system for separated or unaccompanied children, by helping to ensure that all decisions taken are in the child’s best interests; that a separated child has suitable care, accommodation, education, language support and health care provision; that they have suitable legal representation to deal with her or his immigration status or asylum claim; and can contribute to a durable solution in the child’s best interests (e.g. reunification, return, application to remain). They can also provide a link between the child and various organisations who may provide services to the child and can help the child keep in touch with his/her family. A ‘pool’ of child guardians should be developed by PSDHS and they should be available to accompany an unaccompanied / separated child immediately after their identification. The pool of guardians could be drawn from professionals such as teachers, NGO or CBO staff with relevant experience, etc. If the guardian role is to be assigned to Head of Provincial Shelter as identified in CP Act, there should be a mechanism to ensure that those in the guardian role are aware and sensitive to protection risks faced by migrant children, especially those unaccompanied or separated children.

**Good practice illustration:**

**Guardianship system in Italy**

Italian Law 47/2017 established a revised legal framework for the protection and care of unaccompanied asylum-seeking children (USAC) and included a model of voluntary guardianship that is integrated into the existing system of reception and protection for migrant children. Under the Law, volunteer guardians are citizens appointed in coordination with the Juvenile Courts where official registers of guardians are created. They are selected and trained by the Regional Ombudspersons Offices for children, specifically mandated to monitor and promote children’s rights.

A Guardian Support and Monitoring Office has been established, with the support of UNICEF, within the Ombudsperson’s facility in Palermo, Sicily (a region with a large proportion of UASC). The Office aims to accompany, support and monitor the guardianship system by providing technical support and guidance to the volunteer guardians in the international protection application; referral of vulnerable cases; a listening and participatory approach; and cases that require extensive investigation and management.

The Office works on a guardianship referral system in coordination with the Social Services, Juvenile Court and Prefecture at the Municipal level. The Office also plays a strategic role in promoting cooperation between guardians and reception centres, as well as cooperation with local public and civil services, and provides direct contact with the Ombudsperson’s office for children and adolescents. It also aims to mobilise the host community to provide the best possible care for each child, including through the promotion of alternative care mechanisms (particularly foster care) and social inclusion opportunities.310

(c) **Responsibilities and process for family tracing:** Family tracing for a child’s parents and family should be initiated as soon as possible, so long as it can be ascertained that the tracing procedure shall not endanger or otherwise be detrimental to the child. Family tracing should be initiated and coordinated by PSDHS Office social workers. The mandate of existing trafficking mechanisms (e.g. BCATIP) could be expanded to encompass cross-border tracing and management of cases involving unaccompanied and separated children.

(d) **Care and accommodation arrangements:** The full range of care options shall be available (see above) and when selecting from these options, States must ensure that the particular vulnerabilities of the child who has not only lost connection with family, but also are outside their country of origin, as well as the child’s age and gender, are taken into account. The CRC Committee sets out a number of principles to guide the placement of unaccompanied and separated children in alternative care:

- Children shall not be deprived of liberty, as a general rule;
- Changes in residence shall be limited to instances where such changes are necessary in the best interests of the child;
- Siblings shall be kept together;
- Children in the company of adult relatives shall be allowed to remain with them unless this is not in their best interests;
- Children must be regularly assessed in their placements by qualified persons; and
- Children must be kept informed of care arrangements and their opinions must be taken into consideration.\(^{311}\)

(e) **Reunification / durable solutions:** Durable solutions should be implemented at the earliest opportunity and tracing the child’s parents / family should commence as soon as the child is first identified as unaccompanied or separated (see above). The durable solution should be pursued following a best interests assessment, and could include family reunification in the country of origin; return to the country of origin (however, this should not take place without advance secure and concrete arrangements of care and custodial responsibilities upon return to the country of origin); local integration based on giving the child legal status and following a long-term placement plan being developed; inter-country adoption; or resettlement in a third country. Again, existing cross-border trafficking mechanisms (e.g. BCATIP) could be expanded to encompass tracing and reunification in non-trafficking cases involving unaccompanied or separated children.

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311 UN Committee on the Rights of the Child, *General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin*, 1 September 2005, CRC/GC/2005/6, para. 40.
Good practice illustration: Minimum safeguards on return of separated or unaccompanied migrant children

UNICEF’s reference guide for child victims of trafficking in Europe and UNHCR’s special measures for the return of unaccompanied and separated children to Afghanistan may be applied to other situations. They are summarised in the Guide, Safe and Sound, available here:

• A decision is made in a formal procedure containing all necessary safeguards; that it assesses all solutions ensuring that the child’s best interests are a primary consideration; that the child is fully informed, counselled and supported.

• Genuine efforts are made to trace family prior to return and an individual assessment as to whether the family is willing and able to receive the child is made.

• Where tracing is unsuccessful, return to a child-care institution is considered as a last resort and only when in the best interests of the individual child concerned.

• Reception and care arrangements should as a minimum include:
  o Receiving the child at the airport, immediate access to appropriate accommodation, support for basic needs, access to education and health care.
  o Appointment of a care-giver/guardian with appropriate training and qualifications, including in child-protection, formally assigned responsibility for the child.
  o Individual plan for the child’s sustainable reintegration drawn up in collaboration with the child and his/her guardian.
  o Adequate and ongoing post-return evaluation.

• Individual risk and security assessments are carried out by professionals.

• Risk assessment explores the circumstances of the home and community to which the child is likely to return, in order to assess whether it is in the child’s best interests to return there. Initiated by the same social service or child welfare authority wherever the child is located, it requires information from an agency in the child’s country of origin, which is familiar with the child’s family or the home of the person who is going to take responsibility of the child (or the institution which is going to do so) and the surrounding community.
5.2.5 Migrant children in conflict or contact with the law

Child-friendly justice for children in conflict with the law

- **Improving management of child justice cases with a cross-border element**: There is a need to develop (perhaps alongside efforts to strengthen cross-border management of child protection cases) processes and mechanisms for addressing cases involving children in conflict with the law where there is a cross-border element (e.g. the child is unaccompanied, and their family is living outside Thailand). This should include a process for assessing the best interests of a child who has been charged or convicted of a crime as to how the case should be processed and whether, in each individual case, the child should remain in Thailand or be returned to their country of origin.

- **Improving access to bail and community alternatives for migrant children**: Alternatives should be sought where an unaccompanied child applies for bail, or where diversion or a community sentence is being considered, whereby an institution (e.g. PSDHS social workers or registered NGO shelters) could substitute as the child’s guardian and provide a place of primary residence for the purposes of bail applications.

Child-friendly justice for child victims / witnesses

- **Best interests determinations for child victims of trafficking**: Clear guidance is needed to set out that cases involving a child witness who is a victim of trafficking shall be guided by a robust and individual best interests determination as to their care and case processing. This should clearly state that the child’s best interests shall be the primary consideration in these cases, not the interests of justice. Where it is in the child’s best interests to return to his or her home country, this should be done as a matter of priority, regardless of the need for the child to appear as a witness in a case against a perpetrator.

- **Improved enforcement of compensation orders for victims of trafficking**: Legal enforcement of compensation orders in cases of trafficking should be strengthened, and child victims of trafficking should be provided with legal support to make compensation claims.

- **Improving access to support for migrant child victims / witnesses**: Child migrants who are victims of crimes other than trafficking should be entitled to apply for victim compensation: efforts should be made to ensure that the Compensation Committee reverses its decree prohibiting undocumented (irregular) migrants from accessing the fund. Migrant child victims / witnesses should also be ensured access to the child protection system, where necessary, and to rehabilitation, counselling and other victim support services.
ANNEX:
ANALYSIS OF INTERNATIONAL STANDARDS AND BEST PRACTICE ON CHILD PROTECTION AND MIGRATION

The UN Convention on the Rights of the Child and supporting international instruments (including, most relevantly, the Optional Protocol on the Sale of Children, Child Prostitution and Pornography 2000, the UN Guidelines on the Alternative Care of Children 2010 and the UN Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice) elaborate the rights of children and standards applicable to the functioning of the child protection and child justice systems in State parties. The UN Committee on the Rights of the Child has made it clear that the rights contained in these instruments, including those relating to child protection, apply equally to citizens as to non-citizens, including undocumented children. According to the CRC Committee’s General Comment No. 6, “the enjoyment of rights stipulated in the Convention is not limited to children who are citizens of a State party and must therefore, if not explicitly stated otherwise in the Convention, also be available to all children – including asylum-seeking, refugee and migrant children – irrespective of their nationality, immigration status and statelessness.”\(^{312}\)

In addition to this guarantee of the application of all general child protection and other rights and provisions to migrant children, there are special rights and standards that apply to unaccompanied and separated migrant children (including children who migrate internationally without a parent or carer and those who are separated from their parent/s or carer/s after they have crossed an international border), and to refugee and asylum-seeking children. These special protections are elaborated in the CRC Committee’s General

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312 UN Committee on the Rights of the Child, General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin, 1 September 2005, CRC/GC/2005/6, para. 12.
Comments No. 6 on the treatment of unaccompanied and separated children outside their country of origin and its more recent joint general comments with the Committee on the Protection of the Rights of All migrant Workers and Members of Their Families, No. 22 on the general principles regarding the human rights of children in the context of international migration and No. 23 on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return. In addition, the Protocol to Prevent, Suppress and Punish Trafficking in Persons (the Palermo Protocol) contains special provisions that apply to migrants who have been or are exposed to the risk of human trafficking.

The Convention Relating to the Status of Refugees 1951 elaborates rights and protections for refugees and asylum-seekers, including children; however, Thailand is not a signatory to this Convention and it does not have a domestic refugee law or refugee determination process (Thailand also has a reservation to article 22 of the CRC, which sets out specific rights and protections for refugee and asylum-seeking children).

In September 2016, the New York Declaration for Refugees and Migrants was adopted by the General Assembly, following recognition by UN member States of the need for a more comprehensive approach to the movement of persons at the global level. The Declaration explicitly recognises the needs of refugees, internally displaced persons and migrants and makes a number of commitments that are intended to ensure “a people-centred, sensitive, humane, dignified, gender-responsive and prompt reception for all persons arriving in a country, and particularly those in large movements, whether refugees or migrants,” with full respect for their human rights and fundamental freedoms.

With respect to children, the New York Declaration contains some strong commitments. States commit to protect the human rights and fundamental freedoms of all refugee and migrant children, regardless of their status, and to give primary consideration at all times to the best interests of the child. This will apply particularly to unaccompanied children and those separated from their families; who are to be referred to the relevant national child protection authorities and other relevant authorities for care.

Following the adoption of the New York Declaration, intergovernmental consultations and negotiations took place culminating in the adoption of the Global Compact for Refugees and a separate Global Compact Migration. The Global Compact for Refugees was formally endorsed by 181 States on 16th December 2018, while the Global Compact for Migration was formally endorsed by 152 States at the UN General Assembly on 19 December 2018.

313 UN Committee on the Rights of the Child, General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin, 1 September 2005, CRC/GC/2005/6.
314 Joint General Comment No. 3 of the Committee on the Protection of the Rights of All migrant Workers and Members of Their Families and No 22 of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration (2017), 16 November 2017, CMW/C/GC/23 – CRC/C/GC/22.
315 Joint General Comment No. 4 of the Committee on the Protection of the Rights of All migrant Workers and Members of Their Families and No 23 of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration (2017), 16 November 2017, CMW/C/GC/4 – CRC/C/GC/23.
316 It is noted that an in-depth examination of refugee law and procedure is outside the scope of this study, which focuses on access and functioning of the child protection system for migrant children in Thailand.
317 UN Doc. A/71/L.1, 13 September 2016. The NY Declaration took note of the report of the Secretary-General, entitled “In safety and dignity: addressing large movements of refugees and migrants” (A/70/539), prepared pursuant to General Assembly decision 70/539 of 22 December 2015; the World Humanitarian Summit, held in Istanbul, Turkey, on 23 and 24 May 2016; the high-level meeting on global responsibility-sharing through pathways for admission of Syrian refugees, convened by the Office of the United Nations High Commissioner for Refugees on 30 March 2016; the conference on “Supporting Syria and the Region; held in London on 4 February 2016; the pledging conference on Somali refugees, held in Brussels on 21 October 2015; regional initiatives such as the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime; the European Union-Horn of Africa Migration Route Initiative and the African Union-Horn of Africa Initiative on Human Trafficking and Smuggling of Migrants (the Khartoum Process); the Rabat Process, the Valletta Action Plan and the Brazil Declaration and Plan of Action.
318 UN Doc. A/71/L.1, 13 September 2016 para. 22.
319 Only the USA and Hungary voted against the Global Compact on Refugees, while the Dominican Republic, Eritrea and Libya abstained.
320 UN Doc. A/73/L.66, 12 December 2018, Global Compact for Safe, Orderly and Regular Migration. 152 countries voted in favour of the resolution to endorse it, while the United States, Hungary, Israel, Czech Republic and Poland voted against it. 12 countries abstained from the vote and 24 did not vote. Kyrgyzstan fell into this last category.
The Global Compact on Migration is a lengthy and detailed document that contains a number of objectives and commitments that are particularly important to children and which are reflected in the Migration Programme. The Global Compact also sets out a number of actions which States could employ to ensure that the commitments they have made become a reality.

The ASEAN States have issued a number of regional instruments aimed at protecting children and migrants, the most relevant of which are the ASEAN Convention Against Trafficking in Persons, Especially Women and Children and its plan of action; the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers and its follow-up processes such as the ASEAN Committee on Migrant Workers and the ASEAN Forum on Migrant Labour. All the instruments address the need to strengthen cooperation between States with respect to data, information sharing, smuggling of migrants, trafficking of women and children and undocumented migrants.

The ASEAN consensus is ‘soft’ law: it does not have the status of a treaty but it sets out agreements reached by the ASEAN States and acts as a standard which States should apply. Its purpose is to strengthen access of migrant workers and their families to basic services. It also provides for measures to ensure effective prevention and suppression of smuggling and trafficking in persons; encourages the facilitation of information sharing through development or strengthening of databases and information systems on matters relating to migrant workers and enhances cooperation aimed at building capacity and sharing of information on laws, regulations, policies and practices in relation to the protection and promotion of migrants work and welfare, and encouraging constructive dialogue, consultation, cooperation and regular exchange of information for the purposes of effective enforcement of policies and programmes concerning migrant workers.

However, the Consensus does not apply to undocumented migrants, who are defined as “a person who fails to comply with the conditions provided for him or her to legally enter the Receiving State and to stay legally for the duration of the employment pursuant to the applicable laws, regulations and policies of the Receiving State. This definition includes a migrant worker who has recently been in employment but is no longer legally employed in a remunerated activity.”

The only commitment made by receiving States to undocumented migrant workers is to provide assistance to those in need of protection subject to prevailing national laws, regulations and policies of ASEAN member states.

1.1 Migrant children and child protection standards

The CRC contains a number of provisions and imposes a range of obligations on States that relate to child protection. The CRC and the General Comments published by the CRC Committee, set out the measures which States parties must take to ensure that a comprehensive, effective child protection system is in place to protect children from violence, abuse, exploitation and neglect. States are obliged, pursuant to CRC Article 4, to “undertake all appropriate legislative, administrative and other measures for the implementation of the rights” contained in the Convention. Many of the Convention’s rights relate to child protection; however, a central provision is Article 19, which addresses violence against children, and provides:

(1) “States parties shall take all appropriate legislative, administrative and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”

321 ASEAN Consensus on the Protection and Promotion of Migrant Workers, 14 November 2017, Para. 4.
(2) “Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.”

Article 19 must be interpreted in the light of the four general principles contained in the Convention (Articles 2, 3, 6 and 12). Article 2 provides that States must respect and ensure the Convention rights to each child without any discrimination, “irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.” Article 3 requires States to ensure “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” Article 6 recognizes the child’s inherent right to life and requires States to “ensure to the maximum extent possible the survival and development of the child.” Article 12 requires States to “assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.”

Articles 32 to 36 provide protection from various forms of exploitation, including economic exploitation and hazardous or harmful forms of labour; involvement in illicit production and trafficking of narcotic drugs and psychotropic substances; all forms of sexual exploitation and abuse, including prostitution and pornography; from abduction, sale and trafficking; and from all other forms of exploitation that is “prejudicial to any aspects of the child’s welfare.”

It is important to note that the CRC recognises that children are dependent on families and other social structures for the fulfilment of their rights and for meeting their basic needs to survive, thrive and develop. According to the CRC, the family is the “fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children.” Children have the right, under the CRC, to know and be cared for by their parents, where this is possible. States parties are required to respect the responsibilities, rights and duties of parents / carers “to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention.” State parties must ensure they recognise the principle that parents / carers have the primary responsibility for the upbringing and development of the child, and States must ensure parents / carers receive appropriate assistance to allow them to fulfil their duties.

However, where children are unable to be cared for by their parents, States must ensure that special protection and assistance is provided to the child, including alternative care arrangements. These can include, among other alternatives, foster care, kafalah of Islamic law, adoption, or, as a last resort, the placement of children in a suitable institution.

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322 CRC, Article 32.
323 CRC, Article 33.
324 CRC, Article 34.
325 CRC, Article 35.
326 CRC, Article 36.
327 CRC, Preamble.
328 CRC, Article 7.
329 CRC, Article 5.
330 CRC, Article 18(1).
331 CRC, Article 18(2).
332 CRC, Article 20(3).
In its General Comment on violence against children, the CRC Committee provided guidance on the key elements of a rights-compliant and effective child protection system. According to the CRC Committee, States should ensure:

- The development of effective and proactive prevention programmes, which have a of paramount importance and should have a central place in a State’s child protection system. The UN Guidelines on Alternative Care call for interventions that respond to the full range of root causes of child separation, including birth registration, access to adequate housing and health care, education and social welfare services, as well as promoting measures to combat poverty, discrimination, marginalization, stigmatization, violence, child maltreatment and sexual abuse and substance abuse. They require States to implement a range of prevention interventions aimed at children and families, including: family strengthening services, such as parenting courses and sessions, the promotion of positive parent-child relationships, conflict resolution skills, opportunities for employment and income generation and, where required, social assistance; Supportive social services, such as day care, mediation and conciliation services, substance abuse treatment, financial assistance, and services for parents and children with disabilities that are integrated, non-intrusive and accessible at the community level, actively involving the participation of families; and youth policies aiming at empowering youth to face positively the challenges of everyday life.

- Mechanisms to ensure the identification of children who are exposed to child protection risks, including ensuring that all who come into contact with children are aware of risk factors and indicators of all forms of violence, have received guidance on how to interpret such indicators, and have the necessary knowledge, willingness and ability to take appropriate action (including the provision of emergency protection).

- Safe, publicized, confidential and accessible reporting mechanisms, including through 24-hour hotlines and other communication technologies.

- Referral mechanisms, including clear guidance and training on when and how to refer a child protection issue to whichever agency is responsible for coordinating the response, for all relevant persons and professionals. Professionals working within the child protection system need to be trained in inter-agency cooperation and protocols for collaboration. The process should involve: (a) a participatory, multi-disciplinary assessment of the short- and long-term needs of the child, caregivers and family, which invites and gives due weight to the child’s views as well as those of the caregivers and family; (b) sharing of the assessment results with the child, caregivers and family; (c) referral of the child and family to a range of services to meet those needs; and (d) follow-up and evaluation of the adequateness of the intervention.

- Investigation of instances of violence undertaken by qualified professionals who have received role-specific and comprehensive training in child rights-based and child-sensitive approaches.

- Treatment to “promote physical and psychological recovery and social reintegration” for children who have experienced violence, “in an environment which fosters the health, self-respect and dignity of the child.” Medical, mental health, social and legal services and support may be required for children upon identification of abuse, as well as longer-term follow-up services.

333 UN Committee on the Rights of the Child, General Comment No. 13 (2011), The right of the child to freedom from all forms of violence, 18 April 2011, CRC/C/GC/13 (CRC GC No. 13 (2011)), paras. 46 – 54.
334 UN Guidelines on the Alternative Care of Children, Article 32.
335 UN Guidelines on the Alternative Care of Children, Article 33.
336 CRC, Article 39.
Follow up mechanisms which make clear: (a) who has responsibility for the child and family from reporting and referral all the way through to follow-up; (b) the aims of any course of action taken – which must be fully discussed with the child and other relevant stakeholders; (c) the details, deadlines for implementation and proposed duration of any interventions; and (d) mechanisms and dates for the review, monitoring and evaluation of actions. According to the CRC Committee, this is best managed through a case management process.

Judicial involvement, including alternative dispute mechanisms and restorative interventions; juvenile or family court intervention leading to specific protection measures; criminal procedures involving perpetrators of violence against children, disciplinary or administrative proceedings against professionals for neglectful or inappropriate handling of child protection cases; and judicial orders to ensure compensation and rehabilitation of child victims of violence. The best interests of the child must be a primary purpose of decision-making. Specialised family courts and criminal procedures should be established for child victims of violence, along with specialised police and prosecutors.

Special protections also apply, under the CRC, to children in conflict with the law. As noted above, while there is limited data on the extent to which migrant children come into conflict with the law in Thailand, some migrant children appear to be particularly vulnerable – this is especially the case for children who are ‘visible’ to police (those living / working on the streets and in marketplaces and other public locations, child beggars etc.). International standards and norms require States to prevent and respond to violence against children in conflict with the law. Such prevention and response mechanisms are provided for in the extensive international framework for juvenile justice, including Articles 37 and 40 of the Convention on the Rights of the Child (CRC). According to these provisions, States are required to develop specialised justice systems, institutions and processes that respond to children “in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which takes into account the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society.”

A range of special protections apply to children from the point of arrest to their sentencing and placement in detention, and after care.

Several ILO Conventions provide additional protections to children both in work and protections from involvement in hazardous work.

International law does not require the development of separate child protection systems and mechanisms for migrant children; instead, and according to the CRC Committee’s recent Joint General Comment No. 22, States must ensure that child protection systems at the national and local levels mainstream the needs of child migrants into their programmes. The Committee stress that, in order to fulfil their obligations, States must ensure: “(a) comprehensive, inter-institutional policies between child protection and welfare authorities and other key bodies, including on social protection, health, education, justice, migration and gender, and between regional, national and local governments; (b) adequate resources, including budgetary, aimed at ensuring effective implementation of policies and programmes; and (c) continuous and periodic training of child protection, migration and related officials on the rights of children, migrants and refugees and on statelessness, including intersectional discrimination.” The Global Compact also emphasises the importance of ensuring that the domestic child protection system of States covers migrant children under

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337 Children “alleged as, accused of, or recognized as having infringed the penal law”.
338 CRC, Article 40(1).
339 However, an analysis of the protections afforded to migrant children under labour laws is outside the scope of this paper.
341 Joint General Comment No. 3 of the Committee on the Protection of the Rights of All migrant Workers and Members of Their Families and No 22 of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration (2017), 16 November 2017, CMW/C/GC/3 – CRC/C/GC/22, para. 18.
Objective 7 (‘address and reduce the vulnerabilities in migration’): It commits States to “account for migrant children in national child protection systems by establishing robust procedures for the protection of migrant children in relevant legislative, administrative and judicial proceedings and decisions.”

A number of principles have been elaborated in international instruments and CRC committee concluding observations to guide States as to how to ensure that the State’s child protection system accommodates the particular risks and needs of migrant children.

First, the CRC Committee makes it clear that the needs of migrant children shall be identified, assessed and provided for by the child protection / welfare system: “child protection and welfare actors shall take primary responsibility for children in the context of international migration. When a migrant child is first detected by immigration authorities, child protection or welfare officials should immediately be informed and be in charge of screening the child for protection, shelter and other needs.”

Decisions about a migrant child shall, in accordance with article 3 of the CRC, take into account the child’s best interests as a primary consideration. In the context of immigration, the CRC Committee has confirmed that article 3 requires that States ensure the best interests of the child are taken fully into account in all aspects of immigration law and processes, along with decisions as to access to social rights by children and their parents and guardians and in decisions regarding family unity and child custody, through best interests determination processes. A best interests determination is “a formal process with strict procedural safeguards designed to determine the child’s best interests”; it is also a “unique activity” required in relation to the specific circumstances of each child and their case, to be applied in all legislative, administrative and judicial proceedings and decisions by trained professionals that are independent of the migration authorities. Best interests assessments should be done in a multidisciplinary way, involving child protection and welfare actors and other professionals.

UNHCR’s Guidelines on Determining the Best Interests of the Child identify three instances in which a best interest’s determination should be conducted in relation to children encountered by UNHCR. These are helpfully summarised by IOM in their 2018 Guidelines for Best Interests Determination for Vulnerable Child Migrants in Zambia:

342 Global Compact, objective 7(e).
344 Joint General Comment No. 3 of the Committee on the Protection of the Rights of All migrant Workers and Members of Their Families and No 22 of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration (2017), 16 November 2017, CMW/C/GC/3 – CRC/C/GC/22, para. 29.
345 Joint General Comment No. 3 of the Committee on the Protection of the Rights of All migrant Workers and Members of Their Families and No 22 of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration (2017), 16 November 2017, CMW/C/GC/3 – CRC/C/GC/22, para. 30.
346 Joint General Comment No. 3 of the Committee on the Protection of the Rights of All migrant Workers and Members of Their Families and No 22 of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration (2017), 16 November 2017, CMW/C/GC/3 – CRC/C/GC/22, para. 31.
347 Joint General Comment No. 3 of the Committee on the Protection of the Rights of All migrant Workers and Members of Their Families and No 22 of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration (2017), 16 November 2017, CMW/C/GC/3 – CRC/C/GC/22, para. 32(c).
(a) Wherever there is no clear lasting solution, and one is, therefore, needed to adequately address a child’s protection needs (This may include – but is not limited to – return, resettlement or local integration. The process will help in determining the most appropriate solution and identify the right time for the implementation of such solution, and can also contribute to successful family tracking and family reunification);

(b) Wherever there is a need to determine or make temporary care arrangements for the child, including where there are reasonable grounds to suspect abuse and/or neglect, and/or exploitation, as well as where there are reasonable grounds to expect that existing care arrangements are not suitable for other reasons;

(c) Wherever there is a possible separation of a child from his/her parents against their will, though this should only be allowed in exceptional circumstances, including where there is a risk of severe harm from the parents, including (but not limited to) neglect, abuse, or sexual and gender-based violence, parental separation or where the child is abandoned.349

Though UNHCR’s guidelines are primarily designed to assist UNHCR staff and partner agencies to operationalise the best interest principle in their routine encounters with children, the content of the guidelines may be useful inspiration for governments or institutions seeking to improve their decision-making processes for vulnerable migrant children in their territory, in line with the CRC. The accompanying Field Handbook is a complementary source of guidance on the application of the formal Guidelines in practice.350 The introduction to the Field Handbook emphasises that BID mechanisms should be viewed as a key, but integrated part of a wider comprehensive child protection strategy, rather than viewed in isolation:

“BID mechanisms should not be established in isolation from other protection measures intended to benefit children of concern to UNHCR. The mechanism is designed to be part of a comprehensive child protection system. The purpose of the process is not simply to determine what a child’s best interests are, but to also create and carry out a care plan that will serve those interests. Acting in support of a child’s best interests means having the capacity to do so through engaging the entire child protection system. The Field Handbook highlights these connections, helping UNHCR and other child protection staff understand how the pieces fit together as a comprehensive system. UNHCR’s goal is to establish better practice through better understanding and, ultimately, improved protection for all children of concern.”351

Particular factors that can increase the vulnerability of migrant children, including poverty, ethnicity, disability, religion, sexual orientation, gender identity and others, and may expose the child to increased risk shall be taken into account in assessing, identifying and responding to their needs.352

Finally, the CRC Committee has emphasised the importance of prevention, particularly in the context of family separation. In this regard, it has emphasised the importance in supporting parents in their child rearing functions, including providing social benefits and child allowances and other social protection measures, regardless of the parent’s / carer’s immigration status. While not within the scope of this study,

352 Joint General Comment No. 3 of the Committee on the Protection of the Rights of All migrant Workers and Members of Their Families and No 22 of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration (2017), 16 November 2017, CMW/C/GC/3 – CRC/C/GC/22, para. 42.
it is important to note that the Committee has commented that States should ensure that regular and non-
discriminatory migration channels are available for parents in order to reduce the risks inherent in irregular
migration.353

1.2 Special provisions for unaccompanied and
separated children

International standards recognise the particular vulnerability of unaccompanied and separated migrant
children who enter Thailand alone, or who become unaccompanied or separated after arrival into Thailand,
and the CRC Committee has emphasised their vulnerability to risks such as trafficking, exploitation,
involvement in criminal activities and, in extreme cases, death.354 Special provisions and procedures apply
to such children.

Initial assessment

Mechanisms to identify a child as separated or unaccompanied must be in place and identification must
be done as a matter of priority, as soon as the child enters the country or as soon as he or she is identified.
An initial assessment must be carried out, during which the best interests of the child must be a guiding
principle. The assessment should involve an initial interview conducted in an age-appropriate and gender-
sensitive manner in a language the child understands by professionally qualified persons. The assessment
should determine the identity of the child, their citizenship and the identity of parents and siblings. Where
age is in doubt, an age assessment should be carried out in a scientific, safe, child and gender-sensitive
manner.355 Further assessment should involve determination of reasons for being separated or unaccompanied,
any particular vulnerabilities of the child (health, physical, psychological, past trauma etc.) and protection
needs of the child.356

In a joint 2014 report, UNHCR and UNICEF published guidelines to assist States in the EU and EFTA in
their identification of and other arrangements involving unaccompanied and separated children within their
territory.357 Whilst the guidelines are primarily designed for policy makers within the EU and EFTA, the
recommendations are centered around Article 3 CRC and therefore offer useful guidance to other signatory
countries to the CRC who intend to develop and improve their child protection systems in line with
international standards.358

353 Joint General Comment No. 3 of the Committee on the Protection of the Rights of All migrant Workers and Members of Their Families
and No 22 of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of
354 UN Committee on the Rights of the Child, General Comment No. 6, Treatment of unaccompanied and separated children outside their
country of origin, 1 September 2005, CRC/GC/2005/6, para. 23.
355 UN Committee on the Rights of the Child, General Comment No. 6, Treatment of unaccompanied and separated children outside their
country of origin, 1 September 2005, CRC/GC/2005/6, para. 31.
356 UN Committee on the Rights of the Child, General Comment No. 6, Treatment of unaccompanied and separated children outside their
country of origin, 1 September 2005, CRC/GC/2005/6, para. 31.
357 UNHCR, Unicef, “Safe And Sound” What States Can Do To Ensure Respect For The Best Interests Of Unaccompanied And Separated
358 UNHCR, Unicef, “Safe And Sound” What States Can Do To Ensure Respect For The Best Interests Of Unaccompanied And Separated
The report emphasises the need, as mentioned above, for a ‘very rapid’ assessment of risk to be conducted as soon as a child arrives at the border of a State alone or is otherwise identified within the territory as unaccompanied.359 It is at the point of identification that a best interest assessment should be employed, to ascertain whether it would be in the child’s best interests to be referred to child protection services for further assessment.360 Where an adult accompanies a child, but is not the child’s caregiver in law or custom, States should establish the nature and quality of the relationship between the child and that adult. This is important ‘to address concerns of possible trafficking, but also to establish whether it would be in the child’s best interests to stay with the accompanying relative or other adult as child protection services are enlisted.’361

Ethiopia has adopted a good practice approach in relation to the identification and referral of unaccompanied and separated children within the country. There is a referral mechanism which enables bus drivers, who are trained in identifying vulnerable unaccompanied children, to refer ‘new’ children on the move who approach the bus stop, to the appropriate child protection structures.362

It is important that border staff and government officials receive adequate training in identifying risk factors and acting appropriately when they are confronted with an unaccompanied child. UNHCR has developed a manual for border and entry officials in Europe to help governments better identify refugees at the border.363 As part of IOM’s project ‘Protecting children in the context of the refugee and migrant crisis in Europe’364, IOM for Budapest has developed guidelines containing a child friendly step-by-step procedure for actors dealing with unaccompanied children in Hungary.365 The guidelines contain a list of behaviors and mannerisms of children that may signal trafficking concerns, for example a lack of eye contact, closed body behavior and detachment from other members of the group.366 Border guards located within the Schengen-area within the EU have to follow the Schengen Borders Code, which stipulates that special attention has to be paid to children at a border, whether accompanied or unaccompanied.367 Where there are serious grounds for suspecting that a minor, who is accompanied by an adult, has been unlawfully removed from the custody of their lawful parent, the border guard must carry out a further investigation to detect inconsistencies or contradictions in the information previously given.368

It has been noted that border guards may find it difficult to balance their responsibility to protect the border and security of a country with keeping child protection and identification at the forefront of their minds.369 This was evidenced in a UNICEF case study in Mozambique which provides policy recommendations to strengthen child protection systems in the country.370 Government officials in the town studied were

366 Ibid.
mandated to ‘protect the border’ and ‘manage migration’ in addition to improving the situation for unaccompanied migration children. The study revealed negative attitudes that persisted amongst government personnel toward unaccompanied migrant children, referring to them as a burden, “creating us problems”, rather as their responsibility. In response to this problem, UNICEF recommended regular, quality, context-specific seminars and training for all key actors at all levels who interact with migrant children (immigration, customs, border guard police, police), informing them of the vulnerabilities and risks particular to unaccompanied migrant children.

Further lessons can be drawn from UNHCR’s report “Protecting Children on the Move” which evidenced serious problems with the screening, identification and registration process of migrant children in Greece. At the time of that report, there was no specific screening procedure to identify unaccompanied children in Greece. Instead, Greek police authorities at borders were registering declared data, and sometimes determining themselves, the nationality and age of people entering the country, without the assistance of interpreters. This resulted in discrepancies in the recording of personal details and lead to significant issues, for example, unaccompanied children being registered as accompanied by an adult to whom the child had no family link.

In Europe, FRONTEX (the European Border and Coast Guard Agency) provides that any doubt in the minds of border guards in the context of children exhibiting risk indicators should result in a referral to child protection services. UNHCR references Ireland and Sweden as good examples of referral to child protection services; in Ireland an immediate referral is made to the Social Work Team for Separated Children Seeking Asylum, within the Child and Family Agency (CFA) any time that an immigration officer considers the child to be unaccompanied. Sweden has an on-call emergency child protection service, meaning that unaccompanied and separated children can be assessed and placed immediately upon identification.

It is important to conduct an age assessment where age of a suspected unaccompanied and separated child is in doubt, in order to ascertain whether the person is entitled to child-specific rights and procedure. There are a plethora of reports and guidelines which emphasize the importance of a formal, regulated procedure to ascertain the age of a potential minor where age is in doubt. CRC General Comment No. 6, para. 31 (i) calls for any additional age assessment measures to be objective and fair, child and gender-sensitive and to avoid any risk of violating the individual’s physical integrity, giving due respect to his or her human dignity. The Separated Children in Europe Programme (SCEP)’s Statement of Good Practice

374 UN High Commissioner for Refugees (UNHCR), Protecting children on the move, July 2012, available at: https://www.refworld.org/docid/522852c34.html.
375 UN High Commissioner for Refugees (UNHCR), Protecting children on the move, July 2012, available at: https://www.refworld.org/docid/522852c34.html.
376 UN High Commissioner for Refugees (UNHCR), Protecting children on the move, July 2012, available at: https://www.refworld.org/docid/522852c34.html.
recommends that age assessment procedures are only undertaken as a measure of last resort where there are grounds for serious doubts and where other approaches have failed to establish the individual's age. In cases of doubt, there should be a presumption that someone claiming to be under 18 provisionally will be treated as such. Other requirements provided within the SCEP Statement of Good Practice include:

- Informed consent is obtained.
- The procedure is multidisciplinary and draws on relevant expertise.
- Examinations should never be forced or culturally inappropriate and must respect the individual's dignity at all times.
- The least invasive option is followed and balances physical, developmental, psychological, environmental and cultural factors.
- Assessments are gender appropriate.
- Assessments are overseen by an independent guardian who is present if requested to attend by the individual concerned.
- The procedure, the outcome and consequence are explained to the individual in a language they understand.
- There is a procedure to appeal against the decision as well as the necessary support to do so.

The detriments of the lack of a formalized age assessment procedure can be evidenced by a case study on Greece commissioned by UNHCR. At the time of that report, there was no formalized procedure and police were registering the age of persons according to their own judgement. This led to a range of problems, most prominently the fact that children were being mis-registered as adults and therefore not enjoying the full extent of their rights and safeguards as children, leaving them vulnerable to protection risks. In addition, there were incorrect numbers for the amount of unaccompanied migrant children in the country (causing difficulties in terms of allocation of resources). Another undesired effect was that adults were successfully posing as children and benefitting from child protection mechanisms and reception centers, taking up valuable spaces for children actually in need.

Migrant children identified as unaccompanied and separated should not be put into detention. Detaining refugee or migrant children is a violation of their rights and can lead to exploitation and abuse. One of the International Federation of Red Cross and Red Crescent Societies key messages on the protection for children on the move is that “No child should be detained based solely on her or his migration status.” UNICEF in their 2017 A Child is a Child report found that “States need to work much harder to protect child refugees and migrants, particularly unaccompanied children, from exploitation and violence, and to provide alternatives to detention that are in line with children’s best interests while their immigration status is being resolved.” As noted by the Council of Europe in their Handbook for Frontline Professionals, “How

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383 UN High Commissioner for Refugees (UNHCR), Protecting children on the move, July 2012, available at: https://www.refworld.org/docid/522852c34.html [accessed 29 August 2019]
to convey child-friendly information to children in migration, if a migrant child must be detained, they will be especially vulnerable, and it will always be in their best interests to be informed in a child-friendly way about the reasons for their detention. The child should be informed of the reasons for their detention, their rights during detention, how the child can challenge detention, the likely duration of the period of detention and an explanation of any difference in treatment between unaccompanied children and children in families.

Appointment of a guardian or advisor and legal representative

As soon as an unaccompanied or separated child is identified, States should ensure that a guardian or advisor, with suitable experience in the field of childcare, is appointed to the child until they have reached the age of majority or until they leave the State. The guardian’s role is to represent the interests of the child and act as a link between the child and the agencies to which they will come into contact, and to provide the child with a continuum of care. Legal representation should also be provided where the child is involved in court or administrative proceedings.

It is well established that child migrants often do not trust state authorities. UNHCR found that it is essential a child perceives and regards the source providing information as legitimate and trustworthy. Unaccompanied and separated children may have had traumatic relationships with adults in the past and therefore need adequate time and good reason to trust the authority figure in front of them. They are dislocated from point of reference and may be suffering from the results of past trauma. UNHCR recommends a “conscious strategy of discreet approach, avoiding situations or interactions where children feel under pressure” to move past fear or mistrust of authority that some children may hold. As stipulated in the CRC, children have a right to be heard and to be a part of the decision making process in decisions that affect them. In order to ensure effective participation, children must be provided with child-friendly information, timely access to a guardian and an interpreter if required.

As a result of the protection concerns particular to unaccompanied migrant children, many European states have put in place safeguards to ensure timely access to the abovementioned rights. UNHCR references Norway as an example of good practice in this sense, as there a guardian and case manager are present at the initial registration of an unaccompanied children by immigration police. Sweden, The Netherlands and Belgium have similar protocol’s enabling early assignment of guardians. In the UK, information is exchanged between the UK Home Office and the local authority responsible for caring for the child by way

390 Council of Europe, Handbook for Frontline Professionals, ‘How to convey child-friendly information to children in migration’ 2018
392 UN Committee on the Rights of the Child, General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin, 1 September 2005, CRC/GC/2005/6, para. 33.
393 UN Committee on the Rights of the Child, General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin, 1 September 2005, CRC/GC/2005/6, para. 35.
of a pro-forma, so as to enable the collection of all relevant information necessary to make a best interests assessment for the child. The Separated Children in Europe Programme (SCEP)’s Statement of Good Practice describes the responsibilities of the guardian of an unaccompanied child to be:

- to ensure that all decisions taken are in the child’s best interests
- to ensure that a separated child has suitable care, accommodation, education, language support and health care provision
- to ensure a child has suitable legal representation to deal with her or his immigration status or asylum claim - to consult with and advise the child
- to contribute to a durable solution in the child’s best interests
- to provide a link between the child and various organisations who may provide services to the child - to advocate on the child’s behalf where necessary
- to explore the possibility of family tracing and reunification with the child - to help the child keep in touch with his/her family.

Family tracing for a child’s parents and family should be initiated as soon as possible, so long as it can be ascertained that the tracing procedure shall not endanger or otherwise detriment the child or his or her family. States should bear in mind that children may have been instructed by traffickers or family members not to initiate tracing procedures. UNHCR recommends counselling in these instances to understand the reasons behind the child’s resistance and establish what would be in the child’s best interests according to the facts of each individual case.

**Care and accommodation arrangements**

Unaccompanied and separated children must be covered by laws and procedures that ensure alternative care for children at risk or in need. The full range of care options shall be available and when selecting from these options, States must ensure that the particular vulnerabilities of the child who has not only lost connection with family, but also are outside their country of origin, as well as the child’s age and gender, are taken into account. The CRC Committee sets out a number of principles to guide the placement of unaccompanied and separated children in alternative care:

- Children shall not be deprived as liberty, as a general rule;
- Changes in residence shall be limited to instances where such changes are necessary in the best interests of the child;
- Siblings shall be kept together;
- Children in the company of adult relatives shall be allowed to remain with them unless this is not in their best interests;
- Children must be regularly assessed in their placements by qualified persons; and
- Children must be kept informed of care arrangements and their opinions must be taken into consideration.

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406 UN Committee on the Rights of the Child, General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin, 1 September 2005, CRC/ GC/2005/6, para. 40.
When deciding on appropriate accommodation arrangements, relevant actors should have the best interest of the child in the forefront of their mind.\textsuperscript{407} The European Social Network considers the 'provision of accommodation according to the child's best interest is the first crucial step for their social inclusion.'\textsuperscript{408} Data obtained as part of European Social Network’s study indicated that foster care is the preferred accommodation type for under 12 year olds because the security of living with a family enables quicker integration.\textsuperscript{409} Research participants further evidenced that the family environment helps with the uncertain and stressful scenario a child may be suffering.\textsuperscript{410} Children\textsuperscript{411} over the age of 12 tend to be housed in 'apartment-sharing groups, residential homes and supervised accommodation.'\textsuperscript{412} The UK houses 16-21 year old unaccompanied children in 'supported semi-independent accommodation' which allows for independence.\textsuperscript{413} Finally, the report evidenced that children display motivation and capacity to integrate when "an integrated model of accommodation, psychological support, mentoring programmes, information about asylum-seeking procedures, support in entering education and training is in place."\textsuperscript{414}

Reunification / durable solutions

According to the CRC Committee, “the ultimate aim in addressing the fate of unaccompanied or separated children is to identify a durable solution that addresses all their protection needs, takes into account the child’s view and, wherever possible, leads to overcoming the situation of a child being unaccompanied or separated.”\textsuperscript{415} Durable solutions should be implemented at the earliest opportunity, and tracing the child’s parents / family should commence as soon as the child is first identified as unaccompanied or separated. The durable solution should be pursued following a best interests assessment, and could include family reunification in the country of origin; return to the country of origin (however, this should not take place without "advance secure and concrete arrangements of care and custodial responsibilities upon return to the country of origin"); local integration based on giving the child legal status and following a long-term placement plan being developed; inter-country adoption; or resettlement in a third country.\textsuperscript{416}

\textsuperscript{411} In European states who participated in the study.
\textsuperscript{415} UN Committee on the Rights of the Child, General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin, 1 September 2005, CRC/GC/2005/6, para. 79.
\textsuperscript{416} UN Committee on the Rights of the Child, General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin, 1 September 2005, CRC/GC/2005/6, paras. 86 – 93.
UNHCR’s *Guidelines on Determining the Best Interests of the Child* offers useful guidance in relation to making best interests determinations for the most appropriate durable solution for an unaccompanied or separated child. Any decision will require a ‘complex balancing of relevant factors and rights in each individual case.’ The weight of the decision to find a durable solution for a child, and the long-term impact on the child’s life the decision can entail, requires a formal BID procedure (rather than BIA). The BID should preferably be undertaken ‘as early as possible in the displacement cycle’ of the child, though a reasonable amount of time should be allowed for the results of any tracing procedure (as this may influence the most appropriate durable solution for a child).

Interesting lessons can be drawn from the results of a study conducted by Lutheran Immigration and Refugee Service entitled ‘Ensuring Protection & Durable Solutions for Unaccompanied & Separated Refugee Children.’ From field operation mappings in Rwanda and Thailand, the report found:

(a) there is a piecemeal approach to UASC programming  
(b) there is great value in interagency collaboration with child-focused agencies  
(c) there are identification and documentation bottlenecks  
(d) informal approaches to care arrangements and family tracing lead to inconsistent results  
(e) BIDs are used too narrowly, usually only in the context of resettlement, and  
(f) there is a need for consistent and increased child welfare expertise

In response, the report made some suggestions to strengthen unaccompanied and separated child systems, including to: establish comprehensive strategies, ensure identification and documentation groundwork, recognize the need for targeted individualized casework and family tracing, change the current BID mindset, prioritize child welfare capacity, strengthen strategic partnerships with child-focused agencies, and develop practical case-based training materials.

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422 Ibid p6.

423 Ibid p7.
1.3 Special protections for victims of trafficking

As set out above, while not all child migrants are victims of human trafficking, they are – particularly those that are undocumented – vulnerable to being trafficked for sexual or economic exploitation. While the standards set out above in relation to undocumented and separated migrant children will also apply to the majority of trafficking victims, there are a number of international and regional instruments that apply specifically to human trafficking. These instruments set out the obligations on the part of States to criminalise acts of trafficking and they also set out principles and standards that apply to protect and support the victims of trafficking.

Provisions on trafficking are contained in a range of international instruments. The CRC requires States to “take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.”424 However, it does not elaborate what ‘traffic in children’ encompasses, or what ‘any purpose’ might include. The Optional Protocol on the Sale of Children (OPSC) prohibits the sale of children, defined as “any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration.”425 In many instances, child trafficking will also qualify as the sale of children. Girls are particularly vulnerable to trafficking for the purposes of sexual exploitation, and Article 6 of the Convention on the Elimination of All Forms of Violence against Women (CEDAW) imposes an obligation on States to “take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”

The most comprehensive definition of trafficking is contained in the Palermo Protocol, which defines trafficking in persons as:

“The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception of the abuse of power or of a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation should include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”426

However, according to the Palermo Protocol, it is not necessary to prove that particular means were used to gain consent of the trafficked person (threat or use of force, coercion, abduction, fraud, deception, abuse of power, giving or receiving payments) where the victim of trafficking is a child (under age 18). The Palermo Protocol obligates States to “implement measures to provide for the physical, psychological and social recovery of victims of trafficking in persons,” where appropriate in cooperation with NGOs, including: appropriate housing; counselling and information on their rights; medical, psychological and material assistance; and employment, educational and training opportunities.427 The special needs of children and gender needs of victims shall also be provided for.428

The CRC Committee, in its General Comment on the rights of undocumented and separated children, set out a number of “necessary measures” that States must take to prevent them becoming victims of trafficking. These include: identifying unaccompanied and separated children; regularly inquiring as to their whereabouts; and conducting information campaigns that are age-appropriate, gender-sensitive and in a

424 CRC, Article 35.
425 OPSC, Article 2.
427 Palermo Protocol, Article 6(3).
428 Palermo Protocol, Article 6(4).
language and medium that is understandable to the child. The ASEAN Convention Against Trafficking in Persons, Especially Women and Children, also provides a range of protections for victims of human trafficking, and places an obligation on parties to establish national guidelines or procedures for the proper identification of victims of trafficking, rights to physical protection and protection of privacy and to specific protection and support, including to adequate housing; counselling and information; medical, psychological and material assistance; and employment, educational and training opportunities.

International and regional instruments also contain provisions on cross-border cooperation in cases of human trafficking. According to the Global Compact, States commit to using transnational, regional and bilateral mechanisms to share information and intelligence on migrant smuggling and develop child and gender-sensitive cooperation protocols along migration routes that outline step-by-step measures to identify and assist smuggled migrants adequately. The ASEAN Convention sets out a number of areas of cooperation including to strengthen prevention measures that address the root causes of trafficking, strengthen bilateral, multilateral and regional cooperation for the investigation and prosecution of trafficking cases, to exchange and share information on children's vulnerability to trafficking, promote capacity building through training and holding regional coordination meetings, among other areas. The Parties also undertake to cross-border communication channels and exchange information and intelligence to prevent and detect trafficking. Article 14 sets out a range of cooperative measures required to ensure the protection of victims of trafficking, including cross-border recognition of victims, restrictions on holding victims of trafficking in detention for the purposes of prosecuting trafficking cases measures to ensure the reintegration of trafficking victims into the society of the sending party. Article 15 provides for cross-border cooperation on repatriation and return of trafficking victims to their country of origin.

UNICEF has noted recently that traditional responses to tackling child trafficking, exploitation and modern slavery are built on the understanding of children as a geographically static group. However, considering that (according to the same UNICEF report) in 2016 nearly 50 million children globally were on the move, this misunderstands the nature of modern child migration. And as recognised by IOM in their BID guidelines in relation to vulnerable child migrants in Zambia, children who are outside their country of origin are particularly vulnerable to exploitation and abuse. UNICEF reports that the majority of children they interviewed initially made the decision to migrate to a neighbouring country and were not initially in contact with traffickers, instead trafficking occurred whilst already on their journey. Children who have been trafficked out of their country of origin and find themselves unaccompanied and separated in a different country are particularly vulnerable and may be in danger of being re-trafficked. Girls face a heightened risk of sexual exploitation on account of their gender.
IOM makes useful recommendations in relation to measures states can make to reduce the risk of UASC within their territories falling prey to traffickers, including: strong identification mechanisms for UASC, regularly inquiring into the whereabouts of UASC and conducting campaigns that are age-appropriate, gender-sensitive and understandable to a child.\textsuperscript{439} If a state intends to return a child who is at risk of trafficking, they should consider whether this course of action is in the child’s best interests and make appropriate protection arrangements for the child upon return.\textsuperscript{440}

UNICEF recognises robust identification or referral systems as being the cornerstone of effective protection for victims of trafficking.\textsuperscript{441} However, the report evidenced that national identification and referral mechanisms, where in place, tend to focus primarily on the prosecutors of traffickers, rather than providing support to child victims, and they do not function effectively across borders.\textsuperscript{442} UNICEF considers the OSCE principles of national referral systems, developed in 2004, remain relevant today. UNICEF emphasises the need for effective transnational referral mechanisms and cross-border child protection systems.\textsuperscript{443} This need was echoed by GRETA, the Council of Europe’s expert group on trafficking.\textsuperscript{444} In relation to this topic, UNICEF notes the 2010 EU Guidelines for the Development of a Transnational Referral Mechanism for Trafficked Persons in Europe, the objective of which being to “develop a functional, institutionalised transnational referral mechanism for trafficked persons between EU and non-EU countries (destination/transit/origin countries) and thus contribute to a more effective and sustainable national and EU-wide anti-trafficking response.”\textsuperscript{445} Finally, UNICEF referred to the Economic Community of West African States (ECOWAS) 2015 guidelines\textsuperscript{446} which provide standardised guidelines to dealing with UASC within the 15 ECOWAS Member States. The system encourages inter-country management of child protection cases and provides eight steps to protect vulnerable child migrants.\textsuperscript{447} The system forms an integral part of West Africa’s child protection framework.\textsuperscript{448} Another example of transnational efforts to combat trafficking is the Programme to Support the Development of Transnational Referral Mechanisms (TRM) for Trafficked Persons in South-Eastern Europe, an effort to improve international co-ordination between multidisciplinary actors including governments, law enforcement agencies, NGOs and other stakeholders and institutions. The 2009 publication by the International Centre for Migration Policy Development, Co-operation Beyond Borders: Development of Transnational Referral Mechanisms for Trafficked Persons provides a detailed overview of the programme, including lessons learned and recommendations.\textsuperscript{449}

\textsuperscript{445} Bhabha and Dottridge, Child Rights in the Global Compacts: Recommendations for protecting, promoting and implementing the human rights of children on the move in the proposed Global Compacts, 2017
The Joint UN Commentary on the 2011 Directive on Preventing and Combating Trafficking in Human Beings and Protecting Its Victims\(^ {450}\) contains detailed recommendations to Member States in relation to their application of the directive. The recommendations may offer useful inspiration to non-European states wishing to establish or enhance their own trafficking referral systems. The report emphasises the need for co-ordination and co-operation between national and local agencies in order to best support and protect unaccompanied child victims of trafficking.\(^ {451}\) It further emphasises the importance of training for frontline officials (border guards, police, health workers) in identifying trafficking signs so they can be quickly referred to the relevant child protection system and appointed a guardian.\(^ {452}\) In relation to this, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU (FRONTEX) produced an Anti-trafficking Training Manual to train border guards how to identify and deal with potential victims of trafficking.\(^ {453}\) Further, the European Commission has released guidelines for the identification of victims of trafficking in human beings, written with consular services and border guards in particular in mind.\(^ {454}\)

It is important that children are never be penalised for their involvement in criminal activities as a result of being trafficked and should instead be treated as a victim of a serious human rights violation.\(^ {455}\) Key international standards on the non-prosecution and non-punishment of trafficked persons can be found in the Joint UN Commentary on the 2011 Directive\(^ {456}\) between pages 35-40. The UN OHCHR Commentary on Recommended Principles and Guidelines on Human Right and Human Trafficking notes:

“The criminalization of trafficked persons is commonplace, even in situations where it would appear obvious that the victim was an unwilling participant in the illegal act. Such criminalization is often tied to a related failure to identify the victim correctly. In other words, trafficked persons are detained and subsequently charged, not as victims of trafficking, but as smuggled or irregular migrants, or undocumented migrant workers.”\(^ {457}\)

UNICEF similarly recommends, in their 2017 A Child is a Child report, that States focus on targeting those who exploit and employ children, rather than children themselves who have been forced into contact with the law.\(^ {458}\) The same report warns against threatening children with sanctions if they do not give evidence against their traffickers, as children may fear reprisals against themselves or their families if they co-operate with authorities.\(^ {459}\)
