



CASE-STUDY

Migration and Children's Legal Status

The impact of a lack of domestic legal status on the protection and wellbeing of migrant, urban refugee, and unregistered stateless children in Bangkok, Thailand



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Acronyms

ASEAN	Association of Southeast Asian Nations
ATD	Alternatives to Detention
CRC	UN Convention on the Rights of the Child
CRC Committee	UN Committee on the Rights of the Child
CSO	Civil Society Organisation
FGDs	Focus group discussions
ILO	International Labour Organisation
IOM	International Organisation for Migration
KIIs	Key Informant Interviews
MSDHS	Ministry of Social Development and Human Security
MOL	Ministry of Labour
MOU	Memorandum of Understanding
NGOs	Non-governmental Organisation
NSM	National Screening Mechanism
NV	Nationality Verification
RTG	Royal Thai Government
SOPs	Standard Operating Procedures
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNICEF EAPRO	UNICEF East Asia and Pacific Regional Office

Executive summary

1.1. Introduction

This report contains the findings of a research study on the impact of a lack of domestic legal status on the protection and wellbeing of migrant, refugee, asylum-seeking and stateless children in Bangkok, Thailand, with a particular focus on children's wellbeing, protection and feeling of safety, security, identity and belonging. The research investigates, as 'sub-themes' (i) the impact of the Covid-19 pandemic on the protection and wellbeing of children affected by migration in Bangkok; and (ii) the role businesses play both in compounding risks and vulnerabilities and also in contributing to the protection and wellbeing of children and families and who migrate to Bangkok. This study is part of a regional situation analysis of children affected by migration in ASEAN states, commissioned by UNICEF East-Asia and Pacific Regional Office (UNICEF EAPRO), through its European Union-UNICEF co-funded programme, 'Protecting children affected by migration in Southeast, South and Central Asia' (2018 – 2022).

Seven specific research questions were developed to guide the study, as follows:

1. What are the main barriers to undocumented migrant, refugee, asylum-seeking and unregistered stateless children in Bangkok obtaining legal status?
2. What are the main protection risks that flow from a lack of domestic legal status facing these populations of children in Bangkok?
3. How does a lack of domestic legal status impact upon children's feelings of safety, wellbeing, identity and belonging?
4. How has the Covid-19 pandemic and related movement restrictions and other containment measures impacted the safety and wellbeing of children affected by migration, who lack domestic legal status, in Bangkok?
5. What are the main barriers to undocumented migrant, refugee, asylum-seeking and unregistered stateless children accessing protective services (including but not limited to child protection services, health services and education) in Bangkok?
6. What role can businesses play in helping to contribute to the protection and wellbeing of children and families who migrate to Thailand, with a particular focus on Bangkok, and in creating an enabling environment for the protection and wellbeing of children and families affected by migration?
7. What kind of progress has been made in the implementation of the National Screening Mechanism?¹ What are barriers to the full implementation of the mechanism?

The case study utilised a qualitative methodology in order to obtain an in-depth, contextual understanding of the protection risks that exist for children who lack domestic legal status in Thailand (focussing on populations in Bangkok), and how these risks impact upon their feelings of safety, identity and belonging. The methodology was specifically designed to be participatory, primarily involving interactive focus group discussions with adolescents and parents / carers including participatory research methods and exercises designed to encourage an informal, interactive and participant-directed format. The following methods were used: 16

¹ In December 2019, the Thai Cabinet approved the development of a National Screening Mechanism (NSM) for the identification of people in need of international protection in Thailand and establishing a separate system of processing them. However, the NSM is yet to be implemented (see section 3.3, below).

Focus group discussions (FGDs) were conducted with small groups of adolescents / young people (34 in total) with experience of living in Bangkok without domestic legal status in order to learn about their experiences, hopes and fears and their aspirations for the future. Participants included Myanmar and Cambodian communities of undocumented migrants (which were led by trained facilitators from these communities), and groups of asylum-seeking and refugee adolescents / parents/carers. In addition, 24 Key informant interviews (KIs) were carried out with 30 government and non-government stakeholders at the national and the subnational levels to collect data on legal and policy developments (national level) and challenges related to the protection of and provision of services to children and families without domestic legal status in Bangkok. A number of KIs were also carried out with stakeholders in the business and human rights field to identify areas in which business practice could be improved to promote regular migration for foreign workers and their families, as well as to highlight examples of good business practice in this area.

The research was designed and led by Coram International, with assistance from UNICEF Thailand. Data collection for the study was carried out with the assistance of Coram International's national researcher, Phandita Nee.

1.2. Findings

1.2.1. Protection risks and challenges

Children, adolescents and families interviewed for this case study considered risks from the police and immigration authorities to be the chief risk facing populations without domestic legal status in Bangkok. This is despite recent policy developments in Thailand which have aimed at ending immigration detention of children. Whilst there were mixed views amongst participants about the likelihood of children (under 18 years old) being arrested and detained, adolescents reported instances of being stopped by police who wait for them at the traffic lights, junctions and alley ways, and conduct raids at their workplace and rental accommodation. Other protection risks reported by participants included exploitative labour practices at the hands of employers, such as withholding of wages, and instances of violence, abuse and neglect faced by children.

1.2.2. Wellbeing, security and identity

Responses from adolescents indicated that their ability to establish and maintain a strong sense of identity had been impacted by living a precarious and 'illegal' existence, made worse by experiences of discrimination, barriers to education and difficulties speaking the Thai language. Adolescent's responses commonly contained references to feeling like an "*outsider*" living in someone else's country, and they cited differences in culture and language as contributing to their feelings of exclusion. While these feelings may be on account of being a migrant generally (rather than the lack of status), many of their responses demonstrated a clear link between their feelings of exclusion and otherness and their lack of identity documentation and the consequent restrictions on movement and challenges participating in everyday life. Adolescents described the lack of identity documentation as being a source of anxiety and insecurity and one that differentiated them from their peers.

Beyond the impact on adolescent's identity and feelings of belonging, a lack of status was linked to a more concrete fear for adolescent's safety. Adolescents exhibited a strong awareness of their uncertain migration status in Thailand, commonly referring to themselves and other migrant communities as "*illegal*"; they tended

to display a firm understanding of the present and future consequences stemming from this. They routinely commented on the dangers of living in Bangkok without status and considered that children should remain within their diaspora communities in order to keep safe. To mitigate against the risk of crossing paths with police, children and adolescents tend to stay at home where possible and avoid unnecessary journeys.

The constant fear of arrest and uncertainty for the future was considered to negatively impact the wellbeing and mental health of the adolescents and families interviewed for the research. The participants used strong and emotive language to describe the extent of the fear they experience, with some adolescents from Myanmar describing the *“despair”* they feel due to not belonging in Bangkok, and others expressing that they wouldn’t *“dare”* go outside due to being afraid.

When asked if they had ever experienced xenophobia and discrimination while living in Bangkok, responses were mixed. There was a perception among many participants that the majority of Thai people tend to be welcoming and kind towards foreigners, but there are pockets of society that hold intolerant attitudes. Specific instances of xenophobia highlighted by participants tended to take place either at the workplace, at school or when accessing public services (such as at hospitals). Incidents tended to be based on the general fact of the individual not having documents / status; (in)ability to speak or read the Thai language; appearance; and harmful racist stereotypes.

1.2.3. Access to basic services and support systems

Access to basic services, including education and healthcare, are not only crucial to the health, development and wellbeing of children affected by migration; they can also help to create a sense of belonging, and provide a key pathway to protection services.

Despite Thailand’s progressive policy which states that every child is entitled to 15 years of free education regardless of their legal status or nationality,² participants appeared to have differing perceptions of whether children without documents could attend school. Some participants cited challenges with meeting the requisite documentary requirements for enrolment, and others considered that only certain schools would accept children without domestic status. Refugee adolescents who were enrolled in school spoke of language barriers impeding their ability to learn and make friends, as they have low proficiency in Thai and teachers and peers can neither speak English nor their native language. Some adolescents had experienced xenophobic attitudes and treatment from teachers and students alike.

Thai domestic law sets the minimum age for employment at 15 years old, and 18 years old for hazardous work. Many of the adolescents interviewed were employed across a range of industries (noting that undocumented migrants are not legally entitled to employment). Most employment involved short-term contract work with little security. Participants commented on the difficulty of seeking employment without documents, explaining that employers are nervous about repercussions from the authorities. Participants commented on the impact of Covid-19 in relation to their ability to work. They explained that Covid-19 and resultant lockdowns and movement restrictions had negatively impacted upon the labour market, and complained that there is now a

² As per the 1999 Education for All Policy and 2005 Cabinet Resolution on Education for Unregistered Persons.

lack of employment opportunities. Some adolescents explained that they had been fired permanently by employers when they or their family members had been infected with the virus.

Likewise, participants reported barriers in accessing hospitals and other healthcare services. The main barrier appears to be due to a lack of health insurance, the prohibitive high cost of treatment, and language challenges. There were also multiple reports from participants about discrimination by hospital staff during the Covid-19 pandemic, with staff turning away migrants due to a perception that they were more likely to be infected with the virus.

Lack of legal status was also found to be a significant barrier to children's ability to access child protection and other services. Adolescents and parents without status demonstrated a tendency to seek support and solutions to protection risks within their own communities, along with a strong reluctance to report to Thai authorities, even in cases involving quite serious exploitation and abuse. Research participants tended to report that they would typically seek help in cases of violence, exploitation and abuse from family members, other members of their community – in particular, community leaders, or sympathetic Thai neighbours.

Overall, the absence of clear legal status and the rights and entitlements that flow from this was found to contribute to feelings of 'illegitimacy', thereby disempowering participants from seeking help from more formal service providers, such as the police force or child protection services. A culture of fear also appears to have placed participants in a very vulnerable position; fear of detection and of arrest, detention and deportation appears to have created conditions in which participants reported being extremely reluctant to seek help in cases of violence, exploitation or abuse, thereby making it very difficult for them to avoid being in exploitative situations. Other practical barriers to accessing services, including language barriers, limited knowledge of formal systems and services, and cost of services were also noted. Conversely, while Thai child protection laws apply to children with and without legal status alike, there are nonetheless limitations in the way that the system responds to the at times unique needs of children without legal status.

1.2.4. The role of the private sector partnerships in improving the situation for children

In order to explore the role and dynamics of the private sector in child protection, the research looked at the situation of children living in construction site accommodation facilities with their migrant worker parents. There are reported to be thousands of migrant children living with their parents in these accommodation facilities, who either travelled to Thailand with their parents or were born to migrant worker parents in Thailand, and many of whom lack documents. The conditions in these camps are not always fit for children, and research has identified serious concerns relating to the poor sanitation, electrical and other hazards, limited access to clean water and child protection risks.³

Baan Dek foundation is an organisation that has been collaborating with Thai construction and real estate companies since 2010 in order to improve living conditions and access to public services for children and families living in construction camps. In 2021, Baan Dek, in partnership with UNICEF, introduced the Social Impact Guidelines for Construction Site Camps, which includes a Framework for Action and toolkit to be followed by the camp managers to ensure that the rights of children living in the camp accommodation are protected.⁴ The framework provides 12 key action points grouped in accordance with the four themes of

³ Baan Dek Foundation, Building Futures in Thailand: Support to Children Living in Construction Site Camps, 2018, p. 25.

⁴ Baan Dek, Social Impact Guidelines for Construction Site Camps, 2021.

infrastructure, welfare and services, health and education. There is a self-assessment spreadsheet provided to the camp managers which allows them to assess the extent to which their camp is in line with the standards of the framework, and monitor the progress made over time.⁵ A company specific action plan is generated according to the result of the assessment. Baan Dek reports that the framework can provide benefits not just to children and families in the camp – but also for the construction companies who can report benefits to their clients including improved workforce retention, improved health and wellbeing of employees which in turn can yield higher productivity, and improved sustainability scores which can in turn attract clients.⁶

1.3. Conclusions and recommendations

Children without status in Bangkok continue to face considerable challenges, including exposure to a range of protection risks and substantial barriers in accessing basic services and support. In addition, feelings of insecurity and exclusion, which appear to have been compounded in the context of the Covid-19 pandemic, have had a negative impact on the wellbeing and mental health of children and their families and care givers. While these children legally have access to basic services and to systems of protection, lack of legal status appears to create a sense of illegitimacy among the research participants, reinforcing the feeling that they are 'illegal' and do not have entitlements to these services and systems of protection, and that there is no imperative on the part of Government service providers to assist them. In addition, a climate of fear caused by their lack of legal status means that participants avoid reporting protection risks to Thai authorities, for fear of detection, arrest and possibly deportation. This has driven children without legal status into a very vulnerable position, in which they may be unable to seek support and services even in situations of severe exploitation and abuse.

The Government of Thailand has taken some significant steps in recent years to ensure that some groups of persons without legal status – in particular, stateless persons and refugees / asylum-seekers – have or will soon have improved avenues for accessing legal status. It is crucial that this work – in particular the moves to establish a National Screening Mechanism for refugee / asylum-seeking persons – is fully implemented as a matter of priority. Based on the case study findings, the following recommendations are made:

- The Thai Government should increase avenues for children to migrate legally into Thailand and to regularise their status once they are in Thailand.

For undocumented migrant children and families:

- Ensure birth registration for all children born in Thailand, addressing supply and demand barriers to the registration process;
- Build on the National Verification (NV) process enabling post-facto regularisation of status for children of migrant workers who are already within Thailand's borders.

In particular, consider:

- Opening the register to enable migrant workers to register their dependents at more frequent intervals / permanently;

⁵ Ibid.

⁶ Ibid. p.6.

- Awareness raising among migrant communities whenever the register is open to ensure all migrant workers are aware of the steps they need to take to register their dependant children;
- Reducing fees associated with post-facto regularisation to increase accessibility.

For refugee and asylum seeker children and families:

- Implement the National Screening Mechanism without delay, ensuring that a clear protection protocol is followed during the process of screening and approval of protection status;

For unregistered stateless children and families:

- Improve implementation of the civil registration system for stateless persons, addressing known bottlenecks including complicated procedures and high evidentiary requirements and addressing human resource challenges at district level to speed up processing of applications;
- Continue good practice of providing channels to registration through increasing birth registration and assisting children to enrol in education institution to obtain the “G number” which can be a pathway to obtain the 13-digit ID number;

➤ The Thai Government should ensure that no child is arrested or detained for their or their parent's immigration status, including by:

Addressing the following issues in the MOU ATD:

- Whilst the MOU ATD enables release of children from detention, it does not prevent the arrest and detention of children in the first place;
- Mothers who wish to be released with their children under the MOU ATD have to pay large sums of bail fees;
- Fathers are not eligible to be released with children and their mother's, causing family separation;
- Released children can be re-detained as soon as they turn 18.

Leveraging the MOU ATD to become law or regulation.

➤ The Thai Government should remove barriers for children and families without domestic legal status to access basic services (education and health) and protective services.

Education

- Increase awareness of *Education For All* policy amongst schools throughout Thailand to ensure all schools are aware of the policy and none fear legal repercussions of allowing foreign children in school;
- Carry out periodic training for local authorities and schools on the guidelines for enrolling migrant and (unregistered) stateless children in schools;⁷
- Strengthen strategies to address language barriers for migrant children who cannot speak Thai, including by:

⁷ UNICEF, Education Knows No Border: A collection of good practices and lessons learned on migrant education in Thailand, UNICEF 2019, p. 55.

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- Increasing availability of language tuition for migrant children across all schools;⁸
- Encouraging flexible recruitment arrangements for teachers who speak migrant children's country of origin language;⁹
- Increasing training for teachers on teaching children with multilingual learning needs.¹⁰

Healthcare

- Ensure full implementation of the Resolution on access to healthcare for registered stateless children and migrant workers (Resolution No 13, 27 December 2022);
- Increase awareness /understanding of the resolution among operational officers on the ground;

Review the (flexible) fee of health insurance for children aged above 7 years old; consider expanding the availability of the reduced fee to all children under 18 years old.

For access to the child protection system and services:

- Address demand side barriers to child protection system, namely the arrest and detention of children (refer to recommendation 2) in order to reduce the climate of fear and exclusion that prevents children accessing protective services;
- Strengthen the capacity of supply-side actors involved in the provision of protection services as well, including interpreters and service providers;
- Ensure rights of children affected by migration are included within the second National Child Protection Strategy;
- Awareness raising campaign amongst migrant communities of protective services available them.

⁸ UNICEF, Investing in Global Future, A Situational Analysis of Migrant Children's Education in Thailand, p. 23.

⁹ UNICEF, Education Knows No Border: A collection of good practices and lessons learned on migrant education in Thailand, UNICEF 2019, p. 55.

¹⁰ UNICEF, Education Knows No Border: A collection of good practices and lessons learned on migrant education in Thailand, UNICEF 2019, p. 55.

Introduction

1.4. Background and rationale

1.4.1. Background to the study

This report contains the findings of a research on the impact of a lack of domestic legal status on the protection and wellbeing of migrant, urban refugee, asylum-seeking and unregistered stateless children in Bangkok, Thailand, with a particular focus on children's wellbeing, protection and feeling of safety, security, identity and belonging. The research investigates, as 'sub-themes' (i) the impact of the Covid-19 pandemic on the protection and wellbeing of children affected by migration in Bangkok; and (ii) the role private businesses play both in compounding risks and vulnerabilities and also in contributing to the protection and wellbeing of children and families and who migrate to Bangkok.

This case study is part of a regional situation analysis of children affected by migration in ASEAN states, commissioned by UNICEF East-Asia and Pacific Regional Office (UNICEF EAPRO), through its European Union-UNICEF co-funded programme, 'Protecting children affected by migration in Southeast, South and Central Asia' (2018 – 2022). It is anticipated that this research will inform efforts within ASEAN to support children affected by migration, including the implementation of the ASEAN Declaration on the Rights of Children in the Context of Migration (2019) and the Regional Plan of Action (2021) for its implementation. This study is one of a series of six in-depth case studies across different ASEAN countries which aim to explore, in a localised, contextualised and in-depth manner, the various ways in which children may be affected by migration.

The research was designed and led by Coram International, with assistance from UNICEF Thailand. Data collection for the study was carried out with the assistance of Coram International's national researcher, Phandita Nee.

1.4.2. Rationale for the research

Lack of domestic legal status has been identified as being a driver of serious protection risks for children affected by migration in Thailand, as well as a significant barrier to their ability to access child protection and other systems and services.¹¹ A qualitative study carried out by UNICEF and Coram International in 2019 examined the child protection needs of migrant children in Thailand and the capacity of the Thai child protection system to respond to these needs. The study identified the lack of documentation / legal status to be a source of serious protection and other risks for migrant children. Children and families without status were 'hidden', often working in unregulated, informal sectors, increasing their vulnerability to violence, exploitation and abuse. Instances were reported of children being left, unsupervised, in the community after their parents had been arrested and detained for lack of documentation. The lack of status also directly discouraged children and their families from reporting abuse or accessing protective services, owing either to a perception that they would be turned away on account of their legal status or a fear of arrest and detention / deportation. The study identified urban asylum seekers and refugees as populations that were "very

¹¹ Anderson, K. 'Assessment of Child Protection Services for Migrant Children in Thailand', Coram International, UNICEF, December 2019, <https://www.unicef.org/thailand/media/8711/file/Assessment%20of%20Child%20Protection%20Services%20for%20Migrant%20Children%20in%20Thailand.pdf>.

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vulnerable" in terms of their constant fear of arrest and "extreme reluctance" to report violence, abuse or neglect or access services. The study briefly touched on the problems that can flow from the absence of a birth certificate, including challenges in proving a child's age (and eligibility for child-specific services), though this issue was not examined in depth as it fell outside the scope of the study.¹²

Despite the provision in Thai law for any child born in the country (including irregular migrant children) to obtain a birth certificate and have their birth registered, a recent study found that less than one third (32.1 per cent) of children from 'ethnic and migrant child(ren) households'¹³ had a Thai birth certificate and 31.5 per cent of the children had no form of personal documentation whatsoever (such as a birth certificate, ID card, passport).¹⁴ This places children at risk of statelessness, which itself carries a host of protection risks. Whilst the Royal Thai Government (RTG) has taken commendable steps to register the stateless population and provide routes for the restoration of nationality (see section 4.2.3, below), stateless populations continue to face challenges and barriers to realising their rights.¹⁵ Stateless individuals live in fear of arrest, harassment or deportation due to their precarious status as 'illegal migrants'.¹⁶ Stateless individuals also face restrictions on movement within the country, as permissions from District Officers are needed to travel to other provinces. Stateless persons also lack access to the regular labour market, as Thai companies face penalties for employing persons who do not hold appropriate residence or work permits. In addition, many formal jobs (e.g. public sector positions) require Thai nationality and work permit registration limits movement to other parts of the country / industries. Stateless individuals in Thailand have low levels of education, despite the 2005 policy of 'education for all' which grants children access to compulsory schooling, even if they do not hold citizenship.¹⁷ Finally, stateless individuals face barriers in accessing healthcare, as they do not qualify for free health services and are often unable to pay for consultation fees.¹⁸ Stateless respondents in a qualitative study published in 2022 highlighted that they feel as though they are treated as an 'invisible population' that is unequal to those who have Thai IDs and has a lower ability to have their needs met.¹⁹ Taken together, all of these factors put stateless individuals in Thailand at a significant disadvantage and at risk of exploitation as well as trafficking.

Preliminary evidence indicates that Covid-19 has compounded issues for children without domestic legal status in Thailand. Significant delays in the civil registration system and the introduction of a quota limiting

¹² Anderson, K. 'Assessment of Child Protection Services for Migrant Children in Thailand', Coram International, UNICEF, December 2019, available at:

<https://www.unicef.org/thailand/media/8711/file/Assessment%20of%20Child%20Protection%20Services%20for%20Migrant%20Children%20in%20Thailand.pdf>.

¹³ defined as: 'a household in which the household head is not a Thai national and has at least one residing child age 0-14 years (at the time of data collection) who were born in Thailand and do not have Thai citizenship. This study includes two types of households: those with a (non-Thai) migrant worker as the household head, and those in which a member of an ethnic minority group is the household head.'

¹⁴ Mahidol University and UNICEF Thailand, An Assessment of Access to Birth Registration among Migrant Children: The quantitative study, June 2021, p. 25.

¹⁵ UNHCR, Thailand Fact Sheet, 31 December 2021. Available at: https://www.unhcr.org/th/wp-content/uploads/sites/91/2022/01/UNHCR-Thailand-Fact-Sheet_31-December-2021.pdf.

¹⁶ Rijken et al. (2015). The Nexus between Statelessness and Human Trafficking in Thailand. Available at: https://files.institutesi.org/Stateless-Trafficking_Thailand.pdf.

¹⁷ Ibid.

¹⁸ Ibid., Kitchanapaibul, S. et al, Status of the stateless population in Thailand: How does stigma matter in their life? PLoS ONE 17(3): e0264959. <https://doi.org/10.1371/journal.pone.0264959>, p. 6.

¹⁹ Kitchanapaibul, S. et al, Status of the stateless population in Thailand: How does stigma matter in their life? PLoS ONE 17(3): e0264959. <https://doi.org/10.1371/journal.pone.0264959>, p. 6.

birth registration to 10 cases per day are reported to be preventing migrant women from registering the birth of their children within the 15 day time limit, leaving them liable to pay fees for late registration and subjecting them to burdensome documentation requirements as a consequence.²⁰ Covid-19 has impacted upon the ability for migrant children to access schooling, despite Thailand's progressive policy to provide access to education for all children regardless of status. Migrant Learning Centres (in Tak province in particular) were closed throughout the Covid-19 pandemic. Children enrolled in Thai schools also may lack access to online learning tools, due to not having a computer and /or internet connectivity and having had their education disrupted due to parents losing jobs and moving to other areas. A needs assessment carried out by United Nations High Commissioner for Refugees (UNHCR) in February 2021 found 31 per cent of refugee respondents with school-aged children (6-17 years old) reported that their children did not usually attend school, primarily due to financial constraints and a fear of being infected by Covid-19. A significant proportion of respondents (46 per cent) noted that they were not able to access nor utilise home learning materials when schools were closed due to the lockdown, for reasons including financial constraints, no access to requisite electronic devices and language constraints limiting their understanding of materials provided by school.²¹

It was against this background that Coram International and UNICEF planned to conduct the present case study. There has been limited recent research examining the impact of the lack of status on children's lives in Bangkok, and less still from the perspective of children themselves. It is anticipated that the findings of this case study will contribute to expanding the limited knowledge base on the protection of children affected by migration in Thailand. In particular, it is hoped the recommendations in section 0 can be used to inform the development of laws, policies and practices to better protect children and their families affected by migration in Bangkok.

1.5. Research aims and questions

Seven specific research questions were developed to guide the study, as follows:

1. What are the main barriers to undocumented migrant, refugee, asylum-seeking and unregistered stateless children in Bangkok obtaining legal status?
2. What are the main protection risks that flow from a lack of domestic legal status facing these populations of children in Bangkok?
3. How does a lack of domestic legal status impact upon children's feelings of safety, wellbeing, identity and belonging?
4. How has the Covid-19 pandemic and related movement restrictions and other containment measures impacted on the safety and wellbeing of children affected by migration, who lack domestic legal status, in Bangkok?
5. What are the main barriers to undocumented migrant, refugee, asylum-seeking and unregistered stateless children accessing protective services (including but not limited to child protection services, health services and education) in Bangkok?
6. What role can private businesses play in helping to contribute to the protection and wellbeing of children and families who migrate to Thailand, with a particular focus on Bangkok, and in creating an enabling environment for the protection and wellbeing of children and families affected by migration?

²⁰ Interview with UNICEF Thailand focal point, 16 July 2021.

²¹ UNHCR, Covid-19 Impact Assessment: Urban Refugees and Asylum Seekers in Thailand: Multi-sector needs assessment Post-distribution monitoring of cash support, February 2021, p. 6.

7. What kind of progress has been made in the implementation of the National Screening Mechanism?²²

What are barriers to the full implementation of the mechanism?

2.3 Scope

The target population of the study was all children without domestic legal status in Bangkok. This included all undocumented migrants, urban refugee and asylum-seeking children, unregistered stateless children and children who have been trafficked (see definitions section, below). The overall scope of the study was on the impact of a lack of domestic legal status on the target population of children. As highlighted in section 1.4.2, above, these impacts are broad and overlapping, ranging from vulnerability to violence, exploitation and other protection risks, impeded access to birth registration, barriers to education and inability to access services, and limited access to the labour market (for those over 15 years old). Although these aspects were touched upon throughout the course of the research, an in-depth examination of the Thai health, education and child protection systems and the accessibility of these systems to children affected by migration was beyond the scope of the study. The key focus of the study was on the wellbeing and protection of children and how children *themselves* perceive the lack of legal status impacts upon their feelings of safety, security, identity and belonging. The impact of Covid-19 was addressed solely to the extent that it has impacted upon children's wellbeing, protection and feeling of safety, security, identity and belonging. The case study investigated, as a sub-theme, the role of private businesses in compounding risks and vulnerabilities and also in contributing to the protection and wellbeing of children and families without legal status in Bangkok.

2.4 Definitions of key terms

This case study uses the following understandings of key terms and concepts:

'Children affected by migration' (CABM) is a broad umbrella term that encompasses children (those aged under 18 years)²³ who move or have moved within their country of origin, or across the border into another State, temporarily or permanently. This includes children who migrate voluntarily or involuntarily, whether as a result of forced displacement due to national disaster or conflict, or for economic, social, educational or cultural reasons; or individually or to accompany parents who have migrated internally. It also includes children affected by the migration of a parent / parents ('children remaining behind').²⁴

²² In December 2019, the Thai Cabinet approved the development of a National Screening Mechanism (NSM) for the identification and processing of people in need of international protection in Thailand, thereby implicitly recognising refugees as distinct from economic migrants, and establishing a separate system of processing them. However, the NSM is yet to be implemented (see section 3.3, below).

²³ This is in accordance with international definitions of childhood, in particular, as set out in the Convention on the Rights of the Child, Article 1. It should be noted that in the domestic law of some ASEAN States, such as Thailand, children who have attained majority through marriage are not included within the definition of 'child' in the Child Protection Act 2003. In addition, in some domestic laws, such as the Philippine Republic Act 7610 a child over the age of 18 who cannot fully take care of himself because of a physical or mental disability or condition is included within the definition of a child.

²⁴ Joint General Comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of migration, CRC/C/GC/22 16 November 2017, para. 9. See also UNDESA which defines an international migrant as anyone who changes his or her country of usual residence 1 United Nations, Department of Economic and Social Affairs (1998). Recommendations on Statistics on International Migration, Revision 1. Sales No. E.98.XVII.14; and International Organization for Migration: Who is a migrant? www.iom.int/who-is-a-migrant.

Information Box 1: 'Children affected by migration'- Unpacking legal categories

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

Migrant children outside their country of origin

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

A migrant in an irregular situation is "a person who lacks legal status in a transit or host country due to unauthorized entry, breach of a condition of entry, or the expiry of a visa. The definition includes those persons who have entered a transit or host country lawfully but who have stayed for a longer period than authorized, or subsequently taken up unauthorized employment (also called clandestine/undocumented migrant or migrant in an irregular situation)."²⁵

Migrant children who are living outside their country are usually referred to as accompanied, unaccompanied or separated. Accompanied child migrants are those who migrate and remain with their parents or legal caregivers and children who are born in destination countries to migrant parents. The CRC defines unaccompanied children as those "who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so."²⁶ 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."²⁷ Often, these two terms, 'unaccompanied' and 'separated' are used interchangeably and refer to children who are separated.

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

Refugees and asylum-seekers

According to the Refugee Convention 1951, a refugee is a person who is: outside their country of origin; has a well-founded fear of persecution due to his/her race, religion, nationality, member of a particular social group or political opinion; and is unable or unwilling to return. An asylum seeker is "an individual who is seeking

²⁵ International Organisation on Migration, 'Key migration terms', available at: iom.int/key-migration-terms

²⁶ 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 (CRC Committee GC No. 6 (2005)), para. 7.

²⁷ 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 (CRC Committee GC No. 6 (2005)), para. 8.

The impact of a lack of domestic legal status on the protection and wellbeing on migrant, refugee and unregistered stateless children in Bangkok, Thailand

international protection. In countries with individualized procedures, an asylum-seeker is someone whose claim has not yet been finally decided on by the country in which the claim is submitted.²⁸ Refugees and asylum seekers are granted certain protections under international law, such as the prohibition against refoulement, which means they cannot be returned to a country where they would face persecution. Returnee refugees are those “who have returned to their country or community or origin.”²⁹

Thailand is not party to the 1951 Convention related to the Status of Refugees 1951 (Refugee Convention 1951) and does not have domestic laws allowing for the determination and granting of refugee status.³⁰ Therefore, the legal status of ‘refugee’ and ‘asylum seeker’ does not exist in Thai domestic law. Regardless, persons fleeing conflict and persecution are nevertheless refugees under international law and UNHCR’s mandate. There are two distinct populations of refugees: those residing in camps on the Thai-Myanmar border, who are predominantly of Karen, Karenni and Burmese ethnicity,³¹ and the ‘urban’ asylum seeking and refugee population, who have fled persecution from a range (upwards of 51) of different origin countries,³² and who reside in urban settings in and around Bangkok.³³ The study focuses on urban refugees.

Stateless children

The study also includes children whose parents originated from another country but who are stateless; this means that they are “not considered citizens or nationals under the operation of the laws of any country.”³⁴ It also applies to children whose parents have nationality but were / are unable or failed to pass on their nationality to their children as well as those with undetermined nationality. In Thailand, Stateless persons fall within one of two groups: registered stateless (who are registered with the RTG and appear in the national civil registration system) and unregistered stateless persons (those without nationality and who are not (yet) registered as a stateless person with RTG).³⁵

Victim of child trafficking

²⁸ United Nations High Commissioner for Refugees, Master glossary of terms, Rev. 1, 2006, UNHCR: Geneva.

²⁹ Ibid.

³⁰ 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>. It should be noted that the NSM does not grant refugee status. Those recognised as having international protection needs under the NSM are granted Protected Person status.

³¹ The refugees living in camp settings on the border are in what is referred to as a ‘protracted’ refugee situation, having fled to Thailand years previously, during periods of conflict in Myanmar. They are forbidden from leaving the camps, are unable to work or access hospitals or schools and rely on assistance and services provided by a collection of NGOs mandated to enter the camps. These refugees do not face risks of arrest and detention, so long as they remain within camp borders.

³² UNHCR, Fact Sheet, Thailand, March 2022. https://www.unhcr.org/th/wp-content/uploads/sites/91/2022/04/UNHCR-Thailand-Fact-Sheet_31-March-2022.pdf.

³³ UNHCR, Fact Sheet, Thailand, 31 March 2021, available at: https://www.unhcr.org/th/wp-content/uploads/sites/91/2021/04/UNHCR-Thailand-Fact-Sheet_31-March-2021.pdf.

³⁴ United Nations Convention relating to the Status of Stateless Persons (adopted 28 September 1954, entered into force 6 June 1960) 360 UNTS 117), art. 1.

³⁵ Herberholz, C. ‘We are inferior, we have no rights’: Statelessness and mental health among ethnic minorities in Northern Thailand’, SSM - Population Health, Volume 19, September 2022, 101138; Herberholz, C. Protracted Statelessness and Nationalitylessness among the Lahu, Akha and Tai-Yai in Northern Thailand: Problem areas and the vital role of health insurance status, The Economics of Peace and Security Journal, Vol. 15, No. 2, 2020.

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.”³⁶ However, it should be noted that force or coercion is not required to be established for trafficking in children to occur. Children affected by migration will be considered to be victims of human trafficking where they fall within the legal definition of trafficking; a legal category that results in special protections under international law. Child trafficking is also a child protection risk and can be considered, in some cases, to be a driver of migration.

Domestic legal status

This term is used in this report to mean lawful permission to remain in Thailand. Therefore the populations without domestic legal status include asylum seekers and refugees, unregistered stateless and undocumented migrants / children of migrant workers.

‘Child protection’ is the prevention and response to “*all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse*”³⁷ against persons under 18 years of age.³⁸ This includes an examination of the types of protection risks to which children affected by migration may be exposed and the response of child protection systems and services to these risks.

‘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*”³⁹ against persons under 18 years of age.⁴⁰

3. Methodology

The case study utilised a qualitative methodology, in order to obtain an in-depth, contextual understanding of the protection risks that exist for children who lack domestic legal status in Thailand (focussing on populations in Bangkok), and how these risks impact upon their feelings of safety, identity and belonging. The methodology was specifically designed to be participatory, primarily involving interactive focus group discussions with adolescents and parents / carers including participatory action research methods and exercises designed to encourage an informal, interactive and participant-directed format.

³⁶ Article 3, Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (Palermo Protocol), GA Res. 55/25 2000.

³⁷ 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.

³⁸ This is in accordance with Article 1 of the CRC.

³⁹ 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.

⁴⁰ This is in accordance with Article 1 of the CRC.

3.1 Data collection methods

3.1.1 Desk-based research

A desk review was carried out of relevant UN reports, academic articles and news articles related to the situation of children lacking domestic legal status in Thailand. The study also utilised a comprehensive legal and policy analysis, which was carried out for the regional situation analysis report. The legal and policy analysis focused on migration, refugee / asylum, child protection and other key laws and policies relating to children affected by migration.

3.1.2 Focus group discussions

Focus group discussions (FGDs) were conducted with small groups of adolescents / young people with experience of living in Bangkok without domestic legal status in order to learn about their experiences, hopes and fears and their aspirations for the future. FGDs were also held with groups of parents / carers of migrant children in Bangkok. FGDs explored participants' experiences and attitudes related to life in Bangkok, their awareness of their legal status and the impact it has on their life and their feelings of identity, safety and security. They also included an interactive discussion on 'incomplete stories' – a series of vignettes presenting different situations that might be faced by young people like them in their community. The discussion explored the decisions faced by the adolescents and young people in the vignettes, what advice the participants would give them, and what the likely outcomes would be for the young people, thereby allowing for examination of the barriers or challenges facing participants in a concrete and applied through a non-confrontational way. FGD tools were piloted with two groups of undocumented adolescents and parents / carers and adjustments were made to the tool before commencement of data collection. The tools were tailored to the culture and context of each of the different population groups. Researchers aimed to include a diverse range of participants in the FGDs, with roughly even numbers of males and females. Participants included Myanmar and Cambodian communities of undocumented migrants (which were led by trained facilitators from these communities), and groups of asylum-seeking and refugee adolescents / parents/carers, led by a trained Thai researcher. An FGD was also carried out with a group of adolescents who are stateless. In total, 16 FGDs were carried out with 34 adolescents (13 – 18 years) and 43 parents / carers as detailed in the table below (a more detailed list is attached at Annex 7.2).

Figure 1 : Description of Focus Groups Discussions

Location	Description
Klong Neung, Pathumthani, Bangkok	2 FGDs with Cambodian undocumented adolescents (6 males and 4 females in total, aged 13 – 18 years)
	2 FGDs with Cambodian undocumented parents / carers (10 females in total, aged 24 – 50 years)
Klong Tan, Suan Luang, Bangkok	3 FGDs (including 1 pilot) with Myanmar undocumented adolescents (8 females and 7 males in total) (aged 13-18 years old)
	3 FGDs with Myanmar undocumented parents / carers of 13-18 year old adolescents (12 females and 3 males in total)

Lad Phrao, Bangkok	<p>1 FGD with refugee / asylum seeking adolescents from Afghanistan (3, males and 2 females, 14-17 years)</p> <p>1 FGD with refugee / asylum seeking adolescents from Pakistan (3 males and 1 female, 13-18 years)</p> <p>1 FGD with refugee / asylum seeking parents / carers from Afghanistan (4 males, parents of adolescents aged 13-18 years)</p> <p>1 FGD with refugee / asylum seeking parents / carers from Pakistan (3 males and 1 female, parent of adolescent aged 13-18 years)</p>
Saphan Mai, Sai Mai, Bangkok	1 FGD with refugee / asylum seeking parents / carers from Viet Nam (2 males and 2 females, parents of adolescents aged 13-18 years)
Thawi, Watthana, Bangkok	1 FGD with Lua stateless adolescents (4 males and 2 females, 13-16 years)

3.1.3 Key informant interviews

Key informant interviews (KIIs) were carried out with a range of government stakeholders at the national and the subnational levels to collect data on legal and policy developments (national level) and challenges related to the protection and provision of services to children and families without domestic legal status in Bangkok (sub-national). In addition, a number of KIIs were carried out with Non-Governmental Organisation (NGO) and Civil Society Organisation (CSO) stakeholders, particularly those providing services to children affected by migration. KIIs were also carried out with stakeholders in the business and human rights field to identify areas in which private business practice could be improved in order to promote regular migration for foreign workers and their families, as well as to highlight examples of good business practice in this area.

In total, 24 KIIs were carried out with 30 stakeholders, including government stakeholders at the national level and government and non-government stakeholders and service providers at the sub-national level.

3.2 Data analysis

The team used a thematic analysis to explore the qualitative data; all interviews and FGDs were transcribed in English and uploaded into Nvivo software (a software package that facilitates the organisation and analysis of qualitative data). Data was reviewed and coded to identify key themes, connections and explanations relevant to the research questions.

3.3 Verification and validation

A validation workshop was carried out in November 2022 with participants from the UNICEF Thailand Country Office. At the workshop, one of the case study authors presented the key findings of the research and draft recommendations, following a participatory discussion on the suitability of the recommendations. After the validation, necessary amendments were made to the report based on comments from the workshop participants, and a finalised version was submitted.

3.4 Ethics

The research project was carried out in compliance with UNICEF's *Ethics Charter and Guidance for Ethical Research Involving Children*,⁴¹ Coram International's *Ethical Guidelines for Field Research with Children* and recent guidance relating to data collection during Covid-19.⁴² The team developed a detailed ethical protocol for the research (see Annex 7.1), and a full ethical review was carried out for the research by Coram's external review board, with approval obtained prior to the commencement of the data collection.

3.5 Limitations

Limitations of this research and mitigation strategies employed by the international and national researchers are discussed in detail below:

Constraints/ Limitations	Mitigating Strategies
Accessing participants	<p>Children and adolescents:</p> <p>An anticipated limitation was that accessing children and adolescents without legal status may be challenging as it was assumed that they would not want to be too visible (owing to fear of potential repercussions linked to their lack of status). Children and their families may fear deportation or being placed in immigration detention as a result of their participation. To mitigate against these risks, the research team recruited facilitators from the Cambodian and Myanmar migrant diasporas (who had experience and training with working with children) in order to recruit adolescents from these communities for FGDs. FGDs with refugee adolescents were carried out by our Thai researcher and accessed through NGOs we were put in touch with by the UNICEF Thailand country office. All facilitators received training on the ethical protocol for the study. All children received a participant information sheet explaining that nothing they say in the interviews will affect their legal or immigration status in Thailand.</p>

⁴¹ Graham, A., Powell, M., Taylor, N., Anderson, D. and Fitzgerald, R. Ethical research involving children (2013), UNICEF Innocenti: Florence.

⁴² Berman, G., Ethical considerations for evidence generation involving children on the COVID-19 pandemic (2020), UNICEF Innocenti: Florence, DP 2020:01; The Market Research Society, MRS Post-Covid-19 lockdown guidance: undertaking safe face-to-face data collection, 14 July 2020.

	<p><u>Government and business stakeholders</u></p> <p>Some initial challenges were experienced in securing engagement of participants, mainly from certain government agencies and the business sector. To mitigate against these challenges, the researchers used multiple methods of contacting participants; extended the period of data collection to ensure responses from as many participants as possible; and were flexible with time and locations for interviews (whether in-person or remotely over zoom). To secure interviews with business stakeholders, the research team made contact with a key NGO working in the business and human rights sector, with whom UNICEF has an ongoing partnership with, in order to request that they kindly provide introduction to private sector businesses they work with.</p>
Research findings may be influenced by reporting bias and recall bias	<p>An anticipated limitation of the research was that professional stakeholders may selectively reveal or suppress information, hoping to 'look good' rather than to present the realities of their work. On the other hand, migrant, refugee and stateless adolescents and their families, particularly those who have had traumatic or stressful past experiences, may inaccurately recollect memories and experiences or omit certain details during interviews, leading to errors in data collected. To mitigate against reporting bias, the research team emphasised the anonymity and confidentiality of the research to all stakeholders, in order to encourage transparent responses. Interview tools for migrant adolescents and their families were carefully constructed so as to minimize the risk of recall bias and to avoid (re)traumatisation of the participants. In particular, questions were worded so as to ask participants about "children / families without documents/ legal status" generally, rather than ask participants direct questions about their own experiences. The focus groups also utilised participatory activities including "incomplete stories" of fictional children in Bangkok experiencing certain factors (such as exploitation and violence in different settings – in the home, in the community etc.). The participants were asked what they would advise the fictional child in the story, where they consider that they should go to get help and their opinions on whether the child in the story is likely to have any recourse to assistance or support and from whom.</p>
Not all the adolescents / young people in the sample lacked domestic status at the time of the interview	<p>As is addressed in different parts of this report, the original intention was that adolescents / young people in the sample would all lack domestic legal status at the time of the interview. These were the instructions passed on to the facilitators who recruited participants. During the focus group discussions however, a few young people referred to their "migrant ID cards", which they said offers protection from arrest. As the interviewers didn't ask the participants to go into detail about their migration status or history (in line with the ethics protocol), it is not clear exactly what documents these participants were referring to. It is therefore assumed that some young people did have</p>

	<p>some form of legal status at the time of the interview, which is noted where necessary throughout the report. Given that all of the questions were phrased in general terms i.e. <i>“Is Bangkok a welcoming place for [group in FGD] children and families without documents / legal status? Why/ why not?”</i> rather than asking young people about their own experiences directly, this did not cause any material difference to the findings, and in many ways helped to enrich the analysis. In any case, as was mentioned by multiple participants interviewed for the project and has been noted in other contexts, the categories of ‘children affected by migration’ are fluid and overlapping and children do not always fit neatly within one or the other; they also may also oscillate between having regular/irregular status at different points in their lives. Finally, it should be noted that whilst the focus of the study was on a lack of legal status, an in-depth legislative / policy analysis of all the categories of legal status in Thailand was beyond the scope of the report (although the authors have endeavoured to provide an overview of the populations without status in 4.1 below).</p>
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4. Context: Lack of legal status and its challenges

4.1 Populations without legal status in Thailand (focussing on Bangkok)

4.1.1 Irregular migrants

Thailand is one of the main ‘destination countries’ for migration in the Southeast Asian region, owing largely to the country’s strong and stable economy and long, porous borders with Cambodia, Lao PDR and Viet Nam. There are estimated to be around 4.9 million migrants in the country, 3.9 million of which are migrant workers from neighbouring countries, and an estimated 300,000 – 400,000 are migrant children.⁴³ A large proportion (as much as 50 per cent)⁴⁴ of migration into Thailand is thought to occur irregularly – that is, outside the destination country’s regular process or not in compliance with its laws. The true number of migrant children without domestic legal status in Thailand is impossible to accurately predict, given that irregular migration is by nature hidden from official registration systems and databases, but recent estimates place the figure at between 1-2.5 million.⁴⁵ A study of over 1,800 migrant workers from Cambodia, Lao PDR, Myanmar and Viet Nam in Malaysia and Thailand in 2016 found that 74 per cent of respondents had migrated through irregular means.⁴⁶ As noted in section **Error! Reference source not found.**, this has led to a highly precarious existence for children and their families trying to navigate life without the protection and security that regular status provides.

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). Whilst total numbers of irregular migrants are not possible to ascertain, in 2016 it was estimated that, including those with temporary permits, up to one million migrants were residing in Greater Bangkok.⁴⁷ Latest available data show that as at August 2022 there were 2,408,716 foreigners licenced to work throughout the country, of which 550,726 were based in Bangkok and 664,597 were based in the surrounding provinces (see Figure 2, below).

Figure 2: Registered migrant workers, Bangkok and surrounding provinces, August 2022

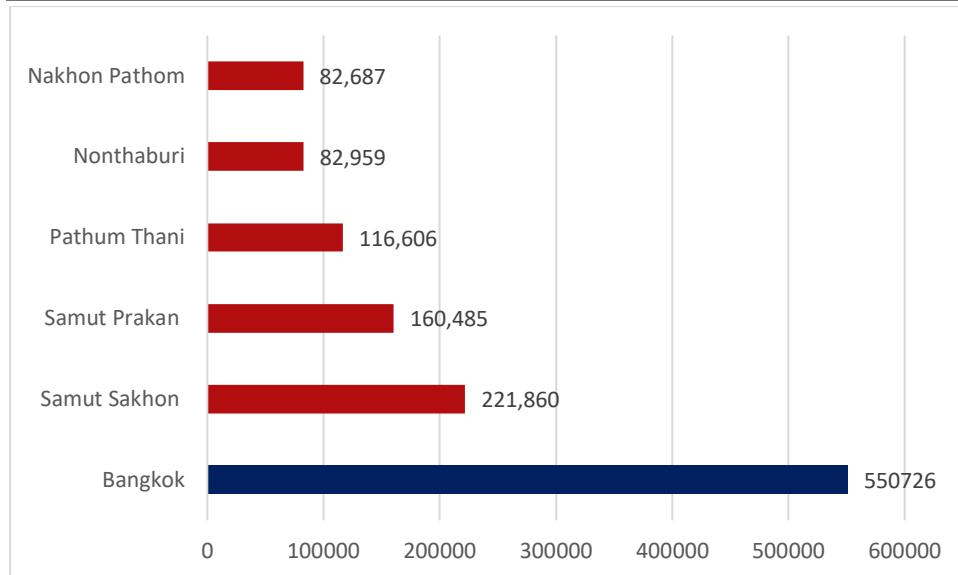
⁴³ United National Thematic Working Group on Migration, Thailand migration report, 2019, p. 10 – 11.

⁴⁴ ILO, IOM and Rapid Asia, Risks and rewards: Outcomes of labour migration in South-East Asia, 2017, p. 45.

⁴⁵ McAuliffe, M. and A. Triandafyllidou (eds.), World Migration Report 2022, 2021, International Organisation for Migration (IOM); IOM, Asia-Pacific Migration Data Report 2020, 30 Aug 2021, cited in: UN Network on Migration, International Detention Coalition, Immigration Detention and Alternatives to Detention in the Asia-Pacific Region, *Alternatives to Detention Working Group of the UN Network on Migration*, 2022, p. 15.

⁴⁶ ILO, IOM and Rapid Asia, Risks and rewards: Outcomes of labour migration in South-East Asia, 2017, p. 33.

⁴⁷ IOM, Hazard exposure and vulnerability of migrants in Thailand, 2016, p. 6.



Source: Ministry of Labour, Office of Foreign Workers Administration Department of Employment, August 2022.⁴⁸

Greater Bangkok is 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 agricultural 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.⁴⁹

A key driver of irregular migration into Thailand is the very limited avenues for children to migrate legally into the country, either alone or with their families. There are two official labour channels for inbound migrants: the bilateral Memorandum of Understanding (MOU) process for regular migration from specific countries of origin (Cambodia, Lao PDR, Myanmar and Viet Nam) and the registration and 'Nationality Verification' (NV) process which allows undocumented migrants to register and regularize their status in-country.⁵⁰

Bilateral MOUs tend to include a clause forbidding migrant workers from bringing accompanying children, leaving parents with the choice between bringing their children into Thailand illegally or leaving them at home (causing family separation). Further, both routes into Thailand are considered by the majority of migrants to be *"inefficient, expensive and slow"*.⁵¹ One study found that irregular migration channels into Thailand were considerably quicker (by an average of 78 days) and cheaper (by an average of 286 USD) than migration through regular channels.⁵² The desire to bypass bureaucratic, complex or slow immigration law requirements

⁴⁸ Ministry of Labour, Office of Foreign Workers Administration Department of Employment, August 2022 issue, 2022, 'Table 1 Number of licensed aliens Remaining work throughout the Kingdom, Classified by nature of immigration and types of aliens', August 2022, p. 12.

⁴⁹ UNODC and TIJ, Trafficking in persons from Cambodia, Lao PDR and Myanmar to Thailand, 2017.

⁵⁰ United National Thematic Working Group on Migration, Thailand migration report, 2019, p 16.

⁵¹ Schloenhardt, S. Irregular migration and smuggling of young women and girls in South-East Asia and the Pacific: A review of existing evidence in Supporting Brighter Futures: Young women and girls and labour migration in South-East Asia and the Pacific, IOM, 2019, p 101.

⁵² ILO, IOM and Rapid Asia, Risks and rewards: Outcomes of labour migration in South-East Asia, 2017.

encourages children and families to opt to migrate irregularly and work without legal permissions.⁵³ These journeys are often facilitated by smuggling networks who, for a fee, provide transportation to / across the border and may assist with securing employment upon arrival.⁵⁴ Relationships with smugglers have high potential to turn exploitative, meaning migrant children and families are vulnerable to becoming victims of trafficking en route or upon arrival into Thailand's borders. Children who have been smuggled or trafficked may have their documentation taken from them which may place the child at risk of statelessness.⁵⁵ Finally, despite policy developments to improve the situation, there remain obstacles for migrant workers on work permits wishing to change employer. They must receive permission from the Registrar, which may be challenging for migrant workers to complete, particularly if they do not have a good command of Thai or if the reasons they wish to leave are sensitive (i.e. due to abuse or exploitation at the hands of the employer).⁵⁶

In 2020, the Covid-19 pandemic caused the Royal Thai Government to close its borders. This and other reasons (including workers returning to their countries of origin during the pandemic) is likely to explain the significant drop in the number of migrant workers in the country and a consequent severe labour shortage.⁵⁷ Responding to the results of a survey conducted by the Department of Employment, which estimated 420,000 foreign workers were required in construction, manufacturing and seafood industries,⁵⁸ RTG reopened Thailand's borders and pledged to hire 400,000 migrant workers under an MOU to meet workforce demands.⁵⁹ The Ministry of Labour introduced three Cabinet Resolutions on December 29, 2020, July 13, 2021, and September 28, 2021, introducing an amnesty period in order to allow migrant workers who were unable to complete the official documentation procedures during Covid-19 to complete the necessary procedures to legally stay and work in Thailand until 2023.⁶⁰

Figure 3, below, displays the proportion of unskilled labour migrants registered with the Ministry of Labour under the MOU and the cabinet resolutions.

⁵³ United National Thematic Working Group on Migration, Thailand migration report, 2019, p. 7.

⁵⁴ See UNODC, Smuggling of migrants in Asia and the Pacific: Current trends and challenges, Volume II, 2018, p. 78 – 87.

⁵⁵ UNHCR, Ending statelessness, available at: <https://www.unhcr.org/en-au/ending-statelessness.html>.

⁵⁶ United National Thematic Working Group on Migration, Thailand migration report, 2019, p 33.

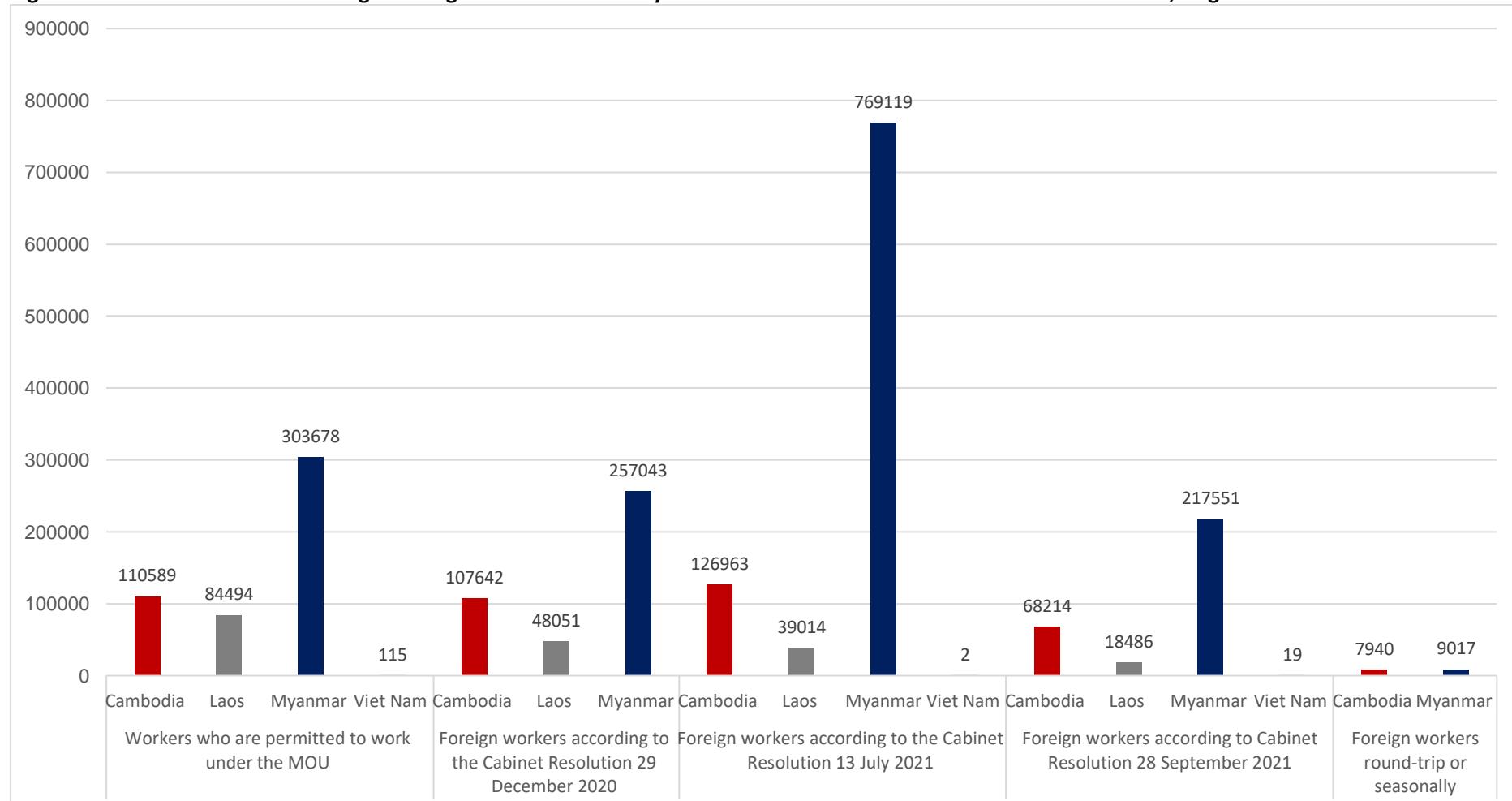
⁵⁷ IOM, Asia-Pacific Migration Report 2020, IOM Asia-Pacific Regional Data hub, 2020, section 3.1.2.

⁵⁸ Panarat Thephumpanat, Thailand plans to reopen borders to foreign workers amid shortage, 9 November 2021. Available at: <https://www.reuters.com/world/asia-pacific/thailand-plans-reopen-borders-foreign-workers-amid-shortage-2021-11-09/>.

⁵⁹ Eleven Myanmar, Thailand to employ 400,000 MoU migrant workers, Published 25 August 2021. Available at: <https://elevenmyanmar.com/news/thailand-to-employ-400000-mou-migrant-workers>.

⁶⁰ Ministry of Labour, Labour Minister Reports Results of Policies on Managing Foreign Workers to Support the Country's Revival After COVID-19, 15 Sep 2022. Available at: <https://www.mol.go.th/en/news/labour-minister-reports-results-of-policies-on-managing-foreign-workers-to-support-the-countrys-revival-after-covid-19>.

Figure 3: Unskilled labour migrants registered with Ministry of Labour under the MOU and Cabinet Resolutions, August 2022.



Source: Ministry of Labour, Office of Foreign Workers Administration Department of Employment, August 2022.⁶¹

⁶¹ Ministry of Labour, Office of Foreign Workers Administration Department of Employment, August 2022, p.4.

4.1.2 Refugees and asylum seekers

Thailand is not party to the 1951 Convention related to the Status of Refugees 1951 (Refugee Convention 1951) and does not have domestic laws allowing for the determination and granting of refugee status.⁶² Therefore, the legal status of 'refugee' and 'asylum seeker' does not exist in Thai domestic law. Regardless, persons fleeing conflict and persecution and who meet the criteria set out in 1A(2) of the Refugee Convention 1951 are nevertheless refugees under international law and UNHCR's mandate. At the end of 2021, there were 35,262 child refugees and asylum seekers registered with UNHCR in Thailand.⁶³ However, the number of children residing in Thailand who have fled or are fleeing conflict or persecution, but have not been formally identified as refugees or 'persons of concern' (e.g., through UNHCR's determination process), is unknown.

The population of refugees in Thailand are primarily from Myanmar (91,349 as of March 2022, under reverification by UNHCR),⁶⁴ Viet Nam, Cambodia, and Pakistan, Somalia, Palestine. There are two distinct populations of refugees: those residing in camps on the Thai-Myanmar border, who are predominantly of Karen, Karenni and Burmese ethnicity,⁶⁵ and the 'urban' asylum seeking and refugee population, who have fled persecution from a range (upwards of 51) of different origin countries,⁶⁶ and who reside in urban settings in and around Bangkok.⁶⁷ Anecdotal evidence suggests the military coup of February 2021 and resultant poverty has caused a spike in the number of irregular arrivals from Myanmar,⁶⁸ many of whom are likely to be refugees.⁶⁹

The 5,253 refugees and asylum-seekers living in urban settings are from a range of countries (Pakistan; Viet Nam; the State of Palestine; Syria; Iraq and Cambodia).⁷⁰ They face risks of arrest and detention for illegal entry and stay, regardless of whether they have claims to international protection or have been recognised to be a refugee by UNHCR. This is because, as noted above, Thailand does not have a domestic asylum law nor

⁶² 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.org/en/news/general/pr/unhcr-welcomes-national-screening-mechanism>.

⁶³ UNHCR, Global Trends: Forced Displacement in 2022, Full Tables, Table 12; The vast majority of this total are living in the camps (as explained in the paragraphs below) whereas the study focuses on refugees and asylum seekers living in urban settings.

⁶⁴ UNHCR Thailand, Refugees in Thailand, available at: <https://www.unhcr.org/th/en/>.

⁶⁵ The refugees living in camp settings on the border are in what is referred to as a 'protracted' refugee situation, having fled to Thailand years previously, during periods of conflict in Myanmar. They are forbidden from leaving the camps, are unable to work or access hospitals or schools and rely on assistance and services provided by a collection of NGOs mandated to enter the camps. These refugees do not face risks of arrest and detention, so long as they remain within camp borders.

⁶⁶ UNHCR, Fact Sheet, Thailand, March 2022. https://www.unhcr.org/th/wp-content/uploads/sites/91/2022/04/UNHCR-Thailand-Fact-Sheet_31-March-2022.pdf.

⁶⁷ UNHCR, Fact Sheet, Thailand, 31 March 2021, available at: https://www.unhcr.org/th/wp-content/uploads/sites/91/2021/04/UNHCR-Thailand-Fact-Sheet_31-March-2021.pdf.

⁶⁸ Bangkok Post, Myanmar coup-fuelled poverty pushes thousands to Thailand, 6 Jan 2022. Available at: <https://www.bangkokpost.com/thailand/general/2243067/myanmar-coup-fuelled-poverty-pushes-thousands-to-thailand>.

⁶⁹ Triggs, Gillian, UNHCR Assistant High Commissioner for Protection, 'News Comment: UNHCR calls on Myanmar's neighbours to protect people fleeing violence', 31 March 2021, www.unhcr.org/uk/news/press/2021/3/60648c304/news-comment-unhcr-calls-myanmars-neighbours-protect-people-fleeing-violence.html.

⁷⁰ UNHCR, Thailand fact sheet, March 2021, available at: https://www.unhcr.org/th/wp-content/uploads/sites/91/2021/04/UNHCR-Thailand-Fact-Sheet_31-March-2021.pdf.

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domestic framework to conduct refugee status determination procedures. In December 2019, the Thai Cabinet approved a regulation establishing a National Screening Mechanism (NSM) for the identification and processing of people in need of international protection in Thailand, and establishing a separate system of processing them.⁷¹ However, the NSM is yet to be implemented (see section 4.2, below).

Information box: Rohingya refugees

A large proportion of asylum-seeking and refugee persons from Myanmar are Rohingya. The movement of Rohingya persons from Arakan state and other parts of Myanmar has been occurring for several decades, a consequence of the systematic oppression of the community by the military government, and especially following the change in citizenship rights in 1982. The exodus has become particularly marked over the last ten years, following persistent outbreaks of serious violence and the effective organising of anti-Rohingya sentiment amongst local Burmese populations. This was accompanied by the effective organising by people smugglers and human traffickers.⁷² In August 2017, the largest and fastest refugee influx of Rohingya populations occurred, and since then more than 773,000 Rohingya – including more than 400,000 children – have fled to Cox's Bazaar in Bangladesh⁷³, along with substantial populations into Malaysia and Thailand. Owing to limited availability of data, it is not possible to ascertain how many Rohingya refugees are currently residing in Thailand.⁷⁴

4.1.3 Stateless children

Stateless persons in Thailand fall within one of two groups: registered stateless (who are registered with the RTG and appear in the national civil registration system) and unregistered stateless persons.⁷⁵ Registered stateless individuals cannot move freely around the country without applying for permission, and whilst they are entitled to apply for Thai citizenship, significant practical and complex bureaucratic hurdles mean this can take years to obtain⁷⁶ (see 4.2.3 below). Unregistered stateless are those without nationality and who are not (yet) registered as a stateless person with RTG.

According to the latest UNHCR Global Trends report, there were 153,574 stateless children, (74,262 girls and 79,312 boys) under UNHCR's stateless mandate as of the end of 2021.⁷⁷ These figures refer to children who are registered as stateless with RTG. The number of unregistered stateless is unknown. Over 80 per cent of the registered stateless population live near border areas.⁷⁸ The largest number belong to a community often

⁷¹ Note that the NSM does not grant refugee status. Those recognised as having international protection needs under the NSM are granted Protected Person status.

⁷² Please refer to the main situational analysis report for this project for more information.

⁷³ OCHA, Rohingya refugee crisis, 2022, <www.unocha.org/rohingya-refugee-crisis>, accessed 12 December 2022.

⁷⁴ For more information on the situation of Rohingya refugees in the ASEAN region, please refer to the regional situational analysis report at pages.

⁷⁵ Herberholz, C. 'We are inferior, we have no rights': Statelessness and mental health among ethnic minorities in Northern Thailand', SSM - Population Health, Volume 19, September 2022, 101138; Herberholz, C. Protracted Statelessness and Nationalitylessness among the Lahu, Akha and Tai-Yai in Northern Thailand: Problem areas and the vital role of health insurance status, The Economics of Peace and Security Journal, Vol. 15, No. 2, 2020.

⁷⁶ Ibid.

⁷⁷ UNHCR, Global Trends: Forced displacement in 2021, 2022, Full Tables, Table 12: Demographic composition by country/territory of asylum and type of population, end-2021.

⁷⁸ UNHCR, Fact Sheet, Thailand, March 2022. https://www.unhcr.org/th/wp-content/uploads/sites/91/2022/04/UNHCR-Thailand-Fact-Sheet_31-March-2022.pdf.

referred to as the ‘hill tribes’ (or sometimes ‘highlanders’).⁷⁹ These individuals generally reside in the mountainous areas in the West and North of the country – specifically, along the border with Myanmar and Lao PDR. The ‘hill tribes’ are an ethnic minority community in Thailand and comprise a large number of different tribes, with different languages and cultures including the Akha, Karen, Lahu, Lisu and Meo (also known as Hmong).⁸⁰ A smaller indigenous group that is also strongly affected by statelessness are located in the south of the country, along the Andaman coast. These persons are known as Moken or Chao Lay, who are semi-nomadic people that have inhabited Thailand for hundreds of years.⁸¹ Owing to a lack of disaggregated data, it is not known how many stateless (registered or unregistered) children are residing in Bangkok specifically.

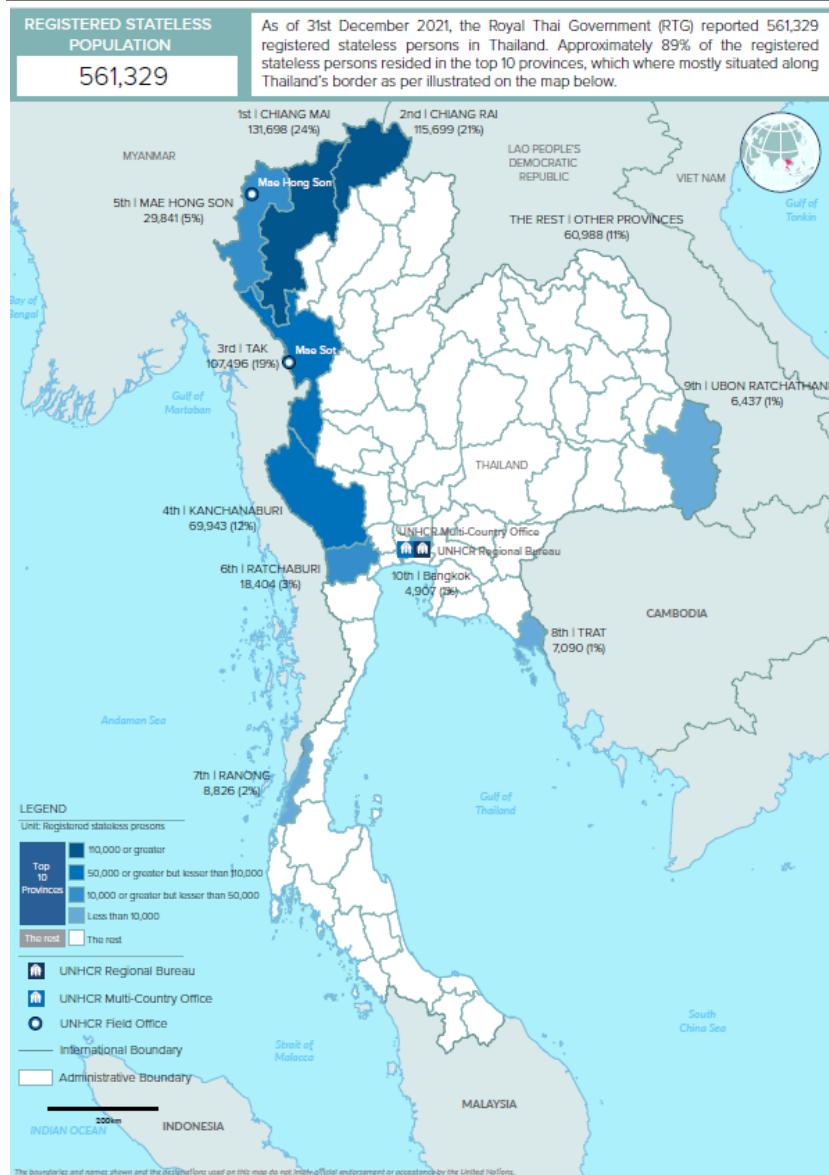
Figure 4: Registered Stateless Population in Thailand, 2021

⁷⁹ Rijken et al., The Nexus between Statelessness and Human Trafficking in Thailand, 2015, Available at: https://files.institutesi.org/Stateless-Trafficking_Thailand.pdf.

⁸⁰ Ibid.

⁸¹ Ibid.

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Source: UNHCR, 2022.

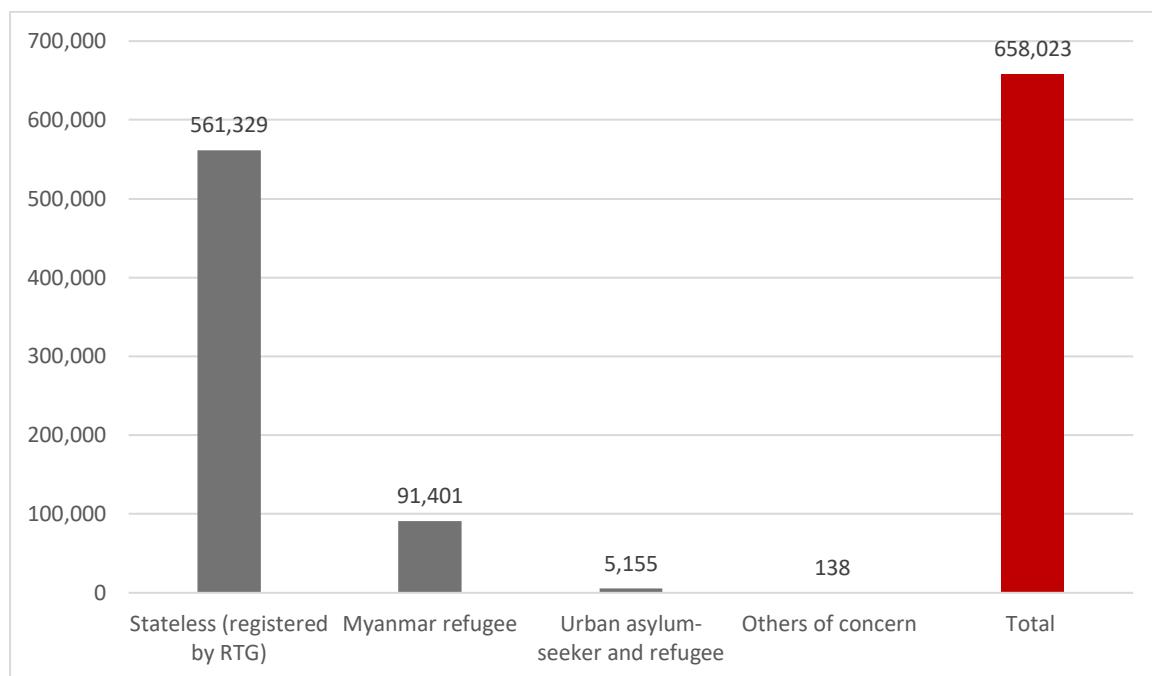
A key driver of status-related challenges for migrant children is lack of birth registration, which places children at risk of statelessness. In June 2021, Mahidol University and UNICEF carried out a quantitative assessment of access to birth registration among 'ethnic and migrant child(ren) households'.⁸² Overall, despite the provision in Thai law for any child born in the country (including irregular migrant children) to obtain a birth certificate and have their birth registered, less than one third (32.1 per cent) of children (aged 0-14 years) in the sample had a Thai birth certificate and 31.5 per cent of the children had no form of personal documentation whatsoever (such as a birth certificate, ID card, passport).⁸³ Out of the children in the sample born in a Thai

⁸² Mahidol University and UNICEF Thailand, An Assessment of Access to Birth Registration among Migrant Children: The quantitative study, June 2021. Ethnic and migrant child(ren) households were defined as: 'a household in which the household head is not a Thai national and has at least one residing child age 0-14 years (at the time of data collection) who were born in Thailand and do not have Thai citizenship. This study includes two types of households: those with a (non-Thai) migrant worker as the household head, and those in which a member of an ethnic minority group is the household head.'

⁸³ Ibid. p. 25.

hospital, 43 per cent were not issued with a birth delivery certified document at the hospital. The most commonly reported reasons for this were that the hospital staff had failed to provide the document (63.5 per cent), the parents were unaware that they should be issued with the document (23.8 per cent), or the mother or father of the child lacked the necessary residence documentation to obtain the document (10.2 per cent).⁸⁴ Out of the children in the sample who were born outside of a hospital setting, only 5.6 per cent had received a birth delivery certification document from a local community leader, 85.2 per cent had not received any such document, and 9.3 per cent were not sure if they had or had not received one.⁸⁵ An earlier study found that almost one in five migrant children did not have a birth certificate.⁸⁶ The study identified a number of challenges, including language barriers (though increasingly, hospitals are employing interpreters in locations with a high number of migrants to address this) and limited understanding of the process, which requires delivery of a certificate from the hospital of the child's birth, along with registering this document with a district office to secure legal registration and receive birth certificate (many migrants are not aware that the second step is necessary). In many cases, parents do not see the birth registration process as valuable, as they are planning on returning home to the country of origin, even though a Thai certificate may be required to register the child's birth in some countries.⁸⁷

Figure 5: Refugee, asylum seeking, registered stateless and other populations of concern to UNHCR, 2022



Source: UNHCR, 2022.⁸⁸

⁸⁴ Ibid. p. 33.

⁸⁵ Ibid. p. 34.

⁸⁶ Mahidol Migration Centre, 2017, in IOM et. al., Thailand Migration Report, 2019.

⁸⁷ IOM et. al., Thailand Migration Report, 2019.

⁸⁸ UNHCR, Thailand, Fact Sheet on populations of concern, 31 March 2022. Available at: https://www.unhcr.org/th/wp-content/uploads/sites/91/2022/04/UNHCR-Thailand-Fact-Sheet_31-March-2022.pdf. Please note the stateless figures here represent those who have been registered as stateless by the RTG, whereas urban refugee population is those registered with UNHCR.

4.2 Legal and policy developments on legal status

Several recent legal and policy developments in Thailand have demonstrated a commitment on the part of the Government to providing greater protection to persons who do not have legal status.

4.2.1 MOUs and Nationality Verification for undocumented migrants

As examined above, the bilateral MOU processes for regular migration from specific (neighbouring) countries of origin (Cambodia, the Lao PDR, Myanmar and Viet Nam) have aimed at providing increased opportunities for regular migration. The ‘Nationality Verification’ (NV) process also allows undocumented migrants to register and regularize their status in-country.⁸⁹ Though, as noted above, the utilisation of these mechanisms by irregular migrants has been quite limited, particularly for undocumented migrant children.

4.2.2 National screening mechanism for asylum-seekers / refugees

In December 2019, the Thai Cabinet promulgated the Regulation on the Screening of Aliens Entering into the Kingdom and Unable to Return to their Country of Origin (B.E 2562). The Regulation was adopted as a follow up pledge from the Royal Thai Government at the UN Summit for Refugees in 2016. It approved the development of a National Screening Mechanism (NSM) for the identification and processing of people in need of international protection, and establishing a separate system of processing them. The regulation requires the creation of a Committee that is chaired by the Commissioner-General of the Royal Thai Police (Immigration Bureau) and staffed by several key ministries, with up to four spots reserved for “experts.” The main duties of the Committee include: determining the criteria for eligibility; conducting screening; cooperating and coordinating with foreign governments and international organizations; and reporting requirements and other duties as necessary.⁹⁰ Under the Regulation, applicants must submit an application for protection to a “Competent Official” who has 30 days to make a determination (a form of pre-screening).⁹¹ If the Official determines that the applicant is eligible, the asylum seeker has 60 days to submit a second application. If the Official finds the applicant ineligible, they have 15 days in which to appeal this decision.⁹² However, the mechanism does not provide a requirement for an Official to provide an explanation for their decision, therefore limiting the ability for an applicant to meaningfully contest an application.⁹³

Opinions on the proposed NSM have been mixed. UNHCR has noted that whilst the regulation introducing the NSM “*is not a conventional asylum law*” they hope the mechanism, once established, “*will lend some predictability to and increase the protection space for those who need it.*”⁹⁴ Indeed, the purpose of the NSM is not to develop a ‘fully fledged’ asylum procedure or system, but rather to provide some protections to

⁸⁹ United National Thematic Working Group on Migration, Thailand Migration Report, 2019, p 16.

⁹⁰ Section 9, Regulation on the Screening of Aliens Entering into the Kingdom and Unable to Return to their Country of Origin (B.E 2562).

⁹¹ Section 16 and 17, Regulation on the Screening of Aliens Entering into the Kingdom and Unable to Return to their Country of Origin (B.E 2562).

⁹² Section 17, Regulation on the Screening of Aliens Entering into the Kingdom and Unable to Return to their Country of Origin (B.E 2562).

⁹³ Runthong, W., ‘Thailand’s National Screening Mechanism: Key Issues’, OpinioJuris, International Commission of Jurists, 28 January, 2020, available at: <http://opiniojuris.org/2020/01/28/thailands-national-screening-mechanism-key-issues/>.

⁹⁴ UNHCR, Fact Sheet, Thailand, 31 March 2021, available at: https://www.unhcr.org/th/wp-content/uploads/sites/91/2021/04/UNHCR-Thailand-Fact-Sheet_31-March-2021.pdf.

persons who qualify for Protected Person Status under the Mechanism, albeit on a temporary basis. It is not the intention of the Government to provide pathways to regularisation or longer-term solutions within the country, indicating that the priority will be to facilitate third country resettlement. It has been noted that access to third country solutions are very limited and some stakeholders (e.g. UNHCR) have been advocating for a pathway to more permanent status.⁹⁵

The criteria for determining who is a ‘protected person’ and the rights and entitlements it will grant to such persons is not set out in the Regulation and it is therefore not possible to determine exactly who it will apply to and what status it will grant. The rules governing the NSM, including the criteria for screening and determining who is able to be granted protected status were developed by a Sub-Committee, which have been presented to the Thai Cabinet for approval. As of March 2022, these rules were still pending approval from the Cabinet.⁹⁶

However, provisions contained in the Regulation itself indicate that it may not amount to a full, human rights compliant refugee protection framework. Firstly, unfortunately, the NSM does not use the term ‘refugee’, thereby carefully avoiding any commitment to international refugee law.⁹⁷ Instead, it uses the term “protected person”, which is defined as a foreigner “who enters into or resides in the Kingdom and is unable or unwilling to return to his/her country of origin due to a reasonable ground that they would suffer danger due to persecution as determined by the Committee.” This grants the Committee the ability to decide eligibility requirements for protected person status without any requirement to comply with criteria in international refugee law. The drafting history of the Regulation indicates that the granting of special protection may be heavily influenced by “special security issues” that may damage “international relationships.”⁹⁸ Though it is too early to tell, there is some concern that this could potentially exclude persons fleeing from Myanmar, including Rohingya, Uighur and North Korean persons.⁹⁹ According to a key informant interviewed for this study, the NSM may not apply to Rohingya populations.¹⁰⁰

In terms of what status “protected person” will grant, and what rights and entitlements flow from this status, much is still unknown. However, according to the Regulation, the protected person may stay in Thailand under “special circumstances” and the Government shall “coordinate as appropriate to provide education to children under Protected Person status and healthcare in accordance with relevant laws, international obligations, cabinet resolutions and government policies.”¹⁰¹ The Regulation does not explicitly provide protected persons

⁹⁵ KII with two representatives of UNHCR Thailand, Bangkok (virtual), 23 February 2022.

⁹⁶ UN Network on Migration, International Detention Coalition, Immigration Detention and Alternatives to Detention in the Asia-Pacific Region, *Alternatives to Detention Working Group of the UN Network on Migration*, 2022, p. 19.

⁹⁷ Stover, C., ‘Thailand’s National Screening Mechanism, refugee protection and the human rights crisis in Myanmar’, 15 April 2021, School of Advanced Study, University of London, available at: <https://rli.blogs.sas.ac.uk/2021/04/15/thailands-national-screening-mechanism-refugee-protection-and-the-human-rights-crisis-in-myanmar/>.

⁹⁸ Runthong, W., ‘Thailand’s National Screening Mechanism: Key Issues’, OpinioJuris, International Commission of Jurists, 28 January, 2020, available at: <http://opiniojuris.org/2020/01/28/thailands-national-screening-mechanism-key-issues/>.

⁹⁹ Ibid.

¹⁰⁰ KII with representative of MSDHS (Anti-trafficking Department), Bangkok (virtual), 28 February 2022.

¹⁰¹ Section 25, Regulation on the Screening of Aliens Entering into the Kingdom and Unable to Return to their Country of Origin (B.E 2562).

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with the right to work or to access social protection, nor does it guarantee access to protection services. However, it has been noted that it may grant protected persons the ability to apply for a work permit.¹⁰²

The Regulation also appears to provide protections against refoulement for protected persons. According to section 25, if an Official identifies a person who has reasonable grounds for claiming “protected person” status, they will not be repatriated, except where “national security is threatened.”¹⁰³ However, this last phrase is concerning and “risks undermining the fundamental concept of protection, as in many cases, asylum seekers are fleeing persecution by their state”¹⁰⁴ and could discourage persons who are in need of protection from applying. Other practical questions have been raised including in what languages will applications be able to be received, whether applicants will have access to free legal support / representation to submit an application, whether the process will require written applications only, or will also require interviews.¹⁰⁵

According to UNHCR documentation, the Screening Committee was established in 2020, the Sub-Committee on Criteria, Procedures and Criteria in 2021 and the Sub-Committee on Screening and on Appeals in 2022.¹⁰⁶ It is understood that the RTG Cabinet signed and issued the Criteria for the NSM in October 2022, though steps have not yet been made towards implementation. Therefore, at present, urban refugee populations in Thailand continue to live in a precarious situation, without legal status.

4.2.3 Improving access to civil registration for stateless persons

The Government has made some progress in addressing statelessness since its 2016 pledge to end statelessness by 2024 as part of the international #IBelong campaign.¹⁰⁷ As part of this pledge, the Thai Government has eased restrictions in citizenship laws through amendments to the Thai Nationality Law in 2008.¹⁰⁸ Laws and policies have also been developed in order to provide a channel to provide children with a channel to obtain Thai nationality through birth registration or via enrolling in education institutions in order to obtain what is referred to as a “G Code” so they can register with the Ministry of Interior to obtain a 13 digit ID number.¹⁰⁹ While these changes, along with the development of a national civil registration procedure, have resolved statelessness for some persons residing in Thailand, the complexity of the legal process (which includes high evidentiary requirements), and limited resourcing at the district level where applications are processed, has slowed its impact.¹¹⁰ A study carried out in April 2021 ‘Invisible Lives: 48 Years Of The Situation

¹⁰² Runthong, W., ‘Thailand’s National Screening Mechanism: Key Issues’, OpinioJuris, International Commission of Jurists, 28 January, 2020, available at: <http://opiniojuris.org/2020/01/28/thailands-national-screening-mechanism-key-issues/>.

¹⁰³ Section 25, Regulation on the Screening of Aliens Entering into the Kingdom and Unable to Return to their Country of Origin (B.E 2562).

¹⁰⁴ Bangkok Post, ‘A new era for refugee protection in Thailand?’, 19 March 2020, available at: <https://www.bangkokpost.com/opinion/opinion/1881970/a-new-era-for-refugee-protection-in-thailand->.

¹⁰⁵ Ibid.

¹⁰⁶ UNHCR, Fact Sheet, Thailand, 30 September 2022. Available at: <https://reporting.unhcr.org/document/3534>.

¹⁰⁷ #IBelong campaign, UNHCR, available at: <https://www.unhcr.org/ibelong/>.

¹⁰⁸ The Borgen Project, ‘Addressing statelessness in Thailand’, 20 April 2021, available at: <https://borgenproject.org/statelessness-in-thailand/#:~:text=Since%202016%2C%20Thailand%20has%20joined,Thai%20citizenship%20in%20recent%20years>.

¹⁰⁹ Refer to Cabinet Resolution on 23 March 2020 on granting of basic health rights (Returning Rights) towards those with legal status issue, in line with the Cabinet Resolution on 20 April 2015 return the rights to specific groups that have been surveyed through the civil registration and waiting to prove their nationality and legal status which include “G Code” students.

¹¹⁰ KII with two representatives of UNHCR Thailand, Bangkok (virtual), 23 February 2022.

Of Stateless Children In Thailand (1972-2020)' found that "*lack of staff funds, unnecessarily complex procedures, [...] negative attitudes towards stateless persons and children, [...] [and] lack of knowledge of birth registration and legal status attainment process, coupled with their fear of Thai authorities*"¹¹¹ contributed to the endurance of statelessness in Thailand, in spite of positive legislative developments.

¹¹¹ UNICEF, A life that no-one sees: 48 years of stateless children in Thailand, 2021, cited in Suntivuttimetee, W. Seen Yet Invisible: Government, NGOs take steps to accelerate legal status of stateless children, Bangkok Post, 27 December 2021. Available at: <https://www.bangkokpost.com/life/social-and-lifestyle/2238275/seen-yet-still-invisible> (source of quotation).

5. Findings

5.1 Protection risks and challenges facing populations without legal status

5.1.1 Risks from police and immigration authorities

The overwhelming majority of children, adolescents and families interviewed for this case study considered risks from the police and immigration authorities to be the chief protection risks facing populations without domestic legal status in Bangkok. This is despite recent policy developments in Thailand which have aimed at ending immigration detention of children (see information box below). There was, however, disagreement amongst participants with regards to whether or not children (i.e. under 18 year olds) themselves face risks of arrest and detention if identified as being illegally resident in Thailand by the authorities.

Information box: Detention of children in Thailand

Thailand has been heralded for its progress in removing children from detention and implementing Alternatives to Detention (ATD) over the last two years. Following a pledge made by Prime Minister Prayut Chan-O-Cha in 2016¹¹² to end immigration detention of children, in January 2019, seven Ministries of the Royal Thai Government¹¹³ co-signed a MOU on the Determination of Measures and Approaches Alternative to Detention of Children in Immigration Detention Centres (MOU ATD).¹¹⁴ The MOU ATD and accompanying Standard Operating Procedures (SOPs) acknowledge that foreign children (defined as under 18 years old)¹¹⁵ should not be detained at Immigration Detention Centres except in "*necessary and unavoidable circumstances*", as a measure of last resort and for the briefest period of time possible.¹¹⁶ The MOU ATD stipulates the prioritisation of family-based care as an ATD, and that children should be transferred to 'reception centres' (either privately-run shelters or shelters run by Ministry of Social Development and Human Security (MSDHS)) as a matter of last resort and for the shortest possible duration.¹¹⁷ In making decisions about a child's placement, the countersigning ministries must always take the child's best interests and views into account, as well the child's physical and mental development.¹¹⁸

¹¹² At the Leaders' Summit on Refugees at the United Nations in New York, 2016, see: UNHCR, UNHCR welcomes Royal Thai Government's commitment to release of detained children in Thailand, available at: <https://www.unhcr.org/th/16817-unhcr-welcomes-royal-thai-governments-commitment-to-release-of-detained-children-in-thailand.html>.

¹¹³ Countersigning government agencies were: Royal Thai Police; Ministry of Social Development and Human Security; Permanent Secretary, Ministry of Foreign Affairs; Ministry of Interior; Ministry of Public Health; Ministry of Education; Ministry of Labour.

¹¹⁴ Royal Thai Government, The Memorandum of Understanding on the Determination of Measures and Approaches Alternative to Detention of Children in Immigration Detention Centers B.E. 2562 of 2018.

¹¹⁵ Article 3, Royal Thai Government, The Memorandum of Understanding on the Determination of Measures and Approaches Alternative to Detention of Children in Immigration Detention Centers B.E. 2562 of 2018.

¹¹⁶ Article 4.1, Royal Thai Government, Memorandum of Understanding on The Determination of Measures and Approaches Alternative to Detention of Children in Immigration Detention Centers B.E. 2562 of 2018.

¹¹⁷ Article 4.4, Royal Thai Government, The Memorandum of Understanding on the Determination of Measures and Approaches Alternative to Detention of Children in Immigration Detention Centers B.E. 2562 of 2018.

¹¹⁸ Article 4.5, Royal Thai Government, The Memorandum of Understanding on the Determination of Measures and Approaches Alternative to Detention of Children in Immigration Detention Centers B.E. 2562 of 2018.

Prior to the MOU, adults and children over the age of 10 could be arrested, charged and prosecuted for an immigration offence related to their irregular presence, for which they would be fined or, if they could not afford to pay the fine, imprisoned, before being transferred to the immigration detention centre. Children and families would remain in immigration detention facilities until they were deported back to their country of origin, their case was accepted for resettlement to a third country or in very limited cases, they were released on bail. Significant challenges and delays associated with each of these options resulted in many children spending months, if not years, in overcrowded detention centres designed for short-term stay.

Following the signing of an MOU on Alternatives to Detention in 2019, there should not be any children in immigration detention in Thailand. Indeed, between October 2018 and September 2021, 259 children were reported to be released from immigration detention with many referred to community-based alternatives.¹¹⁹ However, owing to the very little published information regarding the success of the MOU so far, and it is not clear how many children, if any, remain detained for immigration purposes. One interviewee reported that immigration operations continue to occur in communities and families with children, as well as unaccompanied children, are amongst those arrested and detained.¹²⁰ This is echoed by the Asia Pacific Migration Report 2022 which highlights that “children continue to be arrested and detained for immigration offences. ATD in Thailand, therefore, applies once a child is in detention, rather than preventing a child from being arrested and detained in the first place.”¹²¹

The report highlights gaps in the MOU-ATD, which are:

- First, as noted above, the MOU helps children get out of detention under the protective mechanisms but does not prevent their arrest and detention in the first place;
- Second, if mother’s wish to be released with their children, they must incur high costs to secure bail;
- Third, fathers are not usually eligible for release with the child, leading to family separation;
- Released children are liable to be re-detained once they turn 18; and,
- Finally, most concerningly, “migrant children from Cambodia, Lao PDR and Myanmar are not referred to the MOU-ATD as they are prioritised for deportation.”¹²²

In January 2022, the Parliament of Thailand adopted amendments to the Penal Code to increase the minimum age of criminal responsibility from 10 to 12.¹²³

One NGO research participant expressed the opinion that children without domestic legal status face the risk of arrest should they be identified by authorities in the workplace.¹²⁴ This view was echoed by adolescent participants from Pakistan:

¹¹⁹ UN Network on Migration, International Detention Coalition, Immigration Detention and Alternatives to Detention in the Asia-Pacific Region, *Alternatives to Detention Working Group of the UN Network on Migration*, 2022, p. 14.

¹²⁰ Key informant interview, [Interview participant details withheld], 11 March 2021.

¹²¹ UN Network on Migration, International Detention Coalition, Immigration Detention and Alternatives to Detention in the Asia-Pacific Region, *Alternatives to Detention Working Group of the UN Network on Migration*, 2022, p. 22.

¹²² UN Network on Migration, International Detention Coalition, Immigration Detention and Alternatives to Detention in the Asia-Pacific Region, *Alternatives to Detention Working Group of the UN Network on Migration*, 2022, p. 41.

¹²³ Act to Amend the Penal Code (No. 29) B.E. 2522, Section 3, which amends Section 73 of the Penal Code.

¹²⁴ Key informant interview, Non-governmental organisation.

*"when police arrest you, you go to Immigration Detention Center. The situation at the detention centre is not good. So, it's not safe for refugees without documents."*¹²⁵

In response to follow up questions, however, the same group of adolescents were not sure whether children would be arrested themselves, but were certain they would be required to accompany their adult relatives to detention centres if they were in the care of the adult when arrested.¹²⁶ Adolescents from Afghanistan expressed a similar level of anxiety at the prospect of being apprehended by the authorities, and although they had not been arrested themselves, their school classmates (from Cambodia and Vietnam) had been arrested in front of them.

*"We have a big fear in our mind that maybe police will come and catch us. And they will send us to immigration or something like this or something worse...I think we should have some, you know, safety. Safety should be better."*¹²⁷

Cambodian adolescent participants could recount multiple instances in which they were arrested by police and required to pay a "*fine*" for failing to produce the requisite identity cards, or other documentation such as drivers licence or licence plates for their motorcycle. The participants implied these payments were more akin to bribes rather than fines, noting that "*once they arrest us, they make money out of us as they always come up with all kinds of different excuses to make us pay.*"¹²⁸ The fines tend to around 500-1000 baht and adolescents explained that they will be taken to the police station if they are unable to pay. The best solution, according to the adolescents, is to pay whatever money they have with them (i.e. 400 baht) to the officer, rather than call their parents or employer, as this will always result in a greater fine. Some of the adolescents recounted instances in which they were held in custody at the police station until their employer or relative turned up at the station to pay for their release.¹²⁹ Adolescents reported being stopped most frequently by "*motorcycle police*", who, according to the adolescents, wait for them at the traffic lights, junctions and alley ways, and conduct raids at their workplace and rental accommodation.¹³⁰ One child reported that police routinely appear at his place of residence but he manages to escape every time after being alerted by his landlord to their presence.¹³¹

A view was put forwards by a parent of Myanmar adolescents that Burmese children and those with darker skin, such as children from India, Pakistan or from countries in Africa, are more likely to be arrested than other children without status, which would signal a racial bias or discrimination on behalf of the police / immigration authorities.¹³² The parents in that focus group had differing feelings, however, about the likelihood of children being arrested. Whilst one held the view that police have no interest in arresting children in the community

¹²⁵ FGD with refugee / asylum seeking adolescents from Pakistan (3 males and 1 female).

¹²⁶ FGD with refugee / asylum seeking adolescents from Pakistan (3 males and 1 female).

¹²⁷ FGD with refugee / asylum seeking adolescents from Afghanistan (3, males and 2 females).

¹²⁸ FGD with Cambodian undocumented adolescents (2 males and 3 females) aged 13-16 years, Khlong Neung, Pathumthani.

¹²⁹ FGD with Cambodian undocumented adolescents (2 males and 3 females) aged 13-16 years, Khlong Neung, Pathumthani.

¹³⁰ FGD with Cambodian undocumented adolescents (2 males and 3 females) aged 13-16 years, Khlong Neung, Pathumthani.

¹³¹ FGD with Cambodian undocumented adolescents (2 males and 3 females) aged 13-16 years, Khlong Neung, Pathumthani.

¹³² FGD with parents and caregivers of undocumented adolescents from Myanmar (2 males and 3 females), Klong Tan, Bangkok).

and had never heard of this before, another had heard of children from Myanmar being arrested with their parents but never alone, and another considered that older adolescent children were at risk of interrogation by police on account of their older appearance.¹³³ One adolescent from Myanmar spoke of police raids targeting ‘illegal migrants’ at her place of residence, explaining that she has to hide in the toilets in these instances.¹³⁴ Another highlighted that he bypasses certain areas in which police are present because he doesn’t have the requisite documents.¹³⁵

One group of adolescents from Myanmar considered themselves to be safe from arrest on account of their ‘migrant ID card’, though they commented “*But if we [didn’t] have that card, the police will definitely arrest us... Police can arrest youth as well. If they check you and find if you don’t have any ID.*”¹³⁶ It is not clear what documents the participant is referring to here to be in possession of (but is likely to be a card showing they are a dependent of registered migrant worker or they have a migrant worker card themselves (for age 15+).

While the MOU has likely led to the release of many children from immigration detention (though data are not available to confirm this), reports published prior to the MOU detail serious rights abuses and harsh conditions in immigration detention in Thailand. Data obtained by Human Rights Watch in 2014 revealed, at that time, approximately 4,000 children per year were detained for short periods of time (days or weeks) pending deportation and approximately 100 children per year were detained on a long-term basis (longer than one month).¹³⁷ They also calculated the average period length of stay in an immigration detention centre for refugees and asylum seekers, between 2008-2012, to be 298 days, though there were documented instances of refugees who had been detained for 4-5 years.¹³⁸ Conditions in detention centres have been described as heavily overcrowded and inhumane and lacking “sufficient space for detainees to lie down and sleep.”¹³⁹ Tragically, a 16-year-old Rohingya child died after three years in immigration detention.¹⁴⁰ Over half of the children in a small study exploring the experiences of street-involved children on the Thai-Cambodian border had been arrested and detained at the border, where they were held against their will for varying periods of time (up to one year), before being deported back to Cambodia.¹⁴¹ A larger proportion of girls (31 per cent) than boys (19 per cent) had been detained, though boys were more likely to have experienced physical violence from police.¹⁴² It is these factors and poor conditions which likely explains the extent of the fear towards the immigration authorities held by the children interviewed, despite the introduction of the MOU.

¹³³ FGD with parents and caregivers of undocumented adolescents from Myanmar (2 males and 3 females), Klong Tan, Bangkok.

¹³⁴ FGD with undocumented migrant children from Myanmar, (13-18 years), updated 18 Feb 2022.

¹³⁵ FGD with undocumented migrant children from Myanmar, (13-18 years), (2 males and 3 females) Klong Tan, Bangkok.

¹³⁶ FGD with adolescents from Myanmar (2 males and 3 females) aged 17-18 years, Klong Tan, Bangkok.

¹³⁷ UNICEF Thailand, Situation Analysis on migrant and refugee children in Thailand 2018, p 21; Human Rights Watch, Two Years with No Moon: Immigration Detention of Children, September 2014.

¹³⁸ UNICEF Thailand, Situation Analysis on migrant and refugee children in Thailand 2018, p 24.

¹³⁹ IOM, Thailand Migration Report 2019, 2019, p 111; Human Rights Watch, Two Years with No Moon: Immigration Detention of Children, September 2014.

¹⁴⁰ UNICEF Thailand, Situation Analysis on migrant and refugee children in Thailand, 2018, iv.

¹⁴¹ UNICEF, Study on the Impact of Migration on Children in the Capital and Target Provinces, Cambodia, (Executive Summary), May 2017; UNICEF, Study on the Impact of Migration on Children in the Capital and Target Provinces, Cambodia, May 2017.

¹⁴² *Ibid.*

5.1.2 Exploitative labour practices

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 (see section 5.3, below). Owing to their lack of status and consequent lack of avenues for legal employment, migrant children are more likely to seek work in informal sectors, where work arrangements have a tendency to become exploitative. Once in exploitative employment, barriers to reporting were found to leave limited options to children without status to leave and seek recourse (see section 3.4, below).

The UN Committee on the rights of the Child (CRC Committee) has expressed concern about insufficient legislative protection in Thailand for migrant children under the age of 15 working in informal sectors such as agriculture, tourism, begging and domestic service.¹⁴³ A study carried out in 2015 on the use of migrant children in the fish processing industries found only 10 per cent of children had signed a contract of employment and children worked very long hours, averaging at 9 ½ hours a day, 6 days a week.¹⁴⁴ Another study focussed on the shrimp and seafood supply chain, found only 3.2 per cent of children had a written contract of employment.¹⁴⁵ Migrant children worked an average of 49.6 hours a week, 6 hours longer than Thai children in the study, and higher than the legally permitted 48 hours per week.¹⁴⁶ Children working in the shrimp industry were also significantly more likely to be exposed to occupational hazards and to incur injuries at work than children working in other industries.¹⁴⁷ However, further research carried out by International Labour Organisation (ILO) in 2018 indicated that improvements had been made in the seafood processing industry (see 5.3, below).¹⁴⁸

Adolescents interviewed for the case study recounted stories of acquaintances who had experienced exploitative behaviours at the hands of employers, such as withholding of wages.¹⁴⁹ Employers who are aware of the child's irregular status reportedly use this to their advantage to pressure the child to work without pay. In response to hearing a fictional story about a child who was trafficked and exploited by her employer, one Cambodian adolescent shared his similar experience: he borrowed 13,000 baht from his employer to fund the journey to Thailand and cross the border, and had to work for free until he had paid off the debt. When asked what the fictional child in the story could do in this situation, the same adolescent stated "*It's likely no-one can help her.*"¹⁵⁰

¹⁴³ CRC Committee, Consideration of reports submitted by States parties under article 44 of the Convention, Committee on the Rights of the Child Fifty-ninth session 16 January – 3 February 2012, CRC/C/THA/CO/3-4, 17 February 2012, para 74.

¹⁴⁴ Srakaew, S. et al. A Report on Migrant Children & Child Labourers in Thailand's Fishing and Seafood Processing Industry, 2015, Bangkok: Labour Rights Promotion Network Foundation (LPN) and Terre des Hommes Germany, p 45.

¹⁴⁵ ILO, Migrant and Child Labor in Thailand's Shrimp and Other Seafood Supply Chain, 2015, p 17.

¹⁴⁶ *Ibid.*

¹⁴⁷ *Ibid.* pp 16, 17.

¹⁴⁸ Anderson, K. 'Assessment of Child Protection Services for Migrant Children in Thailand', Coram International, UNICEF, December 2019, <https://www.unicef.org/thailand/media/8711/file/Assessment%20of%20Child%20Protection%20Services%20for%20Migrant%20Children%20in%20Thailand.pdf>, p. 42.

¹⁴⁹ FGD with refugee / asylum seeking adolescents from Afghanistan (3, males and 2 females).

¹⁵⁰ FGD with adolescent migrants from Cambodia adolescents between 17 and 18 years old, (4 males, 1 female), Konlg Neung, Pathumthan.

“I have met a lot of people. They have worked for a restaurant for like 2 or 3 months, one of the restaurants told him “I will not give you your money, your salary.” Then we couldn’t go to the police and report this case because they are here illegally. So, the restaurant owner knew that and they couldn’t do anything. If they have documents we can freely contact police and report this problem and then police came to talk with that restaurant owner. But because they’re here illegally, they couldn’t do that.”¹⁵¹

A representative interviewed from the Anti-Trafficking Department of the Ministry of Social Development and Human Security (MHDHS) commented on the impact of Covid-19 on child trafficking trends in Thailand. According to the participant, there has been an increase in Thai as opposed to migrant victims of trafficking, in light of border closures restricting entry to foreigners. Restrictions on movement have led to an increase in online sexual abuse and exploitation, particularly amongst Thai victims, but there remains a tendency for large groups of working age boys (aged 15-18 years old) from Myanmar to become victims of labour trafficking.¹⁵² This view was echoed by child participants in focus group discussions. One Cambodian group of adolescents considered that *“Burmese workers have it worse than us Khmer workers”* on the basis that *“their employer intimidates them so much in order to keep them around and tell them that they will get arrested by the police if they leave for a new employer... [they are] not able to leave and seek a new employer unlike us Khmer... We can communicate and negotiate, but they are scared.”*¹⁵³

5.1.3 Violence, abuse and neglect

Previous evidence suggests migrant children without domestic legal status in Thailand face risks of violence. In a small (pre-Covid) study examining the situation of street-involved children in Poipet (on the Thai-Cambodian border), over half (66 per cent) of respondents reported personally experiencing physical violence on the street and almost one third (31 per cent) reported to have been hurt or threatened with a weapon (36 per cent of the male sample and 24 per cent of the female sample).¹⁵⁴ A yet larger proportion (70 per cent) of respondents had witnessed another child being subject to physical violence (*“being beaten, slapped, choked, or burnt”*) on the street, with 21 per cent of those reporting witnessing such violence daily.¹⁵⁵ Experience of witnessing violence was more prevalent amongst males than females.¹⁵⁶

Evidence suggests that the Covid-19 pandemic has triggered an increase in xenophobic and discriminatory attitudes towards migrants, particularly refugees, in multiple ASEAN States, including Thailand, with fears such discriminatory attitudes may translate to real world violence.¹⁵⁷ It was reported that calls to the domestic violence hotline significantly increased after Covid-19, suggesting the pandemic exacerbated violence in the

¹⁵¹ FGD with refugee / asylum seeking adolescents from Afghanistan (3, males and 2 females).

¹⁵² Anti-trafficking department of Ministry of Social Development and Human Security (MHDHS).

¹⁵³ FGD with adolescent migrants from Cambodia adolescents between 17 and 18 years old, (4 males, 1 female), Khlong Neung, Pathumthan.

¹⁵⁴ Davis, J, ON THE BORDER: Exploring the Perspectives & Experiences of Street-Involved Children on the Thai-Cambodian Border, May 2017, p 24.

¹⁵⁵ ibid. p 23-24. .

¹⁵⁶ Ibid, p.24.

¹⁵⁷ See, for example: Thepgumpanat, P. et al, Anti-Myanmar hate speech flares in Thailand over virus, 24 December 2020, available at: <https://www.reuters.com/article/uk-health-coronavirus-thailand-myanmar-idUKKBN28Y0KQ>; ASEAN Today, ‘Migrants in Thailand face racism amongst new coronavirus outbreak’, January 2 2021, available at: <https://www.aseantoday.com/2021/01/migrants-in-thailand-face-racism-amid-new-coronavirus-outbreak/>.

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home.¹⁵⁸ In a rapid assessment on the impact of Covid-19 on urban refugees and asylum seekers carried out by UNHCR Thailand in 2020, 12 per cent of the respondents reported that a member of their household had experienced violence/abuse since the onset of the pandemic.¹⁵⁹ The majority of these experiences of violence/abuse were reported to take place in the home (76 per cent). When asked whether they considered they or their communities faced an increased risk of violence since the outbreak of Covid-19, 56 per cent of respondents considered it was the same as in pre-Covid-19 times and 27 per cent considered it had increased.¹⁶⁰ A further 6 per cent of respondents considered it had decreased and 11 per cent did not respond to the question.¹⁶¹

Research participants were not asked directly about their personal experiences of physical or sexual violence or neglect, in order to mitigate against the risk of re-traumatisation. However, adolescents were asked whether they felt that undocumented children experience violence and neglect more generally, and were presented with fictional scenarios involving children who had been trafficked, exploited and neglected at the hands of different actors. Adolescents did not commonly share experiences of sexual abuse or violence and were apprehensive to speak about the issue during FGDs, even in relation to the fictional scenarios, on account of socio-cultural norms, which may stigmatise experiences of sexual violence and exploitation. One Cambodian child shared that his sister was raped by two Thai men when she was 14 years old, commenting that the perpetrators did not get caught because they had "*big connection with powerful people.*"¹⁶² A participant from a non-governmental organisation highlighted that sexual abuse cases they encounter amongst migrant children tend to be perpetrated by family members; he recounted the most recent case of a Cambodian child, who has now returned to Cambodia, after being sexually abused by her stepfather in Bangkok.¹⁶³ Anecdotal evidence from interviews suggests children without domestic legal status may be at heightened risk of neglect, with one interviewee reporting that children as young as three years old may be left alone in the house without adult supervision when the parents go to work, and that some parents bring their children to beg or sell flowers on the street, rather than attending school.¹⁶⁴

5.2 Wellbeing, security and identity among children without legal status

5.2.1 Identity and belonging

Participants interviewed for the case study were asked whether they considered the lack of documentation and / or legal status to impact upon children's identity, sense of 'self', or belonging. Responses from adolescents were mixed but the majority considered that they did not belong in Bangkok and they yearned for the familiarity of home and their friends and relatives. Whilst these feelings may be on account of being a migrant generally (rather than the lack of status), some of the responses indicated that their ability to establish

¹⁵⁸ UN Women, 'What happened after Covid-19 hit: Thailand', 16 November 2020, available at:

<https://www.unwomen.org/en/news/stories/2020/11/what-happened-after-covid-19-hit-thailand>.

¹⁵⁹ 87% reported that they / members of their household had not experienced violence/abuse since the outbreak of the pandemic. 1% did not respond to the question.

¹⁶⁰ UNHCR, COVID-19 Impact Assessment: Urban Refugees and Asylum-seekers in Thailand. Multi-sector Rapid Needs Assessment and Post-distribution Monitoring of Cash Support, July 2020, UNHCR Multi-County Office, Thailand, p 19.

¹⁶¹ UNHCR, COVID-19 Impact Assessment: Urban Refugees and Asylum-seekers in Thailand. Multi-sector Rapid Needs Assessment and Post-distribution Monitoring of Cash Support, July 2020, UNHCR Multi-County Office, Thailand, p 19.

¹⁶² FGD with adolescent migrants from Cambodia adolescents between 17 and 18 years old, (4 males, 1 female), Khlong Neung, Pathumthani.

¹⁶³ KII with NGO.

¹⁶⁴ KII with NGO.

and maintain a strong sense of identity had been impacted by living a precarious and ‘illegal’ existence, made worse by experiences of discrimination, barriers to education and difficulties speaking the Thai language. Adolescent’s responses commonly contained references to feeling like an “outsider” living in someone else’s country, and cited differences in culture and language as contributing to their feelings of exclusion. Many, particularly those from Myanmar, expressed a desire to return to their home country one day.

“I don’t feel [that I belong in Bangkok]. I felt that I’m another’s country person looking for work here.”¹⁶⁵

“When I ask my children, they said they want to go back to Myanmar. Even though the living standard is better than our place in Myanmar, they want to go back and play with their friends. If the children [were] not born here, their heart will be in Myanmar. They miss their birth places and relatives, friends.”¹⁶⁶

*“I don’t know [if I belong in Bangkok]. Since I was a kid, I’ve only encountered bad society, pressured by people, and disgusted by people. It’s ingrained in my heart. I feel that I am neither a Bangkokian nor a country boy. I’m just a normal person. And I don’t want to be a Bangkok boy or a Samut Prakan boy. **Where do you feel you ‘belong’?** I will go back to my country.”¹⁶⁷*

“I am happier in our motherland because I have more friends there.”¹⁶⁸

“Our children don’t feel like they are Thai even though they are living and attending school here... They only want to go back to Myanmar. Sometimes they ask whether they could go to school in Myanmar or not.”¹⁶⁹

Whilst it should be noted that many of these feelings may result from being a ‘foreigner’ generally rather than *solely* resulting from children’s legal status, some of the responses set out below demonstrated a clear link between participants’ feelings of exclusion and otherness and their lack of identity documentation and the consequent restrictions on movement and challenges participating in everyday life. Adolescents described the lack of identity documentation as being a source of anxiety and insecurity and one that differentiated them from their peers.

“I don’t have Thai ID. I’ve birth registration and a student card only. I feel insecure wherever I go. I’m not confident myself dealing with Thai society.”¹⁷⁰

“The children feel unsecured. The opportunity for growing up as a child is being limited.”¹⁷¹

¹⁶⁵ FGD with undocumented adolescents from Myanmar (2 males and 3 females) aged 17-18 years, Klong Tan, Bangkok.

¹⁶⁶ FGD with undocumented parents and caregivers of adolescents from Myanmar (1 male, 4 female), 18 February 2022.

¹⁶⁷ FGD with undocumented adolescents from Myanmar (2 males and 3 females) aged 17-18 years, Klong Tan, Bangkok.

¹⁶⁸ FGD with undocumented adolescents from Myanmar (2 males, 3 females), 13 February.

¹⁶⁹ FGD with parents of undocumented adolescents from Myanmar (5 males), 13 February.

¹⁷⁰ FGD with undocumented adolescents from Myanmar (2 males and 3 females) aged 17-18 years, Klong Tan, Bangkok.

¹⁷¹ FGD with undocumented parents and caregivers of adolescents from Myanmar (1 male, 4 female), 18 February 2022.

“For me, I’m not happy. It’s like having to stay in hiding. I can’t buy a motorcycle, a house, land. I can’t do anything. It’s difficult.”¹⁷²

“if the child does not have a card, their friends will make a joke or when you have shown your card to get school supplies, ... Children will be teased by their friends. Children will feel inferior. They were born in Thailand but [ask] “why do we look like we are not Thai?” When a child must be vaccinated the school has asked children to submit ID cards. Children will begin to feel that they are different and they want to have Thai ID card like their friends.”¹⁷³

Adolescents exhibited a strong awareness of their uncertain migration status in Thailand, commonly referring to themselves and other migrant communities as “illegal”, and had a firm understanding of the present and future consequences stemming from this. One child from Afghanistan considered the lack of documents to be the biggest barrier preventing him from pursuing his dreams.¹⁷⁴ Another child expressed his frustration and disappointment at being scouted and accepted by a local football academy, only to later have the offer rescinded owing to his lack of documents.¹⁷⁵ The quotation below from a parent of an adolescent from Afghanistan summarises how he perceives the challenges faced by refugee children. It should be noted that whilst he perceives that refugee children cannot study, Thailand has a progressive policy which states that every child is entitled to 15 years of free education regardless of their legal status or nationality. The barriers must therefore be due to other factors rather than law and policy – this is explored in greater detail in 5.3.1 below.

“The main problem of refugees in Bangkok is the lack of identity. If you don’t have identity, you cannot work. You cannot study. You cannot have, like, you cannot join any activity program. You cannot do what you like to do. There are many talents in sports, in different activities but they cannot join because they don’t have proper identity documents. This is the problem.”¹⁷⁶

There were some adolescents who expressed positive feelings towards living in Thailand, citing economic opportunities, a good standard of living, higher wages and access to education, as well as friends at work and school and teachers as reasons that made them happy with their lives in Bangkok.¹⁷⁷ In general, and unsurprisingly, it tended to be the adolescents who had been born in Thailand or had been living here for many years who expressed positive feelings towards living in Bangkok, citing factors such as speaking fluent Thai and having Thai friends as contributing to these attitudes.

5.2.2 Safety and security

Beyond the impact on adolescent’s identity and feelings of belonging, a lack of status was linked to a more concrete fear for adolescent’s safety. Children and families routinely commented on the dangers of living in Bangkok without status, and considered that children should remain within their diaspora communities in

¹⁷² FGD with undocumented adolescents from Myanmar (2 males and 3 females) aged 17-18 years, Klong Tan, Bangkok.

¹⁷³ Mahamek shelter.

¹⁷⁴ FGD with refugee / asylum seeking adolescents from Afghanistan (3, males and 2 females).

¹⁷⁵ FGD with refugee / asylum seeking adolescents from Afghanistan (3, males and 2 females).

¹⁷⁶ FGD with parents of refugee / asylum seeking adolescents from Afghanistan (4 males).

¹⁷⁷ FGD with undocumented adolescents from Myanmar (2 males and 3 females) aged 17-18 years, Klong Tan, Bangkok.

order to keep safe. As mentioned in 5.1.1, participants considered police and immigration authorities to be the main source of danger, generating a considerable amount of fear amongst the children and families.

“We have to worry about them every day because it’s not safe outside of the community.”¹⁷⁸

“I think it’s not safe because we are illegal here. So, whenever the police arrest us... They will not forgive us. They will take us and they will capture us.”¹⁷⁹

Parents and carers expressed significant concern about their children coming in contact with the authorities, particularly their older adolescent children (i.e. 17 year olds), who are more likely to be wrongly identified as an adult on account of their stature and height.¹⁸⁰ One parent from the Vietnamese group recounted an instance in which she was arrested with her husband and one year old child, before being sent to immigration detention in Don Muang. She and her child were released but her husband remained in detention for two months before securing release with the help of a non-governmental organisation.¹⁸¹

5.2.3 Wellbeing and happiness

The constant fear of arrest and uncertainty for the future was considered to be negatively impacting on the wellbeing and mental health of the adolescents and families interviewed for the research. The participants used strong and emotive language to describe the extent of the fear they experience, with some adolescents from Myanmar describing the “despair” they feel due to not belonging in Bangkok, and others expressing that they wouldn’t “dare” to go outside due to being afraid.¹⁸²

“We’re not considered as a resident, as a legal refugee, legal migrant or anything. So, it makes a mental problem and challenge for us. It makes us fear inside. In our mind: okay, what will happen next.”¹⁸³

“I get so scared of the police that my hairs just stand up!”¹⁸⁴

To mitigate against the risk of crossing paths with police, children and adolescents tend to stay at home where possible and avoid unnecessary journeys. Multiple participants implied this impacted negatively on their wellbeing and happiness. One group of adolescents from Cambodia explained whenever they encounter periods of time without employment (i.e. between contracts), they generally stay at home to avoid the risk of being confronted with police. In one adolescent’s words:

“we cannot really go out or do anything for fun since we might get caught having no documents. Therefore, we are just stuck at home ... I feel bored, depressed and worried.”¹⁸⁵

¹⁷⁸ FGD with parents of undocumented adolescents from Myanmar (5 males), 13 February.

¹⁷⁹ FGD with refugee / asylum seeking parents / carers from Afghanistan (4 males).

¹⁸⁰ FGD with parents and caregivers of undocumented adolescents from Myanmar (2 males and 3 females), Klong Tan, Bangkok).

¹⁸¹ FGD with undocumented parents of adolescents from Viet Nam.

¹⁸² FGD with undocumented migrant children from Myanmar, (13-18 years), updated 18 Feb 2022.

¹⁸³ FGD with refugee / asylum seeking parents / carers from Afghanistan (4 males).

¹⁸⁴ FGD with undocumented Cambodian parents between 24 and 44 years old (5 female) Khlong Neung, Pathumthani.

¹⁸⁵ FGD with adolescent migrants from Cambodia adolescents between 17 and 18 years old, (4 males, 1 female), Konlg Neung, Pathumthan.

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Parents were well aware of the ways in which these limitations on movement have impacted upon their children's happiness, and indicated feelings of guilt and disappointment at having to repeatedly deny their children's wishes.

*"Sometimes, my children say to me 'Father, go to outside park'. I say 'No go park. Problems. Police has. No have visa'. Too much problem. My children are not happy here. Every time, no park, no going outside. Every time I stay at home. Too many problems. Every refugee has this problem same as me."*¹⁸⁶

"They don't want to go where they want. They must follow their parent's instruction all the time or go with the parent all the time.

*My daughter would like to visit Chiangmai so much. But without an ID how safely she can go? It is impacting her wishes and happiness.*¹⁸⁷

*"They seem like they are not happy here because they can't go anywhere."*¹⁸⁸

*"The opportunity for growing up as a child is being limited."*¹⁸⁹

Participants were not asked directly about the type or living standards of the accommodation in which they reside but some participants voluntarily offered this information, particularly relating to the lack of space and cramped nature of the accommodation, and lack of air conditioning. This, coupled with the restrictions on movement described above, generates feelings of claustrophobia for children, which further impacts negatively upon their mental health. Covid-19-related movement restrictions appear to have compounded these feelings in recent times.

*"I do not like being trapped in a room with four walls but it's difficult without documents."*¹⁹⁰

*"It's very difficult for us because I am a kid. I have a brother. I have to stay with him but sometimes there is no game for me. There is nothing for me to make me happy. So, sometimes it affects us. Maybe, not mentally. It doesn't make us crazy but it makes us kind of very sad. Actually, I was very sad. I was saying to myself "Oh my god. My parents could play when they were kids. And now I cannot play because of corona." I'm like: "What is this life?"*¹⁹¹

*"Of course, it has a very bad impact on our children mentally... So, mentally, yes they're not safe. Mentally, they're worried. We're all living in one room. There's five of us in one room. So of course it's difficult in many aspects."*¹⁹²

¹⁸⁶ FGD with refugee / asylum seeking parents / carers from Afghanistan (4 males).

¹⁸⁷ FGD with parents and caregivers of undocumented adolescents from Myanmar (2 males and 3 females), Klong Tan, Bangkok).

¹⁸⁸ FGD with parents of undocumented adolescents from Myanmar (5 males), 13 February.

¹⁸⁹ S FGD with parents of undocumented adolescents from Myanmar (18 Feb).

¹⁹⁰ FGD with adolescent migrants from Cambodia adolescents between 17 and 18 years old, (4 males, 1 female), Konlg Neung, Pathumthan.

¹⁹¹ FGD with refugee / asylum seeking adolescents from Afghanistan (3, males and 2 females).

¹⁹² FGD with refugee / asylum seeking parents / carers from Afghanistan (4 males).

5.2.4 Xenophobia and discrimination

When asked if they had ever experienced xenophobia and discrimination whilst living in Bangkok, responses were mixed. There was a perception amongst many participants that the majority of Thai people tend to be welcoming and kind towards foreigners, but there are pockets of society that hold intolerant attitudes.

“Is Bangkok a welcoming place for the children and family? Well, if you mean in humanitarian terms, human rights: yes, because Thai people are very calm, very kind people. They treat people like a human being and not aliens. So, in general, it’s okay. But in part [...] if you’re not living legally, this part is not safe. If you live legally it’s fine. It’s very good for children, for elders, for everyone.”¹⁹³

“Do children and families without legal status experience xenophobia in Bangkok? We rarely meet this case. We think that they are not afraid.”¹⁹⁴

“Is Bangkok a welcoming place for children and families without documents?

I don’t know but the people here are friendly.

Do children and families without documents experience xenophobia in Bangkok?

*No, we don’t.”*¹⁹⁵

“Is Bangkok a welcoming place for you and your families since you don’t have documents? Why / why not?

Yes I feel welcome, because they love us.

Do Cambodian children and families without documents ever get treated poorly by members of the community in Bangkok? Or experience discrimination?

*NO!”*¹⁹⁶

Specific instances of xenophobia highlighted by participants tended to take place either at the workplace, at school or when accessing public services (such as at hospitals). Incidents tended to be based on the general fact of the individual not having documents / status; (in)ability to speak or read the Thai language; appearance; and harmful racist stereotypes. It should be noted that some of the experiences outlined below relate to the status of being a migrant or a foreigner in general as opposed to the specific legal status of the participants (or lack thereof), as the general public will not generally know who does and does not have documents.

¹⁹³ FGD with refugee / asylum seeking parents / carers from Afghanistan (4 males).

¹⁹⁴ Individual interview with Anti-trafficking department of MHDHS.

¹⁹⁵ FGD Iua parents G1

¹⁹⁶ FGD with 5 undocumented Cambodian adolescents, 13 – 16 years (2 male, 3 female), Khlong Neung, Pathumthani, 19 March 2022.

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However, as can be seen, some experiences of xenophobia and discrimination are directly linked to lack of documentation.

*"Is Bangkok a welcoming place for you and your families? I don't think so because when I went to the hospital, it was about 1 year ago, they just said 'Taliban' and talked about Taliban, you know? Something like that. So, I don't think it's good for us."*¹⁹⁷

*"Do children without documents experience violence, abuse or neglect in Bangkok? We don't face those kinds of violence, abuse or neglect. Just some friends look down on us for not having documents. I have one friend like this. Her father is Thai."*¹⁹⁸

*"When I first came here, people were making fun of me by calling (Thai word) which means 'black bastard'. Who called you that? My boss."*¹⁹⁹

*"Are there any differences in the way that Thai and Myanmar children (without documents) are treated at work? The other Thai girls who come and sell goods at the market laugh and mock at me when I can't speak Thai very well. And when the customers come and ask about the goods, sometimes it's hard for her to answer the customers and she can't explain. The other sales girls told her she is useless because she can't read the product's information and instruction."*²⁰⁰

Participants, mainly the parents in focus groups, recounted multiple instances of being subject to discriminatory and xenophobic attitudes when accessing general day to day services. For instance, one group of parents from Afghanistan explained they had been overcharged by one bus driver, who told them the fare was triple the real cost, and wrongly informed them that tickets are required to be purchased for 4 year old children.²⁰¹ There was a general view amongst parents that it was better to keep their immigration status a secret as far as possible because although they considered many of their Thai neighbours would not care, there was an apprehension that some may treat them badly if they found out they were working in Bangkok without a permit / passport. As was the case with wellbeing and happiness, participant's responses suggested the longer the child / family had been living in Bangkok, the lower likelihood they would experience xenophobia from the community. The following excerpt from a focus group discussion with parents from Myanmar captures some of these perspectives.

"Do migrant children and families without documents experience xenophobia in Bangkok?"

We don't exactly know about this because we've lived here for a quite a long time and know each other in the area / community. So, people really don't care about who we are. The people in the community see the children going to school with uniform every day. So, they don't care who the children are. But we have experienced [xenophobia] in other areas. [...]

¹⁹⁷ FGD with refugee / asylum seeking adolescents from Afghanistan (3, males and 2 females).

¹⁹⁸ FGD with undocumented migrant children from Myanmar, (13-18 years), updated 18 Feb 2022.

¹⁹⁹ FGD with adolescent migrants from Cambodia adolescents between 17 and 18 years old, (4 males, 1 female), Konlg Neung, Pathumthan.

²⁰⁰ FGD with undocumented migrant children from Myanmar, (13-18 years), updated 18 Feb 2022.

²⁰¹ FGD with refugee / asylum seeking parents / carers from Afghanistan (4 males).

Who are the people that hold xenophobic views?

Some Thai people, especially those who providing a service at banks or offices. When they know that we are Burmese, some service provider staff immediately shout at us. For example, I had an experience at a bank while asking to open a bank account, without further inquiring, the staff shouted at me: "Burmese cannot open a bank account here". I don't mean that all [Thai people] treat us like this. There are many who are treating us like humans or Thai.

Don't talk about how the Thai people are treating us, even the Burmese embassy treat us like aliens. They also sometimes shout at us.

Why do you think they hold xenophobic views towards people without documents?

Because we are not Thai.

Because we are from Myanmar. I am always facing difficulties with telling others that I came from Myanmar. Especially to the Thais. I took a taxi one day, and the driver asked me where I came from. When I replied that I am from Myanmar, the driver suddenly asked me if I have a passport and legally stay in Thailand. Suddenly, I felt so angry, and asked him back, "Why do you think I don't have a passport and look down at Burmese people?" Then the driver kept quiet. Because we come from a poor country (similar to Laotians and Cambodians).²⁰²

News reports have documented anti-migrant sentiment fuelled by hate speech and rumours circulating in Thailand, particularly on social media, blaming migrants for importing and spreading Covid-19.²⁰³ Participants interviewed for the case study commented on this. The response of one adolescent from Afghanistan in particular highlighted the extent of children's awareness of negative attitudes towards migrants and the importance of upholding a good reputation, perhaps because they fear the repercussions (whether physical or legal). As the participant explained:

"You know... the negative point if I get sick, right? If I get Covid-19, then the whole apartment block that I'm living in will realise that I have Covid-19. Then the whole condo, all the people living in the building, have to take the Covid-19 test. It will change their point, and they would say "Oh, he brings Covid-19 and he risked our lives!" and something like that. It decreases our social [standing]."²⁰⁴

"Since Covid-19 came in, there have been some problems. There is an agency that come to check ATK [Covid-19 Antigen Testing Kit]. Thai people around see us infected with Covid-19, and there is disgust. So, they said about telling the police to come and arrest us. We informed BRC [Bangkok Refugee Center] to help talk to the Thai people, after that nothing happened."²⁰⁵

²⁰² FGD with parents and caregivers of undocumented adolescents from Myanmar (2 males and 3 females), Klong Tan, Bangkok).

²⁰³ See, for example: Thepgumpanat, P. et al, Anti-Myanmar hate speech flares in Thailand over virus, 24 December 2020, available at: <https://www.reuters.com/article/uk-health-coronavirus-thailand-myanmar-idUKKBN28Y0KQ>.

²⁰⁴ FGD with refugee / asylum seeking adolescents from Afghanistan (3, males and 2 females).

²⁰⁵ FGD with parents of adolescents from Viet Nam (2 males, 3 females).

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Intolerant attitudes towards foreigners were present in Thailand prior to the outbreak of Covid-19. According to the 2019 Gallup 'Acceptability Index', which measures global attitudes towards migrants, Thailand was 9th on the list of least-accepting countries for migrants in the world.²⁰⁶ In that survey 77 per cent of respondents considered crime rates to have increased due to migration; 58 per cent perceived migrant workers to threaten their culture and heritage; 60 per cent considered migrants to have a poor work ethic and perceived them as untrustworthy.²⁰⁷ A survey carried out in 2017 revealed only 17 per cent of children surveyed had migrant friends, 33 per cent of parents agreed that migrant children should have the same rights as Thai children, and nearly half of surveyed parents were "*unsure of whether they would be in favour of their children playing with another child from a migrant family.*"²⁰⁸

Migrant children and their families may also experience community violence, which is sometimes motivated by xenophobic and discriminatory attitudes held by non-migrants in host communities. Anecdotal reports suggest that migrants living in Bangkok, particularly those living in unsafe locations, are at heightened risk of experiencing community violence, which may be linked to discriminatory attitudes held by Thai neighbours towards the migrant community.²⁰⁹

5.3 Access to basic services and support systems for children without status

Access to basic services, including education and healthcare are not only crucial to the health, development and wellbeing of migrant children, they can also help to create a sense of belonging, and provide a key pathway to protection services.

5.3.1 Access to education

Thailand has a progressive policy which states that every child is entitled to 15 years of free education regardless of their legal status or nationality.²¹⁰

This was confirmed by a representative of the Ministry of Education who was interviewed for the study, who highlighted that the Ministry's mandate is to ensure the right for all children to access an education is realised. The representative outlined four areas in which the Ministry works to help children realise their rights in school, which are: The right to survival, through the provision of school lunch and school milk, The right to be protected, through issuing the "G-code" [to stateless children which provides them with an avenue to obtain a 13-digit Thai identification number]; The right to development, through the provision of free education for

²⁰⁶ Esipova, N., Ray, J. and Pugliese, A. 'World Grows Less Accepting of Migrants', Gallup, 23 September 2020, available at: <https://news.gallup.com/poll/320678/world-grows-less-accepting-migrants.aspx>.

²⁰⁷ TRIANGLE in ASEAN programme (ILO) and Safe and Fair programme (ILO and UN Women), Public Attitudes towards migrant workers in Japan, Malaysia, Singapore and Thailand, 2019.

²⁰⁸ Ipsos Public Affairs, Baseline Survey 2: parents of 0-18 years old, 2017, referenced in UNICEF Thailand, Situation Analysis on migrant and refugee children in Thailand, 2018, p 32.

²⁰⁹ Anderson, K. 'Assessment of Child Protection Services for Migrant Children in Thailand', Coram International, UNICEF, December 2019, <https://www.unicef.org/thailand/media/8711/file/Assessment%20of%20Child%20Protection%20Services%20for%20Migrant%20Children%20in%20Thailand.pdf>, p. 40-41.

²¹⁰ As per the 1999 Education for All Policy and 2005 Cabinet Resolution on Education for Unregistered Persons.

15 years, equal to Thai children; and The right to participate in education, through guaranteeing children without legal status have the same rights as Thai children through sports and other extracurricular activities.²¹¹

Despite this, it is estimated that approximately half of migrant children are out of school.²¹² Previous studies have identified a number of practical barriers that prevent migrant children from accessing schools despite the promising policy environment. The barriers include language / communication challenges; high rates of absenteeism and drop-out; and expectations of schools to demonstrate academic achievement, as well as demand-side barriers including lack of awareness amongst of migrant families of the schools available to them and attitudes of parents towards education.²¹³

Interviews for the case study broadly confirmed the findings from previous studies. Participants appeared to have differing perceptions of whether or not children without documents could attend school. Parents from Cambodia explained that children born in Cambodia wishing to enrol in school without documents must have a 'co-signature' from a Thai person, who must be able to present the 'house registration book and Thai ID card.'²¹⁴ Lao parents similarly considered that undocumented children require a Thai 'guarantor' or someone to verify them entering school and continuing their education. Cambodian parents also noted that the birth certificate needs to be translated from Khmer, but they were not aware how to do this.²¹⁵ Adolescents from Afghanistan described the process of accessing education for refugees as challenging, though most if not all were attending school. Some were under the impression that refugees under the age of 18 could study in Thai schools for only 4 or 5 months before having to find a new school, owing to the lack of documents.²¹⁶ Others considered that only a specific selection of schools in Bangkok would accept children without documents,²¹⁷ despite the Education for All policy. A representative from the Ministry of Education confirmed that "*all who live on Thai soil, regardless of race, religion, or ethnicity will be entitled to access education equally to all Thais*"²¹⁸ but explained that the challenge is ensuring all school personnel around the country are aware of this policy and don't fear legal repercussions of allowing foreign children to enrol. Another participant commented that there is an apprehension on behalf of schools to accept migrant students due to a perception it will lower their position on a national scoring system.²¹⁹ The Ministry of Education has a number of ongoing projects and activities to address these and other barriers, some of which are due to be piloted in Chiang Mai, Chiang Rai, Kanchanaburi, Bangkok, Chonburi and Tak provinces this year.

"Of course, we have [worries or fears about the future] because now we're [here] illegally. I'm now 16 years old. It's time for me to study. It's time for me to continue... what dreams I have and the passion I have for it. But there is no facility for me to do that right now, I can't follow that. So, if it continues,

²¹¹ Key informant interview with Ministry of Education Representative, 4 March 2022.

²¹² Benjamin Harkins, ed., Thailand Migration Report 2019, United Nations Thematic Working Group on Migration in Thailand (Bangkok, 2019), <https://thailand.iom.int/thailand-migration-report-2019-0>.

²¹³ UNICEF, 'Education Knows No Border', A Collection of Good Practices and Lessons Learned on Migrant Education in Thailand was commissioned as part of the "Protecting children affected by migration", 2019.

²¹⁴ FGD with undocumented Cambodian parents between 24 and 44 years old (5 female) Khlong Neung, Pathumthani.

²¹⁵ FGD with undocumented Cambodian parents between 24 and 44 years old (5 female) Khlong Neung, Pathumthani.

²¹⁶ FGD with refugee / asylum seeking adolescents from Afghanistan (3, males and 2 females).

²¹⁷ FGD with refugee / asylum seeking adolescents from Afghanistan (3, males and 2 females).

²¹⁸ KII with Ministry of Education.

²¹⁹ KII with business and human rights stakeholder.

*after four years, when I am 20 years old, I still won't have studied, I will lack education, I will lack finances... I will not be able to work or go to university because I don't have documents.*²²⁰

Language challenges being a barrier to children's access to education came out as a strong finding amongst refugee participants. Adolescents described the impossibility of studying in a language of which some do not even have basic command. Their responses, particularly the adolescents from Afghanistan, implied they understand and learn very little in class. They expressed great appreciation for their teachers, who they repeatedly described as being 'good' and 'very kind' for trying their best to help them despite the insurmountable language barriers (some teachers cannot speak English, making communication impossible). One child described how language barriers prevent him from forming and maintaining friendships with his peers (below). The Covid-19 pandemic and resultant move to online learning caused further challenges in understanding for adolescents with language difficulties.²²¹

*"Unfortunately, it's very hard for us to learn Thai language and go to school and have friendships with others because I cannot speak their language. With friends, I have I think 1 or 2 friends in the school. Their English is really not very good but they can kind of speak, like you know, introducing themselves... and play with me sometimes. I think that's enough. For me to have a friendship with them and talk to them. For now, it's enough."*²²²

*"I cannot speak Thai very well. I don't know anything. That's why this is the problem Thai schools cannot teach us Thai. It's like they will open their book and they will say "read it." But I don't even know what is that word! So that's why. We cannot even speak Thai and we're going to Thai school and we don't know anything."*²²³

Conversely, some adolescents from Myanmar had experienced poor treatment from teachers and their peers (below). Whilst this treatment may not necessarily be due to lack of status, but due to xenophobic attitudes against migrants more generally, the harmful effect on the adolescents remains the same.

"How are migrant children without documents treated at school?"

When I was in elementary school, there was a teacher, a very old woman. When I first entered school I asked "Is this [name of school] or not? She asked me what nationality I am. I replied that I am Burmese, then she called me an alien – Burmese. For example, when I enter the wrong row because I don't know, she would hit my back and said in harsh Thai word "Burmese – you have to stand over there!" Another of my friends encountered such problems at school.

*Most of my friends will not do it. They respect us. But, some of the students who don't like us will call us aliens, 'Burmese'.*²²⁴

²²⁰ FGD with refugee / asylum seeking adolescents from Afghanistan (3, males and 2 females).

²²¹ FGD with undocumented parents from Viet Nam.

²²² FGD with refugee / asylum seeking adolescents from Afghanistan (3, males and 1 females).

²²³ FGD with refugee / asylum seeking adolescents from Afghanistan (3, males and 2 females).

²²⁴ FGD with parents and caregivers of undocumented adolescents from Myanmar (2 males and 3 females), Klong Tan, Bangkok).

Adolescents also referred to financial challenges as acting as a barrier in pursuing their education, for instance not being able to afford requisite books or materials, not being able to afford access to a high-speed internet connection.²²⁵ One parent described that the school had offered to pay an allowance for the child, but the parent could not receive it as they were not able to set up a bank account owing to a lack of documents.²²⁶

The majority of the adolescent participants in the Cambodian focus groups were not attending school, as they were working instead (see 5.3.2, below), though a few responded to the question about education stating they do not attend school as they look after their siblings. Plan International in Bangkok has a center that allows older adolescent children to bring their younger sibling(s) to come and study together at the center, which circumvents the issue of childcare demands prohibiting children with younger siblings from attending school.²²⁷ Cambodian adolescents interviewed that were in school reported that they faced no discrimination from their peers or their teachers, and considered they were well liked and treated well at school.²²⁸

5.3.2 Access to employment (for 15+ year olds)

Thailand ratified the Minimum Age Convention, 1973 (Convention No. 138) in 2004, and declared upon ratification that the minimum age of employment is 15 years of age. Convention 138 stipulates that children may engage in part-time “*light work*”, between 13-15 years old. For work that is deemed hazardous (defined as “*likely to jeopardise the health, safety or moral of young persons*”), Convention No. 138 sets the minimum age of employment at 18 years old,²²⁹ except where specific criteria are met,²³⁰ in which case 16 is permitted as a minimum age.²³¹ In line with these standards, Thai domestic law sets the minimum age for employment at 15 years old, and 18 years old for hazardous work.²³²

Child migrants have been reported to migrate to Thailand from neighbouring countries to work in the fish processing or construction industries. However, the exact number of migrant children who work, and the extent to which the work carried out by children constitutes child labour, is unknown. According to one study, jobs commonly undertaken by migrant child populations have been categorised into the following four ‘levels’: “*general service jobs (e.g. domestic workers, restaurant or kitchen staff, car washing or gas station attendants); manual labor (such as in the agriculture or construction sector); factory work (e.g. textile, metals, food processing) and other ‘small item’ work (such as fish grading, working as vendors, etc.)*.”²³³ Migrant children, including many that are Cambodian, have also been reported to beg on the streets, with some reports indicating they are forced to do so by criminal gangs.²³⁴ Research carried out by ILO in 2018 indicated that

²²⁵ UNICEF Thailand, <https://www.unicef.cn/en/csr/thailand>.

²²⁶ FGD with refugee / asylum seeking parents / carers from Afghanistan (4 males).

²²⁷ Key informant interview with Plan, Bangkok.

²²⁸ FGD with Cambodian undocumented adolescents (2 males and 3 females) aged 13-16 years, Khlong Neung, Pathumthani.

²²⁹ Article 3(1).

²³⁰ where the full protection of the child’s health, safety and morals can be guaranteed, and the child has received adequate and relevant industry training,

²³¹ Article 3(3).

²³² Labour Protection Act B.E. 2541 Sect. 4 Art. 44 -52 (2nd amend in B.E. 2551).

²³³ Capaldi, M. Rethinking Independent Child Migration in Thailand: Victims of Exploitation or Competent Agents?, *Journal of Population and Social Studies*, Volume 23 Number 1 January 2015: 16 – 32.

²³⁴ Bangkok Post, Gangs run ‘hired out’ beggar kids, 28 September 2017. Available at: <https://www.bangkokpost.com/thailand/general/1332451/gangs-run-hired-out-beggar-kids>; Reuters, Former

improvements had been made in the seafood processing industry, including a notably lower prevalence rate of child labour than what has previously been reported, with less than 1 per cent of the workers surveyed found to be under the age of 18.²³⁵ However, evidence indicates that although there has been a reduction in the number of children working in official seafood processing plants, largely due to an increase in monitoring activities by labour inspectors, children could still be found in smaller informal processing plants.²³⁶

Many of the adolescents interviewed for the study were employed across a range of industries, including restaurant work,²³⁷ selling goods at the market, rowing passenger boats across the canal, assisting their parents with selling plants and flowers,²³⁸ working in the fishing port,²³⁹ at a strawberry shop,²⁴⁰ and a ginger factory. Work tends to be short-term contract work, with no security. Most participants commented on the difficulty of seeking employment without documents, explaining that employers are nervous about repercussions from the authorities. It was reported by participants that those without documents will receive a lower salary than documented workers, and there is a perception that Myanmar workers receive lower salaries than other workers. Only two adolescents offered information about their wages: one earned 100 baht per day for selling flowers, though commented he sometimes earns 1000 baht, and the other earned 400 baht a day, though quit her job to look after her siblings, which made more financial sense for the family because her mother was able to obtain double this salary.

Participants commented on the impact of Covid-19 in relation to their ability to work. They explained Covid-19 and resultant lockdowns and movement restrictions had negatively impacted upon the labour market, complaining that there is now a lack of jobs. Some adolescents explained they had been fired permanently by employers when they or their family members had been infected with the virus.

*"I was infected by Covid-19 so people avoided me. It was my saddest time. When I came back from work my mother told me I have been infected with Covid-19. So, I lost my job. My mother takes care of me. Nobody wants to talk to me even now I have recovered from it. I have to stay in the home."*²⁴¹

*"I was planning to go somewhere but because of Covid-19 I can't get a new job. The new job didn't accept me. The old job doesn't treat me as fair as when my seniors got Covid-19, my boss sent me food. But he didn't send me anything and he fired me instead."*²⁴²

Cambodian child beggar triumphs over trafficked past to help others, May 6, 2016; Friends International, The nature and scope of the foreign child beggar issue (especially as related to Cambodian child beggars) in Bangkok, Friends-International Edited by the UN Inter-Agency Project to Combat Human Trafficking in the Greater Mekong Sub-Region (UNIAP) October 2006.

²³⁵ ILO, Ship to Shore Rights: Baseline research findings on fishers and seafood workers in Thailand, International Labour Organization 2018, p 4.

²³⁶ Anderson, K. 'Assessment of Child Protection Services for Migrant Children in Thailand', Coram International, UNICEF, December 2019, <https://www.unicef.org/thailand/media/8711/file/Assessment%20of%20Child%20Protection%20Services%20for%20Migrant%20Children%20in%20Thailand.pdf>, p 42.

²³⁷ FGD with parents of undocumented Lua adolescents group 1.

²³⁸ FGD with undocumented migrant children from Myanmar, (13-18 years), updated 18 Feb 2022.

²³⁹ FGD with adolescent migrants from Cambodia adolescents between 17 and 18 years old, (4 males, 1 female), Konlg Neung, Pathumthan.

²⁴⁰ FGD with undocumented Cambodian parents between 24 and 44 years old (5 female) Khlong Neung, Pathumthani.

²⁴¹ Focus group interview, adolescents from Myanmar, 13-18 years old, (2 girls, 3 boys).

²⁴² Focus group interview, adolescents from Myanmar, 13-18 years old, (2 girls, 3 boys).

5.3.3 Access to healthcare

Registered migrants can access health care for themselves and their dependents through the Social Security Scheme or can access Migrant Health Insurance Scheme (MHIS) for a fee of THB 2,200 for adults and THB 365 for dependents per year.²⁴³ Undocumented children and families only have access to MHIS, if they can afford to pay. Challenges have previously been reported in relation to the MHIS including reports of health facilities turning migrants away for fear they will not be able to pay, and hesitance on behalf of parents to register children due to concerns of being identified as irregular by the authorities.²⁴⁴ Some stateless children can access free health care on the same basis as Thai citizens.

Similar to the case with education, participants reported barriers in accessing hospitals and other healthcare services. The main barrier appears to be due to a lack of health insurance, high costs of treatment which the families cannot afford, and language challenges. Some participants noted that the hospitals refuse to treat them and tell them to go to an 'international clinic.' Parents and adolescents mentioned several specific clinics that they feel confident would prescribe them with a limited selection of medication (i.e. painkillers, cough syrup etc.) for specific illnesses but commented that "*We have to be careful not to get sick.*"²⁴⁵ One participant commented "*we just thought it would be difficult to go to hospital without documents so we don't go to hospitals,*"²⁴⁶ evidencing a lack of awareness amongst migrant communities about the services that are and aren't available to them.

"It is hard because [healthcare services] do not want to accept us for treatment due to not having documents. I am not quite sure why, but they probably think that helping out the undocumented means that they help hide them from the authorities and help people that enter the country illegally. I cannot take time off work when I am sick. I just have to take some medication and carry on."

"Can migrant children and families without documents access healthcare services in Bangkok? Why/ why not? We have to have a social security card. If not, how can we pay for all of these costs? Some factories make this card for their workers. For a jobless person like me it would be difficult if anything happens [she continues and laughs]... if something serious happens, I would have to die by myself [...]"

*"Our kids also don't have social security cards... So if they feel sick, we go to the clinic nearby. We don't dare to take them to the hospital as we cannot afford the expensive fees."*²⁴⁷

There were also multiple reports from participants about discrimination on behalf of hospital personnel during the Covid-19 pandemic, with staff turning away migrants due to a perception that they are more likely to be infected with the virus; one of the participant's husband was turned away from a hospital despite having a broken hand due to these prejudicial assumptions.²⁴⁸

²⁴³ IOM, Thailand Migration Report, 2019, p. 105.

²⁴⁴ IOM, Thailand Migration Report, 2019, p. 105.

²⁴⁵ 1 FGD with refugee / asylum seeking parents / carers from Afghanistan (4 males).

²⁴⁶ FGD children updated 18 feb. 2022.

²⁴⁷ FGD with parents of undocumented adolescents from Myanmar (5 males), 13 February.

²⁴⁸ FGD with undocumented Cambodian parents between 24 and 44 years old (5 female) Khlong Neung, Pathumthani.

“Some people have money so they can afford it. But some people aren’t so they don’t go. Sometimes some hospital staff don’t want to accept the patient like us. During this period, the hospital staffs don’t want to accept the migrants because of Covid-19.”²⁴⁹

5.4 Access to and suitability of protection systems and services for children without legal status

As set out above (see section **Error! Reference source not found.**), previous studies have identified the lack of legal status as being not only a driver of serious protection risks for children affected by migration in Thailand; it is also a significant barrier to their ability to access child protection and other services. The case study data broadly confirmed the findings of these earlier studies, and provided further insight into the help-seeking behaviours among children without legal status in Thailand, along with the barriers they face in accessing appropriate protection systems and services.

5.4.1 Help seeking behaviours among children and families without legal status

Data collected during the FGDs with adolescents and parents without status demonstrated a tendency to seek support and solutions to protection risks within their own communities, along with a strong reluctance to report to Thai authorities, even in cases involving quite serious exploitation and abuse. Research participants tended to report that they would typically seek help in cases of violence, exploitation and abuse to family members (even where these family members lived overseas), other members of their community, in particular, community leaders, or – if necessary (and particularly where children do not speak Thai) – sympathetic Thai neighbours. Several participants also mentioned specific local NGOs or CSOs who were known to provide assistance to those without status. As an illustration of this theme, during an FGD with undocumented Cambodian migrant adolescents, participants identified the following help seeking avenues:

“Can [migrant] children without documents get help if they experience violence, abuse or neglect? Where do they go to get help?

- *I would immediately ask help from an organisation that comes to our community. A few weeks ago, one of our youth in the community was arrested by the immigration officers and, the organization able to help us.*
- *When we need help, the first people that comes to our mind is those who close to us and able to help us. The Thai people and community leaders are also able to help us. I don’t think we can ask help from the authorities.”²⁵⁰*

According to participants, children who had been trafficked into exploitative work or were otherwise being exploited have limited options for seeking support or even for leaving an exploitative situation. Lack of legal status appears to place these children in particularly difficult situations in which they feel they cannot report to authorities, including the police or immigration authorities, for fear of being arrested or due to a lack of confidence in the ability or willingness of authorities to provide help or redress. This demonstrates how lack of legal status appears to compound and reinforce the exploitation of children, particularly among children

²⁴⁹ FGD children updated 18 feb. 2022.

²⁵⁰ FGD with 4 undocumented Cambodian adolescents, 13 – 16 years (3 male, 1 female), Khlong Neung, Pathumthani, 19 March 2022.

who are unaccompanied or separated, with no or limited social support networks. For instance, in FGDs with adolescents and parents, participants were presented with a scenario involving a 15 year old child (Kosal) who was being exploited by a restaurant owner who refused to pay him after a few month's work. The child demanded his pay, but the employer pushed him against the wall with such force that he hit his head. Participants were asked what advice they would give to the child. The responses demonstrated the view among participants that the options for a child being exploited to get support are very limited:

“Could they ask anyone for help? Who?

- *The children can ask those who come to shop to contact someone in the contacts for rescue them. It will be better to ask customers who are from your own country or ethnicity or other counties.*

What barriers or challenges might the brother encounter when trying to seek help?

- *You need to keep your contact information secret and not seen by the employer. When you ask help from someone, don't let the employer know. Otherwise, the employer will give you problems.”²⁵¹*

“Who would you tell Kosal complain to?

- *I'd tell Kosal and his brother to talk and negotiate with the restaurant owner in order to get some wages back. But they do not have documents, which is difficult, and I do not know who to ask for help.*

...If you are undocumented, can you report to the police?

- *We cannot, but we might ask for a favour from a neighbor who has documents. Like me and others without documents, we are scared to do that. If Kosal has relatives here, he can tell and ask relatives.*
- *Kosal can ask help from relatives if he has some.*

How can relatives help?

- *To talk with the restaurant owner to pay him some of his wage, even if not all.*
- *... Migrants rarely help each other because of fear of being abused, and they need to ask Thai people for help. Some Thai employers threaten us in order to take advantage of us.*
- *Kosal cannot report to the police as he has no documents and that will create a problem.”²⁵²*

Adult participants (parents / carers) also mentioned that the Myanmar / Cambodian embassy may be able to help in situations of labour exploitation.

The impacts of Covid-19 appear to have placed children in more exploitative situations by limiting their ability to find work and therefore leave exploitative employers and workplaces and placing more substantial barriers on their ability to report exploitation. This was noted by a group of undocumented adolescent participants:

“Can Cambodian children without documents get help if they experience violence, abuse or neglect?

- *We do not know. Even the Burmese who want to change employers, we don't know [them]. Now there is no or little work for them, so they do not have money.*

What if you face the same abuse situation as Burmese workers? What would you do and who would you turn to for help?

- *I do not know what to do.*

²⁵¹ FGD with 5 undocumented Cambodian adolescents, 13 – 16 years (2 male, 3 female), Khlong Neung, Pathumthani, 19 March 2022.

²⁵² FGD with 5 undocumented Cambodian parents / carers, 24 – 22 years (5 females), Khlong Neung, Pathumthani, 19 March 2022.

- *There is no resolution for this problem.*
- *No solution, just do nothing and say nothing.*
- *There is nothing that I would do.*
- *I do not know who would be able to help me.*²⁵³

Perhaps given the tendency for participants to seek help from family and community members, substantial barriers were reported in help seeking in the context of family violence. It was clear from the FGDs with adolescents that, in the case of violence within the family, there are extremely limited options for help seeking, leaving children with little option but to 'put up with it.' There were indications that this could also be driven by social norms and beliefs that family matters are 'private' and that children should submit to parental authority. For instance, in a FGD with undocumented adolescents from Cambodia, participants indicated that there are few options for seeking services and support in cases of family violence:

"What if your parents beat you up, hurt you or harm you, what would you do?

- *Just let it be.*
- *I would just tell other people about the incidents.*
- *I would fight my parents back.*
- *I would do nothing because they are my parents.*

Do you know any organizations or agencies that would be able to help you?

- *No, we do not.*²⁵⁴

5.4.2 Barriers to accessing systems and services

The research demonstrated that lack of legal status had created considerable barriers to accessing protection systems and services among the migrant, refugee / asylum-seeking and unregistered stateless research participants. Overall, the absence of clear legal status and the rights and entitlements that flow from this was found to contribute to feelings of 'illegitimacy', thereby disempowering participants from seeking help from more formal service providers, such as the police force or child protection services. A culture of fear also appears to have placed participants in a very vulnerable position; fear of detection and of arrest, detention and deportation appears to have created conditions in which participants reported being extremely reluctant to seek help in cases of violence, exploitation or abuse, thereby making it very difficult for them to avoid being in exploitative situations. Other practical barriers to accessing services, including language barriers, limited knowledge of formal systems and services, and cost of services were also noted. On the other side, while Thai child protection laws apply to children with and without legal status alike, there are nonetheless limitations in the way that the system responds to the at times unique needs of children without legal status.

Feelings of 'illegitimacy' among those without legal status

The FGDs with adolescents and parents suggested that having no legal status created feelings of 'illegitimacy', that is, that participants do not really belong in Thailand and that Thai systems and services are not 'there for them', but that they are there to service the needs of citizens and others with legal status. Lacking legal status appears to have led to feelings that participants have no recourse or right of access to public systems and

²⁵³ FGD with 4 undocumented Cambodian adolescents, 13 – 16 years (3 male, 1 female), Khlong Neung, Pathumthani, 19 March 2022.

²⁵⁴ FGD with 5 undocumented Cambodian adolescents, 13 – 16 years (2 male, 3 female), Khlong Neung, Pathumthani, 19 March 2022.

services. This was observed in the FGDs, particularly in relation to the scenario-based questions. For instance, according to an FGD involving refugee adolescents from Afghanistan:

“Do the children without the documents experience violence, abuse, or neglect in Bangkok?”

- *Yes, I have met a lot of people. They have worked for a restaurant for like 2 or 3 months, but after like 2 or 3 months, they, one of the restaurant owners, told him that ‘I will not give you your money, your salary.’ Because we couldn’t go to police and report this case to police because they’re illegal. So, the restaurant owner knew that they couldn’t do anything here. Because of that, if they have documents we can freely contact with police, and they can report this problem with police and then police came to talk with that restaurant owner. But because they’re illegally so they couldn’t do that.”²⁵⁵*

In relation to the scenario of labour exploitation mentioned above, participants tended to express that the child would not feel they are entitled to report the exploitation and violence on the part of the employer to Thai authorities on account of not having legal status. An illustration of that is expressed by a group of undocumented adolescents from Myanmar, in which it was noted that the vulnerable position of the child without legal status and the comparative power of the employer (and their ability to ‘deal with’ authorities) meant that the child would have no effective recourse.

“What could the child do?”

- *She should continue her work.*
- *She should ask help to other people.*
- *Her most trusted person.*
- *Her parents.*
- *She should run away from that place as soon as possible.*
- *...Tell the police.*
- *It’s not good to tell police.*
- *...The Police will not help and that man [the employer in the scenario] can handle the police not to make trouble him. Or the police will arrest her.*
- *She is not a citizen.*
- *If she contacts the police, that man [employer] can also bribe the police to go away.*
- *Since she is not the citizen, the police will not help and will arrest her.*

...Would it be different if the child in the story had legal status - if the child was Thai?

- *If they will become the same as nationals, Thai...*
- *They will be the same nationals so it’s easy.*
- *She can ask for help easily.*
- *The conditions will be totally changed as she could behave as a Thai child. Like example, if that man knows she is Thai, he will not do bad things like this. Everything will be easy and she could ask any help from anyone, it will not difficult like it is for Myanmar people to ask for help.”*

In addition to feelings of ‘illegitimacy,’ there appears to be a general lack of confidence in Thai authorities and a belief that they will not respond to the needs of those without legal status, which is compounded by fear surrounding the lack of legal status (see below). This is a belief that may not be unfounded: previous research

²⁵⁵ FGD with 4 adolescent refugees / asylum-seekers from Afghanistan (3 male, 1 female), Bangkok 23 February 2022.

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carried out in Thailand has found that there is a general lack of understanding or confusion on behalf of service providers as to the eligibility of migrant children to access services or receive protection benefits, including for instance, a perception that long-term shelters are unable to accept foreign children, despite the fact that the child protection legislation is inclusive of children without legal status. Though it is unclear whether this results from a lack of knowledge or understanding of the law, budgetary factors or individual shelter rules.²⁵⁶

Participants tended to report feeling more at ease and empowered to raise concerns of violence occurring in schools with teachers. In response to a scenario involving bullying of a child without status in school, Cambodian and Myanmar parents tended to report that they would feel comfortable raising this with their child's teacher, though language barriers were mentioned as being a barrier to reporting. However, in the groups involving Vietnamese refugee / asylum-seeking parents and carers, the view was expressed that they would not feel empowered to discuss the matter with the child's teacher owing to feelings of not having legitimacy to raise challenges:

- “- Right now, we don't have any cards. If we talk, they might not listen to us. We have to find an organisation that can communicate with the teachers to improve the situation.*
- I don't dare to talk to the teacher because I don't have the right documents.*
- Ask for an agency that can help us to talk with the school.”²⁵⁷*

Creation of climate of fear and exclusion

Lacking legal status not only creates feelings of illegitimacy, disempowering children and families from attempting to access systems and services; without legal status, participants expressed feelings of fear surrounding their situation and in particular, the fear of arrest by police and immigration authorities, as explored above (see section 3.3). This climate of fear and exclusion appears to impact heavily on participants' help seeking behaviours. This finding is consistent with previous research carried out across four locations in Thailand which found that *“accessing child protection services requires extensive contact with the criminal justice system, which may serve as a deterrent to those who are undocumented and face the possibility of detention and deportation.”*²⁵⁸ Another report noted that uncertainty and fear of arrest, exacerbated by circulating rumours amongst migrant communities, discourages families from sending their children to school and accessing services.²⁵⁹

Fear of reporting was mentioned by key informants as a substantial barrier, for instance, according to a representative of UNHCR: *“There are cases of detention or issues like domestic violence, any sort of conflict, but they [persons without legal status] have a fear of reporting to the police. This causes problems and the issues continue without anyone knowing. What we do know – if the issue is major and they need support, we*

²⁵⁶ Anderson, K. 'Assessment of Child Protection Services for Migrant Children in Thailand', Coram International, UNICEF, December 2019, <https://www.unicef.org/thailand/media/8711/file/Assessment%20of%20Child%20Protection%20Services%20for%20Migrant%20Children%20in%20Thailand.pdf>, p 51.

²⁵⁷ FGD with 5 refugee / asylum-seeking parents / carers from Viet Nam (2 male, 3 female), Bangkok, 19 February 2022.

²⁵⁸ International Organization for Migration et al., Thailand Migration Report, United Nations Thematic Working Group on Migration in Thailand, IOM et al., Thailand, p. 109.

²⁵⁹ UNICEF Thailand, Situation Analysis on Migrant and Refugee Children in Thailand, 2018, iii.

help them to go to police but this is not common as there is a fear of being arrested due to their status. So domestic violence becomes more of an issue – they don't come forward for fear of arrest.”²⁶⁰

Fear of Thai authorities as a barrier to reporting cases of abuse, exploitation and violence was a dominant theme in the FGDs, in which the view was expressed that, with legal status, reporting to the police would be a clear option; however, given the fear surrounding their lack of status, participants expressed a very strong reluctance to involve police or other State authorities (e.g. immigration authorities) in cases of violence. For example:

“Thai people are not afraid to file a complaint. If we have legal documents, we can report easily to neighbours or Thai people.”²⁶¹

“If we were legal, there is a very low chance of being deceived [by an employer]. If we go to work, we may meet friends from the same country. We can ask for help from anyone because we wouldn't be afraid of being arrested.”²⁶²

“If you are undocumented, can you report to the police?”

“We cannot, but we might ask for a favour from a neighbour who has documents. Me and others without documents: we are scared to do that.”²⁶³

Another theme that arose from the FGDs with adolescents and parents was that lack of legal status and resulting fear of detection produced situations of extreme vulnerability and grossly uneven power dynamics (e.g. between Thai employers and foreign employees) that result in an inability for those without status to take action to protect their rights. For instance, this was illustrated in an FGD with adolescent refugees / asylum-seekers from Afghanistan:

“We have a big fear in our minds that the police will catch us, and they will send us to immigration or something worse...So for example, if a person sees my card²⁶⁴, they will say ‘oh, this guy is not a citizen here, and they are illegally living here’, so they will not accept us...sometimes the rules are not with us, you know what I mean? It’s like, they’re saying ‘you’re living here illegally and if you do anything wrong, we could tell the police’, and we cannot tell the police that we need anything.”²⁶⁵

Language barriers

Lack of Thai language skills was frequently mentioned by research participants as a key barrier to accessing protection systems and services. Participants typically expressed the view that regardless of legal status, the ability to speak and understand Thai was a factor that improved access to protection (and other) services. As

²⁶⁰ KII with two representatives of UNHCR Thailand, Bangkok (virtual), 23 February 2022.

²⁶¹ FGD with 5 undocumented Cambodian adolescents, 13 – 16 years (2 male, 3 female), Khlong Neung, Pathumthani, 19 March 2022.

²⁶² FGD with 5 undocumented Myanmar adolescents, 17 – 18 years (3 female, 2 male), Klong Tan, Bangkok, 20 February 2022.

²⁶³ FGD with 5 undocumented parents / carers from Cambodia, 24 – 44 years (5 females), Khlong Neung, Pathumthani, 19 March 2022.

²⁶⁴ It is likely the participant is speaking about UNHCR card for Afghanistan.

²⁶⁵ FGD with 4 refugee / asylum-seeking adolescents from Afghanistan, ages (3 male, 1 female), Bangkok, 23 February 2022.

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an illustration of this, according to participants in an FGD involving undocumented adolescents from Myanmar in relation to a scenario: “*Lack of Thai language will be a main challenge for them, because they don’t know anyone here. If they don’t know the Thai language, they would feel uncomfortable or afraid to ask for help.*”²⁶⁶ The ability of non-Thai speaking children and parents without status to receive appropriate services in response to cases of violence, exploitation and abuse (medical examination and care, child protection assessments and care planning, counselling services and so on) will also be very limited.

According to a previous study, limitations on interpretation and translation services were found to be a barrier to receiving protective services, even where they are owed to them in law. While specialist systems, in particular anti-trafficking systems and services have put in place translation services to enable children who do not speak Thai to report exploitation, violence and abuse, and to have support through the system, it was reported in 2019 that “*the child protection system in general...does not yet have the ability to provide services in the main migrant languages, especially Myanmar and Khmer.*”²⁶⁷ It also found that the ‘1300’ hotline (‘Prachabodi Centre’) – a 24-hour telephone service providing services to victims of abuse and violence, was not operating a migrant language interpretation service, despite this being a key route for children to gain access to the child protection system.

Cost and other practical barriers

Cost of some services and other practical barriers, such as the need to produce identity documents and other bureaucratic requirements, the need travel to particular locations with limited understanding of Thai (see above) also appear to impose considerable barriers on the ability of children and families without status to access and receive services and support. These practical barriers were reported among some key informants and also mentioned at times by children and parent / carer research participants. For example, according to a key informant from a national NGO: “*A child who has been sexually abused and who has to undergo a physical examination: the examination cost can be high and the coordinating procedures for examination is more difficult...it’s harder in all aspects I can tell you, including health, education and access to justice...most of the cases that come to us do not have the knowledge, they do not know who to rely on, who to contact...When travelling to ask for an examination, documents are required to be confirmed. There will be inquiries such as legal documents, dependent certificates, birth certificates, who are the parents and where is the employer? etc. It is likely that this will happen and the cost is high.*”²⁶⁸

Adaptability of the child protection system to the needs of children without legal status

While not the main focus of this study, it is important to note that the child protection system itself may create barriers for children without status. As noted above, the Child Protection Act applies to all children in Thailand, regardless of legal status. However, as found in previous research, there are gaps in how the system responds to the needs and situation of children without legal status. In a study carried out across four locations in Thailand in 2019, it was found that 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 were also no guidelines or SOPs for professionals on working with migrant children

²⁶⁶ FGD with 5 undocumented adolescents from Myanmar, 15 – 18 years (1 male, 4 female), Bangkok, 18 February 2022.

²⁶⁷ International Organization for Migration et al., Thailand Migration Report, United Nations Thematic Working Group on Migration in Thailand, IOM et al., Thailand, p 108.

²⁶⁸ KII with representative of Friends Foundation, Bangkok, 15 February 2022.

in the child protection system (apart from victims of trafficking). In addition, lack of legal status appears to have been used by some service providers as a way of justifying denial of services to migrant and refugee / asylum-seeking children, who were found at times to display discriminatory attitudes toward undocumented migrant children, referring to them as ‘burdens’ or ‘outsiders’ to which they do not have a duty to provide services.²⁶⁹

Covid-19 appears to have created additional challenges in the delivery of child protection and other services to those without status. A social impact assessment on the impact of Covid-19 in Thailand identified an increase in the number of people seeking support from the One Stop Crisis Centres (in some areas), but many of these centres had to suspend face-to-face service provision, leaving many vulnerable clients, particularly those without access to the equipment for a virtual appointment, without protection and care. The same assessment noted concerns that “*Hotline 1300 calls from women and children affected by violence, exploitation and abuse are being overshadowed by callers desperate for information about social assistance, including temporary shelter.*”²⁷⁰ The pandemic has also, in some contexts, intensified pre-existing difficulties in coordination between NGO service providers and government agencies.²⁷¹

5.5 The role of private business in creating an enabling environment for children and families without status

In order to address research question 6 (“*What role can private businesses play in helping to contribute to the protection and wellbeing of children and families who migrate to Thailand, with a particular focus on Bangkok, and in creating an enabling environment for the protection and wellbeing of children and families affected by migration?*”), interviews were carried out with experts in the field of children’s rights and business as well as business representatives. Due to challenges in arranging interviews with business stakeholders in a range of sectors, this component of the research focussed on children of migrant parents working in the construction industry in Bangkok.

The construction industry in Thailand employs a large number of migrant workers,²⁷² and many companies provide temporary worker accommodation for employees in construction site camps.²⁷³ There are reported to be thousands of migrant children living with their migrant worker families in these accommodation facilities, who either travelled to Thailand with their parents or were born to migrant worker parents in Thailand.²⁷⁴ Participants explained that many of the parents working in the construction industry lack legal status. The complexity of the supply chain (made up of multiple layers of subcontractors) and the rules requiring workers to update their documents when they change employer lead some migrant workers to become undocumented

²⁶⁹ Anderson, K. ‘Assessment of Child Protection Services for Migrant Children in Thailand’, Coram International, UNICEF, December 2019, available at: <https://www.unicef.org/thailand/media/8711/file/Assessment%20of%20Child%20Protection%20Services%20for%20Migrant%20Children%20in%20Thailand.pdf>.

²⁷⁰ United Nations Thailand, Social impact assessment of Covid-19 in Thailand, July 2020, p 124.

²⁷¹ Child Rights Coalition, Status Report on Child Rights in Malaysia 2019-2020, 2020, p 110; UNICEF, Avoiding a Child Welfare Crisis: Mitigating the Impact of COVID-19 through Social Service Workforce Strengthening, October 2020, p 4.

²⁷² Baan Dek Foundation, Building Futures in Thailand: Support to Children Living in Construction Site Camps, 2018, p. 21.

²⁷³ Baan Dek Foundation, Social Impact Guidelines, 2022, p 5.

²⁷⁴ Ibid.

without even realising it.²⁷⁵ In light of the limited legal avenues for bringing children legally, and complexities and barriers to regularising children's status in Thailand, children living with their parents in construction camps are often undocumented too.

The conditions in these on-site accommodation facilities are not always fit for children, and research has identified serious concerns relating to the poor sanitation, electrical and other hazards, limited access to clean water and child protection risks that increase children and families' vulnerability to risk.²⁷⁶ A large proportion (70 per cent) of children in camps in a study carried out in 2018 reported not feeling safe using the toilet facilities, half of whom cited the fear of snakes or wild animals as the reason.²⁷⁷ An even greater proportion of children (90 per cent) reported past experience of violence at the hands of their parent / guardian.²⁷⁸ Despite the legal minimum age for work of 15 years old, nearly one third of children reported having been employed before in sectors such as the agriculture and domestic service industries, or looking after younger children. A small number reported to have worked in the construction industry. Access to health services were limited, with almost half of parents reporting they had a child without an active health insurance card.²⁷⁹ According to a participant, around 60 per cent of children in the construction accommodation facilities attend school.²⁸⁰

Research participants explained that construction companies tend to have a camp boss who is directly employed by the company and who is responsible for overseeing the welfare of the workers living in the on-site accommodation. The wife of the camp boss usually takes up the role of keeping the accommodation clean but also sometimes takes care of children (though this is not company policy, it's an informal practice that has been observed). Some companies provide day care centres within the accommodation facilities, but these tend to be very basic – often just a room with toys soft floor. Due to limited childcare facilities, children have been known to take on the role of caretaker for younger siblings whilst their parents go to work.²⁸¹

During the Covid-19 lockdowns, participants explained that some construction accommodation facilities were placed under lockdown and residents were not allowed to leave, in order to prevent the spread of the virus. Some companies responded by delivering necessities including diapers, food and allowances for workers that had to stop working, financed in some instances by the company and in others through donations by the Thai public.²⁸² Others coordinated with different agencies in order to establish Covid-19 vaccination centres in the camp.²⁸³ Those that were infected with Covid-19 had to quarantine in a specific area of the building.

Baan Dek foundation is an organisation who has been collaborating with Thai construction and real estate companies since 2010 in order to improve living conditions and access to public services for children and families living in construction camps. In 2021, Baan Dek in partnership with UNICEF introduced the Social Impact Guidelines for Construction Site Camps, which includes a Framework for Action and toolkit to be followed by the camp managers in order to ensure the rights of children living in the camp accommodation

²⁷⁵ Key Informant Interview, Baan Dek Foundation.

²⁷⁶ Baan Dek Foundation, Building Futures in Thailand: Support to Children Living in Construction Site Camps, 2018, p. 25.

²⁷⁷ Ibid.

²⁷⁸ Ibid.

²⁷⁹ Ibid.

²⁸⁰ Key informant interview with business and human rights stakeholder.

²⁸¹ Interview with Baan Dek Foudnation.

²⁸² Key informant interviews with multiple stakeholders.

²⁸³ Key informant interview with construction company.

are protected.²⁸⁴ The framework provides 12 key action points grouped in accordance with the four themes of infrastructure, welfare and services, health and education. There is a self-assessment spreadsheet provided to the camp managers which allows them to assess the extent to which their camp is in line with the standards of the framework, and monitor the progress made over time.²⁸⁵ A company specific action plan is generated according to the result of the assessment. Baan Dek has also carried out trainings on the Framework for Action and toolkit. Baan Dek has pointed out the benefits the framework has the potential to bring – not just to children and families in the camp – but also for the construction companies who can report benefits to their clients including improved workforce retention, improved health and wellbeing of employees which in turn can yield higher productivity, and improved sustainability scores which can in turn attract clients.²⁸⁶ For more information on the role of private business practice in creating an enabling environment for the protection and wellbeing of children and families affected by migration in Thailand in the ASEAN region more broadly, please refer to the UNICEF EAPRO *Regional report on the Situation of Children affected by migration in ASEAN member states* and corresponding *Business policy brief*.

²⁸⁴ Baan Dek, Social Impact Guidelines for Construction Site Camps, 2021.

²⁸⁵ Ibid.

²⁸⁶ Ibid. p.6.

6. Conclusion and recommendations

Children without status in Bangkok continue to face considerable challenges, including exposure to a range of protection risks and substantial barriers in accessing basic services and support. In addition, feelings of insecurity and exclusion, which appear to have been compounded in the context of the Covid-19 pandemic, have a negative impact on the wellbeing and mental health of children and their families and care givers. While these children legally have access to basic services and to systems of protection, lack of legal status appears to create a sense of illegitimacy among the research participants, reinforcing the feeling that they are 'illegal' and do not have entitlements to these services and systems of protection, and that there is no imperative on the part of Government service providers to assist them. In addition, a climate of fear caused by their lack of legal status means that participants avoid reporting protection risks to Thai authorities, for fear of detection, arrest and possibly deportation. This has driven children without legal status into a very vulnerable position, in which they may be unable to seek support and services even in situations of severe exploitation and abuse.

The Government of Thailand has taken some significant steps in recent years to ensure that some groups of persons without legal status – in particular, stateless persons and refugees / asylum-seekers – have or will soon have improved avenues for accessing legal status. It is crucial that this work – in particular the moves to establish a National Screening Mechanism for refugee / asylum-seeking persons – is fully implemented as a matter of priority.

- The Thai Government should increase avenues for children to migrate legally into Thailand and to regularise their status once they are in Thailand.

For undocumented migrant children and families:

- Ensure birth registration for all children born in Thailand, addressing supply and demand barriers to the registration process;
- Build on the National Verification (NV) process enabling post-facto regularisation of status for children of migrant workers who are already within Thailand's borders.

In particular, consider:

- Opening the register to enable migrant workers to register their dependents at more frequent intervals / permanently;
- Awareness raising among migrant communities whenever the register is open to ensure all migrant workers are aware of the steps they need to take to register their dependant children;
- Reducing fees associated with post-facto regularisation to increase accessibility.

For refugee and asylum seeker children and families:

- Implement the National Screening Mechanism without delay, ensuring that a clear protection protocol is followed during the process of screening and approval of protection status;

For unregistered stateless children and families:

- Improve implementation of the civil registration system for stateless persons, addressing known bottlenecks including complicated procedures and high evidentiary requirements and addressing human resource challenges at district level to speed up processing of applications;

- Continue good practice of providing channels to registration through increasing birth registration and assisting children to enrol in education institution to obtain the “G number” which can be used (pathway) to obtain the 13-digit ID number;
- The Thai Government should ensure that no child is arrested or detained for their or their parent’s immigration status, including:

Address the following issues in the MOU ATD:

- Whilst the MOU ATD enables release of children from detention, it does not prevent the arrest and detention of children in the first place;
- Mothers who wish to be released with their children under the MOU ATD have to pay large sums of bail fees;
- Fathers are not eligible to be released with children and their mother’s, causing family separation;
- Released children can be re-detained as soon as they turn 18.

Leverage MOU ATD to become law or regulation.

- The Thai Government should remove barriers for children and families without domestic legal status to access basic services (education and health) and protective services.

Education

- Increase awareness of *Education For All* policy amongst schools throughout Thailand to ensure all schools are aware of the policy and none fear legal repercussions of allowing foreign children in school;
- Carry out periodic training for local authorities and schools on the guidelines for enrolling migrant and (unregistered) stateless children in schools;²⁸⁷
- Strengthen strategies to address language barriers for migrant children who cannot speak Thai, including by:
 - Increasing availability of language tuition for migrant children across all schools;²⁸⁸
 - Encouraging flexible recruitment arrangements for teachers who speak migrant children’s country of origin language;²⁸⁹
 - Increasing training for teachers on teaching children with multilingual learning needs.²⁹⁰

Healthcare

- Ensure full implementation of the Resolution on access to healthcare for registered stateless children and migrant workers (Resolution No 13, 27 December 2022);

²⁸⁷ UNICEF, *Education Knows No Border: A collection of good practices and lessons learned on migrant education in Thailand*, UNICEF 2019, p. 55.

²⁸⁸ UNICEF, *Investing in Global Future, A Situational Analysis of Migrant Children’s Education in Thailand*, p. 23.

²⁸⁹ UNICEF, *Education Knows No Border: A collection of good practices and lessons learned on migrant education in Thailand*, UNICEF 2019, p. 55.

²⁹⁰ UNICEF, *Education Knows No Border: A collection of good practices and lessons learned on migrant education in Thailand*, UNICEF 2019, p. 55.

- Increase awareness /understanding of the resolution among operational officers on the ground;

Review the (flexible) fee of health insurance for children aged above 7 years old; consider expanding the availability of the reduced fee to all children under 18 years old.

For access to the child protection system and services:

- Address demand side barriers to child protection system, namely the arrest and detention of children (refer to recommendation 2) in order to reduce the climate of fear and exclusion that prevents children accessing protective services;
- Strengthen the capacity of supply-side actors involved in the provision of protection services as well, including the interpreters and service providers;
- Ensure rights of children affected by migration are included within the second National Child Protection Strategy;
- Awareness raising campaign amongst migrant communities of protective services available them.

Appendices

7.1 Ethical protocol

7.1.1. Harm / benefit analysis

A fundamental principle of ethical research with human (and in particular, child and youth) participants is 'do no harm'. This means that the welfare and best interests of participants are the primary considerations guiding the design of the methodology and data collection methods.

UNICEF's and Coram International's ethical guidelines require a consideration of whether the research needs to be done, if children need to be involved in it, and, if so, in what capacity. An analysis of potential harms of the research on children and other participants, is required, along with an assessment of the benefits of the research. Strategies are required to ensure that children are not harmed as a result of their participation in the research, and that distress due to their participation is minimised.

Benefit analysis

It is important to establish that the research will bring benefit to children and their communities more generally and that it is necessary (the research process will bring about *new* information or knowledge). It must also be demonstrated that it is necessary for children to be involved in the research as participants.

As noted above, the **aim** of the research is to investigate the impact of a lack of domestic legal status on migrant, refugee, asylum-seeking and stateless children in Bangkok, with a particular focus on children's wellbeing, protection and feeling of safety, security, identity and belonging. The research will explore two further sub-themes: (1) the impact of the Covid-19 pandemic on the protection and wellbeing of the target population of children; and (2) the role private businesses play both in compounding risks and vulnerabilities and also in contributing to the protection and wellbeing of children and families and who migrate to Bangkok.

There has been limited recent research examining the impact of the lack of status on children's lives in Bangkok, and less still from the perspective of children and young people with lived experience of lacking domestic legal status themselves. The rationale for carrying out the research is to contribute to expanding the limited knowledge base on the protection of children without domestic legal status in Thailand. In particular, it is anticipated that the findings of this study will be used by UNICEF Thailand in partnership with the Royal Thai Government to develop concrete recommendations that can be used to inform the development of laws, policies and practices to better protect children and their families without domestic legal status in Bangkok.

The research topic was selected after consultation with staff at UNICEF Thailand, who noted that a lack of legal status continues to be the most pressing source of protection risks for children affected by migration in Thailand. The study intends to build on the findings of a previous study carried out by Coram International on behalf of UNICEF in 2019 on the responsiveness of the Thai child protection system to migrant children. That study identified a lack of status as being a source of serious protection risks for children and contributing to challenges for them to access protective services. However, as legal status was not the focus or aim of that research project, the issue was not investigated in depth. The benefit of the 2019 study can be evidenced by the fact that the findings were used by UNICEF Thailand and the Thai government to develop guidelines for

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social workers in dealing with migrant children. It is hoped that the current research project will be similarly beneficial in informing evidence-based interventions to better protect children.

As mentioned above, the study sits within a broader policy context: it forms part of a wider research project to conduct a situation analysis of '*children affected by migration*' in the countries comprising the Association of Southeast Asian Nations (ASEAN), a project Coram International has been contracted by UNICEF East Asia and Pacific Regional Office (EAPRO) to carry out. The situation analysis forms part of UNICEF's focus on migration in the East Asia and Pacific region as 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 protected across the region.

The research methodology has been designed to be participatory, as can be seen by the various participatory research methods with adolescents proposed as well as the focus group discussions / vignette exercises. Involving children and young people without domestic status themselves in this research is vital to properly capturing and understanding the views and experiences of children without status themselves and ensuring that these views and experiences shape the study and the recommendations that are developed from its findings. Children are in the best position to provide information on their situation and they may have views and opinions that are different to their parents or carers or adult community members; providing them a space to be included in the research allows for data to be collected on their experience that is free of adult interference is therefore important to ensuring the collection of relevant and robust data.

The participation of children in research and the development of policy and practice recommendations that affect them is also a human right. According to article 12 of the UN Convention on the Rights of the Child (CRC), children have a right to have their views sought and taken into consideration in matters that affect them, commensurate with their developing capacities. It has also been noted that involving children in research, where carried out in a way that makes the most of their abilities and treats them with respect, can bring improvements in their own wellbeing, including "*greater opportunities to acquire knowledge, to develop new skills, to build new friendships and wider support networks, to be heard and to have their concerns taken seriously.*"²⁹¹ In particular, involvement in research on violence, where carried out in a way that allows them to discuss experiences and opinions in a safe manner, can increase the confidence of children in addressing past experiences and can promote their help-seeking skills.

Harm analysis

While there is minimal direct risk of physical harm to research participants (other than Covid-19, which is addressed in the box below) through their involvement in the study, it should be noted that the study will involve discussion of issues that could cause distress to research participants – children in particular. The study, which may involve the discussion of sensitive information, could also lead to stigmatization of the children and possibly family or community retribution, if not carefully managed. The table below links the specific risks identified for the research study with specific strategies to be used in order to minimise harm and ensure the meaningful participation of children and parents in the research.

Potential risk	Harm minimisation strategy
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²⁹¹ Save the Children, *So you want to involve children in research? A toolkit for supporting children's meaningful and ethical participation in research relating to violence against children* (2004), p. 27.

<p>Psychological risk.</p> <p>The study involves the discussion, in groups and individually, of children without domestic legal status' experiences of violence, abuse, neglect and exploitation. Some of the vignettes used in the focus group tools and in the participatory action research methods outline hypothetical scenarios that could be triggering to children who have been through similar ordeals in the past. It therefore exposes children to the possibility of distress and retraumatisation.</p>	<p>To mitigate this risk, the information sheet children receive will explain that the interview is voluntary and they can stop the interview at any point, without repercussion. Researchers will receive training on child-friendly interview techniques – particularly on using language which avoids victimization, blame and judgement. Researchers will also be trained to identify indicators that the interview is causing harm to a participant/s. Where it is clear that the interview is having a negative effect on a participant, the interview will be stopped and the appropriate manager or designated lead informed. Interviews should finish on a 'positive or empowering note' (e.g. through asking questions about what would improve the situation of children in the relevant study sample). Where adolescents reveal past experiences of violence or abuse, researchers will convey empathy, but will not show shock or anger. All child and parent participants will be provided with an information sheet setting out where to seek services and support should they be in need of counselling or other services to respond to past experiences of trauma (see information sheet, section 8.13).</p>
<p>Legal risk.</p> <p>Given the target population of the study is adolescents and families without domestic legal status, there is the risk that the participants may be prosecuted if they are identified as admitting having entered / remained in Thailand without requisite documentation i.e. illegally. Therefore the risk is that the study opens participants up to self incrimination.</p>	<p>This will only become a problem if a participant is identified / linked to the contributions they provided at interview. As noted below, the research team will take strict measures aimed at preventing this from happening. Please see below for anonymity and data protection measures. In summary:</p> <ul style="list-style-type: none"> • The researcher will request for the interview to take place in a sufficiently private location, out of earshot of any other person; • Names shall not be recorded on the transcripts and the transcripts will be securely saved / held on a password protected computer, in a separate location to any list of participant;

	<ul style="list-style-type: none">• Researchers will delete electronic records of data from laptops immediately after they are sent to Coram International (in a password-protected and secure account);• Research findings will be presented in such a way so as to ensure that individuals are not able to be identified.
Covid-19 risk from face to face interviewing	In the context of COVID-19, it will be particularly important to have measures in place to reduce the risk of virus transmission between researchers and participants, and between participants in group interview settings. Researchers will not conduct data collection if they have any symptoms of COVID-19 or if they have been in recent contact with anyone who has had symptoms of COVID-19. Information will be provided to all researchers about COVID-19 and the importance of health and safety measures such as social distancing and frequent handwashing. The training of the national researcher / facilitators will also include guidance on collecting data safely in the context of the COVID-19 pandemic, such as maintaining social distance between the interviewer and the participant, and the importance of frequent handwashing, wearing a mask and self-isolating if experiencing symptoms.

Further harm mitigation strategies

Selection and training of researchers

Researchers have been selected on the basis of their knowledge of the topic and their experience in carrying out qualitative research, including research on sensitive topics with vulnerable groups of adolescents. Researchers will be provided with training prior to the data collection in order to ensure that they are orientated to the purpose and methodology of the study and the ethical protocol and to provide a space to refresh their skills and knowledge on carrying out research with community members (including children). Following the training session, the data collection tools will be piloted on a small sample of research participants in Bangkok, in order to test the utility of the tools and their cultural appropriateness, allowing for tools to be adjusted before data collection commences. The pilot will also provide an opportunity for the Team Leader to observe how the researchers administer the tools and provide feedback, including on the extent to which the ethical procedures and tools were delivered and understood (informed consent, data protection and anonymity, child protection, voluntary participation etc.). Upon discussion and review of the pilot research outputs, the coram international team will make any required adjustment to the tools. A video call will then

be held between Coram international and the national researcher / enumerators to explain these changes and ensure researchers understand how to implement the tools.

Design of data collection tools and data collection approaches and processes

The topics covered in the research may cause distress to some children, particularly those that have experienced types of violence that are stigmatised (e.g. sexual abuse or exploitation). Every effort has been made in this research design to avoid such distress arising in the first place. Throughout interviews and FGDs, Researchers will be led by the ‘do no harm’ principle, which requires that the data collection be considered secondary to the need to avoid harm to research participants. This will be covered in-depth in the training session, with practical examples being given.

Should it become clear that the interview or FGD is having a negative effect on a participant (e.g. the participant breaks down, becomes very quiet and withdrawn, becomes shaky etc.), Researchers will be advised to suggest stopping the interview / removing the child from the FGD and will suggest follow up support to the participant. Any child protection concerns (where a child is currently at risk of significant harm) will be identified and dealt with appropriately (see below). Where children reveal past experiences of violence or abuse, researchers will convey empathy, but will not show shock or anger, as this can be harmful to children who have experienced violence. These matters will be covered in-depth during the training session with the Researchers.

In order to reduce the risk of stress or harm to participants:

- Data collection tools have been designed in a manner that avoids direct, confronting questions, judgement and blame. They have also been developed to ensure that they are age-appropriate and relevant to the cultural context.
- In order to reduce distress during FGDs, sessions will revolve around a number of hypothetical scenario question, thereby avoiding direct questions on personal experiences of participants which could place them at risk of stigmatisation or retribution.
- In order to reduce stress caused to children in individual interviews, children will be provided with the opportunity to participate in data collection with a trusted adult or friend if this would make them feel more at ease. Researchers should identify staff at institutions (e.g. schools, community groups, shelter staff) that are available to accompany participants, if requested.
- Interviews and FGDs may cover particularly sensitive or traumatic material, and it is important to ensure that participants feel empowered and not solely like victims. Interviews and FGDs will finish on a ‘positive or empowering note’ through asking questions about what would improve the situation of migrant children in their community. This will help to ensure that children do not leave the interview focusing on past experiences of abuse.

Ensuring the safety of participants and Researchers

Researchers will be provided with a copy of Coram International’s Code of Conduct, encompassing the organisation’s Child Protection Policy. Compliance with the Code of Conduct is a contractual requirement for all Researchers.

As is noted above, the training of the national researcher / facilitators will also include guidance on collecting data safely in the context of the COVID-19 pandemic, such as maintaining social distance between the interviewer and the participant, and the importance of frequent handwashing, wearing a mask and self-isolating if experiencing symptoms.

Responding to trauma, distress and child protection disclosures

During the data collection process (in individual interviews and also possibly FGDs), participants may disclose information that raises past traumatic or distressing experiences. They may also raise more immediate child protection concerns (i.e. information indicating that they are currently at risk of or are experiencing violence, exploitation or abuse). As research participants will be accessed through government and non-government service providers, it is likely that they will already have accessed necessary services and support for past child protection issues. However, all child and parent participants will be provided with an information sheet setting out where to seek services and support should they be in need of counselling or other services to respond to past experiences of trauma (see information sheet).

Coram International has developed a child protection referral protocol for this study for cases in which a child research participant discloses that they are at imminent or ongoing risk of serious harm. Researchers will be provided with in-depth training on the child protection protocol, including through the use of practical, hypothetical scenarios and role plays.

7.1.2. Informed consent and voluntary participation

Researchers will ensure that participation in research is on a voluntary basis. Researchers will explain to participants in clear language that participants are not *required* to participate in the study, and that they may stop participating in the research at any time. Researchers will carefully explain that refusal to participate will not result in any negative consequences. Incentives will not be provided to participants in order to ensure that participation in the research has not been induced. Participants will be clearly advised that their participation or lack of participation in the study will not lead to any direct benefits or sanctions / removal of benefits.

All research participants will be required to give positive informed consent in order to participate in the study. Researchers will use information forms in all interviews. Consent will be verbally requested and interviewers will make a note of whether consent has or has not been given. In the case of FGDs with adolescents, written consent will be obtained from the participant and from the parent where possible.

At the start of each interview, research participants will be informed of the purpose and nature of the study, their contribution, and how the data collected from them will be used in the study. The research will explain, in clear, appropriate language, the nature of the study, the participant's expected contribution and the fact that participation is entirely voluntary.

If unsure, researchers will request the participant to relay the key information back to them to ensure that they have understood it. Participants will also be advised that the information they provide will be held in strict confidence, subject to our safeguarding protocol (see below). The researcher will also verbally provide information about how the information provided will be stored securely, and outline the child protection policy, particularly in relation to the safeguarding protocols (i.e. notifying the UNICEF / NGO safeguarding focal point), should any child protection concerns arise during the interviews.

In addition to seeking consent from individual participants, it is important to seek the support of the relevant Government Ministries / Departments. In order to achieve this, letters (translated into Thai) will be sent from UNICEF EAPRO to key Government agencies (contacts to be provided by UNICEF Thailand). The letters will explain the purpose and nature of the study and the purpose of the data collection, and requests assistance from the Ministry in accessing research participants.

7.1.3. Anonymity and data protection

The identity of all research participants will be kept confidential²⁹² throughout the process of data collection as well as in the analysis and writing up study findings. The following measures will be used to ensure anonymity:

- Interviews will take place remotely in a secure, private location (where possible, in a room within a service provider's office / government office etc.) which ensures that the participant's answers are not overheard;
- Researchers will not record the name of participants and will ensure that names are not recorded on any documents containing collected data, including on transcripts of interviews;
- Researchers will delete electronic records of data from password-protected laptops / mobile data collection devices immediately after they are securely transferred to Coram International (in a password-protected and secure account);
- Coram International will store all data on a secure, locked server, to which persons who are not employed by the Centre cannot gain access. All employees of Coram International, including volunteers and interns, receive a criminal record check before employment commences;
- Analyses will be conducted by Coram International on secure, password protected laptops/devices to which only Coram International staff have access, and data files will be immediately saved onto the secure, locked server;
- Transcripts will be saved on the secure server for a period of five years and will then be deleted; and
- Research findings will be presented in such a way so as to ensure that individuals are not able to be identified.

All participants will be informed of their rights to anonymity and confidentiality throughout the research process, verbally and in information sheets. All efforts will be made to avoid gathering information that may result in a compromise to participant confidentiality; in any cases where this is not possible participants will be informed. This may occur where, in a particular, named setting, the background information relating to a participant may make it possible for them to be identified even where they are not named. (Every effort has been taken in the study design to avoid unnecessary background information relating to personally identifiable information.) Researchers will then ask participants whether they wish to have this information removed from any published report of findings (e.g., location, specific job title etc.). However, the interview topics are not particularly sensitive as they will not relate to specific incidents or cases and will focus on generalised issues facing children affected by migration and gaps in legal and operational frameworks in the child protection system and how this impacts on the work of their agency / team. The physical or professional risks to participants are therefore minimal.

²⁹² This is limited by the fact the participants will be accessed through NGO and government partners, who will be aware of the identity of those they put forward for the research. The measures to ensure anonymity (below) will help to ensure that contributions provided in interviews aren't able to be linked to participants.

It is noted that interview transcripts will be typed or hand written in real time (interviews will be carried out with two researchers – one conducting the interview and another recording notes from the interview). Once transcriptions have been finalised, they will be anonymised and uploaded by the national researcher onto a password-protected Dropbox folder provided by Coram International, and removed/deleted from the researcher's laptop. Coram International will then remove any access granted to the researcher, and move files to the secure, locked server that is only accessible to Coram International employees. Transcriptions will be uploaded onto an NVivo file for analysis, which will also be saved in the password protected folder.

7.2 Detailed data collection tables

7.2.1 Key informant interviews

No.	Organisation	Individual or group	Date	Online / in-person
National level				
1	Anti-Trafficking Department of MSDHS	Individual	28 February 2022	Online
2	Department of Children and Youth	Individual	18 March 2022	Online
3	Foreign Affairs Division Office of the Permanent Secretary for Interior	Individual	15 February 2022	Online
4	Secretary-General Office of the Basic Education Commission, Ministry of Education	Individual	4 March 2022	Online
5	Bureau of Integrated Education Affairs Office of Permanent Secretary Ministry of Education	Individual	22 February 2022	Online
6	National Security Council	Group (2 persons)	24 February 2022	Online
7	Attorney General Office	Individual	24 February 2022	In person
Subnational Level				
9	Commander of Investigation Division, Immigration Bureau	Individual	7 February 2022	Online
10	DCY-MSDHS shelters (Mahamek)	Individual	3 March 2022	Online
11	DCY-MSDHS shelters (Phoomvej)	Individual	4 March 2022	Online
12	Public school teachers, Bangkok (Saothonghin School)	Group (4 person)	25 February 2022	In-person
14	Sub-district public health and social work volunteers (Huay Khang)	Individual	28 February 2022	Online
15	RRLP (NGO supporting with laws)	Individual	14 February 2022	Online
16	Friend Foundation (Cambodia Children international)	Individual	15 February 2022	Online
17	Yateem (urban refugee NGO)	Individual	21 February 2022	In-person
18	Save the Children (advocacy officer)	Group (2 persons)	7 March 2022	Online
19	Plan International (stateless children)	Individual	23 February 2022	Online
20	World Vision (Myanmar Children)	Individual	1 March 2022	Online
Business sector				
21	Construction company 1	Individual	23 June 2022	Online
22	Construction company 2	Individual	27 June 2022	Online
23	Baan Dek Foundation	Group (2 persons)	25 May 2022	Online
24	UNICEF business and human rights expert	Individual	28 April 2022	Online

7.2.2 Focus group discussions

Location	Description
Klong Neung, Pathumthani, Bangkok	2 FGDs with Cambodian undocumented adolescents (6 males and 4 females in total, aged 13 – 18 years)
	2 FGDs with Cambodian undocumented parents / carers (10 females in total, aged 24 – 50 years)
Klong Tan, Sauan Luang, Bangkok	3 FGDs (including 1 pilot) with Myanmar undocumented adolescents (8 females and 7 males in total) (aged 13-18 years old)
	3 FGDs with Myanmar undocumented parents / carers of 13-18 year old adolescents (12 females and 3 males in total)
Lad Phrao, Bangkok	1 FGD with refugee / asylum seeking adolescents from Afghanistan (3, males and 2 females, 14-17 years)
	1 FGD with refugee / asylum seeking adolescents from Pakistan (3 males and 1 female, 13-18 years)
	1 FGD with refugee / asylum seeking parents / carers from Afghanistan (4 males, parents of adolescents aged 13-18 years)
	1 FGD with refugee / asylum seeking parents / carers from Pakistan (3 males and 1 female, parent of adolescent aged 13-18 years)
Saphan Mai, Sai Mai, Bangkok	1 FGD with refugee / asylum seeking parents / carers from Viet Nam (2 males and 2 females, parents of adolescents aged 13-18 years)
Thawi, Watthana, Bangkok	1 FGD with Lua stateless adolescents (4 males and 2 females, 13-16 years)