

**BACKGROUND RESEARCH TO
THE UNICEF REGIONAL REPORT**
*Situation of Children in the Context
of Migration in ASEAN Member States*



LEGAL REVIEW

Situation of Children Affected by Migration in ASEAN Member States



EUROPEAN UNION

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A project implemented by UNICEF
and co-funded by the European Union and UNICEF

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This research was managed and commissioned by United Nations Children’s Fund (UNICEF) Regional Office for East Asia and Pacific (EAPRO), with support from the European Union in the context of the cross-regional programme *Protecting Children in the Context of Migration in Southeast, South and Central Asia 2018-2023* to Coram International at Coram Children’s Legal Centre (CCLC). It supplements the UNICEF regional report *Situation of children affected by migration in ASEAN Member States*.

Co-funded by the European Union. This publication was made possible through the financial support of the European Commission. The contents of this background case-study are the sole responsibility of Coram International and can in no way be taken to reflect the views of the European Union and UNICEF. The European Commission is not responsible for any use that may be made of the information it contains.

UNICEF East Asia and Pacific Regional Office
19 Phra Athit Road Bangkok 10200 Thailand
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April 2023
www.unicef.org/eap/

Suggested Citation: United Nations Children Fund, East Asia and Pacific - *Situation Analysis of Children Affected by Migration in ASEAN Member States: Legal Review*

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

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Acronyms

ASEAN	Association of Southeast Asian Nations
CRC	Convention on the Rights of the Child
CRC Committee	Committee on the Rights of the Child
CMW Committee	Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families
DCY	Department of Children and Youth, Thailand
ICRC	International Committee of the Red Cross
K	Myanmar currency, Kyat
Lao PDR	Lao People's Democratic Republic
MOU	Bilateral agreements and memoranda of understanding
P	Currency of the Philippines, Pesos
Rp	Indonesian currency, Rupiah
THB	Thai currency, Baht
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNICEF EAPRO	UNICEF East Asia and Pacific Regional Office
VND	Vietnamese currency, Dong

1 Introduction

This report contains the findings of a comparative legal review undertaken as part of the consultancy with UNICEF East Asia and Pacific Regional Office (EAPRO) on the situation of children affected by migration in the Association of Southeast Asian Nations (ASEAN) region. This legal review was undertaken as part of, and is annexed to, a report on the situational analysis of children affected by migration in the ASEAN region. The findings, conclusions and recommendations of this legal review were used to inform that report.

The legal review consists of a comparative review and analysis of bilateral agreements and memoranda of understanding (MOUs) related to the protection of children affected by migration between two or more of the 10 ASEAN Member States and a review of national laws related to the protection of children affected by migration in each of the ASEAN Member States (Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam), against international child protection standards. The conceptual framework and questions developed for the legal review are enclosed in **Annex 1: Conceptual Framework**.

Three MOUs have been reviewed for the purposes of the report:

- a Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Lao People's Democratic Republic on Cooperation to Combat Trafficking in Persons signed on 12 July 2017 (**'Lao PDR-Thailand Trafficking MOU'**);
- a Memorandum of Understanding between the Royal Thai Government and the Government of Lao PDR on Employment Cooperation signed on 18 October 2002 (**'Lao PDR-Thailand Employment Cooperation MOU'**); and
- a Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Republic of the Union of Myanmar on Strengthening the Cooperation to Protect Children Affected by Migration, a draft of which was agreed by the respective governments during high level discussions on 20 February 2020 but has not yet been adopted by the States as at the time of writing (**'final draft Thailand-Myanmar MOU'**).

The legal review covers legislation provided by or confirmed to be in force by UNICEF country offices in eight of the ten ASEAN Member States: Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Thailand and Viet Nam) up to 31 December 2022. In addition, unofficial translations of laws have, in some instances, been relied upon and the research and analysis completed by researchers not registered to practice in the jurisdictions to which the laws relate. While the authors have endeavoured to verify the contemporaneity and accuracy of the laws when developing and finalizing this report, it is possible that the laws have undergone amendments which are not reflected in this report. As UNICEF does not have country offices in Brunei Darussalam or Singapore, the authors relied on legislation published via the respective Government's official websites¹ and were unable to verify the analysis of those laws with local experts. A full list of the legislation reviewed for this legal review is enclosed in **Annex 2: Documents Reviewed**. This report does not contain legal advice and should not be relied upon as such.

This legal review covers primary legislation only, except where secondary legislation, policy documents and case law were expressly noted by UNICEF country offices and where such legislation/policy/case law was considered by the relevant UNICEF country office to be especially pertinent to the research questions. As such, it is possible that amendments or additions have been made to the primary legislation through secondary legislation that have not been captured in this review. With regard to Malaysia, the legal review covers federal laws only. Further, references to gaps in the legislative framework as compared to international standards are

¹ Attorney General's Chambers, Prime Minister's Office, Brunei Darussalam, <www.agc.gov.bn/AGC%20Site%20Pages/Laws%20of%20Brunei.aspx>, accessed 7 November 2022; Singapore Statutes Online, <www.sso.agc.gov.sg/Index>, accessed 7 November 2022.

based solely on the review of the legislation listed in Annex 2: Documents Reviewed. Additionally, this report provides the status of laws as at the date of the review and does not consider transitional provisions.

References to a law include any subsequent amendments to that law as set out in Annex 2: Documents Reviewed. For example, where references are made to Thailand's 'Anti-Trafficking in Persons Act', this includes the original 2008 Act and amendments made to the Act in 2015, 2017 and 2019.

The report uses a colour coding system to indicate the degree of concordance between international standards and the national laws that have been reviewed in each State. The categories of the coding system are as follows:

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

2 Immigration Processes and Decision-Making

	Best interests to be primary consideration in immigration processes ²	Requirement for best interests assessments and determinations
Brunei Darussalam	Yellow	Red
Cambodia	Yellow	Red
Indonesia	Yellow	Red
Lao PDR	Green	Red
Malaysia	Yellow	Red
Myanmar	Yellow	Red
Philippines	Green	Yellow
Singapore	Yellow	Red
Thailand	Green	Green
Viet Nam	Green	Red

2.1 'Best interests' principle

Does the law require the best interests of the child to be a primary consideration in immigration processes and decision-making?

Article 3(1) of the Convention on the Rights of the Child requires the best interests of the child to be a primary consideration in all actions concerning children. Paragraph 1 of the ASEAN Declaration on the Rights of Children in the Context of Migration confirms the application of this principle in migration-related policies and practices. In the context of migration, the best interests of the child must be taken fully into consideration in immigration law, planning, implementation and assessment of migration policies and decision-making on individual cases, including in granting or refusing applications on entry to or residence in a country and in migration enforcement.³

In the preamble of the **final draft Thailand-Myanmar MOU** on children affected by migration (which has yet to be adopted), the parties acknowledge that the best interests of the child shall be 'a primary consideration' in all policies and practices designed to protect children affected by migration. The best interests of the child must also guide the development of standard operating procedures on the management of cases and repatriation of children affected by migration (under Article 17) and be part of a formal process in the application of procedures relating to unaccompanied or separated children (see **Part Error! Reference source not found.** below).

Other than for the Philippines,⁴ there are no specific provisions in the immigration laws of any of the ASEAN Member States requiring the best interests of the child to be a primary consideration in immigration processes and decision-making. The best interests principle is, however, contained in the child protection laws of **Brunei Darussalam, Indonesia, Lao PDR, Myanmar, Singapore, Thailand** and **Viet Nam**. In **Brunei Darussalam**, Article

² A State has been marked 'green' where there is an overarching obligation to take the best interests of the child into consideration when dealing with children and 'yellow' where there is reference to the best interests principle in specific circumstances.

³ 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 international migration (CRC GC No. 22 (2017)), CMW/C/GC/3-CRC/C/GC/22, 16 November 2017, para 29.

⁴ The Philippines, Department of Justice Circular 024 on Strengthening the Refugees and Stateless Persons Protection Unit, Enhancing the Rules for Refugee and Stateless Status Determination 2022.

2(4) of the Children and Young Persons Act requires the best interests of the child (defined under the Act as persons aged 0-13) or young person (defined under the Act as persons aged 14-17) to be ‘the paramount consideration’ in any question regarding the welfare of the child or young person in the interpretation and application of the Act, which broadly concerns child protection procedures and the child justice process. However, the best interests provision does not apply to matters which fall outside of the Act,⁵ which includes migration processes. Article 2 of **Indonesia’s** Law on Child Protection provides that child protection (defined under the Law as all acts designed to guarantee and protect children and their rights) shall be based on the guiding principles contained in the CRC including the best interests of the child (as well respect for the opinions of the child, non-discrimination and the right to life and development). Article 4 of **Laos PDR’s** Law on the Protection of the Rights and Interests of Children provides that the best interests of the child shall be ‘the deciding factor in making decisions’ about the child (including in the conduct of criminal proceedings against the child).

In **Myanmar**, the law enshrines the ‘right to enjoy the best interests of the child.’⁶ Further, one of the objectives of Myanmar’s Child Rights Law 2019 includes the implementation of the rights contained in the CRC,⁷ which includes the ‘best interests’ principle. Several of the law’s provisions also refer to the promotion of the child’s best interests.⁸ Although these provisions do not explicitly refer to the best interests of the child being a ‘primary consideration’, the ‘best interests of the child’ is defined in the law to include ‘actions prioritized towards the best interests of the child in managing the child’s affairs or adjudicating juvenile justice’,⁹ indicating that the child’s best interests are given some priority. Only Article 60 explicitly refers to the best interest of a child being a ‘paramount’ consideration, but is limited to the treatment of children who are displaced or affected by or associated with armed conflict. Further, the ‘best interests of the child’ is limited to the enjoyment of child rights contained in the Constitution of Myanmar, many of which are limited to Myanmar nationals, and Child Rights Law, curtailing its scope.

Article I, Section II of the **Philippines’** Special Protection of Children Against Abuse, Exploitation and Discrimination Act provides that the best interests of children shall be the paramount consideration in all actions concerning them, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, and legislative bodies. Despite this, the Immigration Law of 1940 provides that unaccompanied children who are under fifteen years of age, and who do not claim asylum and are not refugees, are to be considered as aliens who are to be excluded from entry into the Philippines, unless they are coming to join parents.¹⁰ While there is no express requirement to consider the best interests of these children in the Immigration Act 1940, the Commissioner of Immigration has discretion to admit the child.¹¹ However, Rule 9 of Department of Justice Circular 024 issued in 2022 on Strengthening the Refugees and Stateless Persons Protection Unit, Enhancing the Rules for Refugee and Stateless Status Determination, and for other purposes, provides that the best interests of the child shall be the primary consideration in all actions concerning children, including those who are unaccompanied and separated.

Section 4 of **Singapore’s** Children and Young Person’s Act 1993 requires that the best interests and welfare of the child (defined in the Act as persons under 14 years of age) or young person (defined as persons from 14 to 18 years of age) are ‘the first and paramount consideration [...] in all matters relating to the administration or application of [the] Act.’¹² The best interests principle is referenced 14 more times in the Act in the context

⁵ Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Section 2(4).

⁶ Myanmar, Child Rights Law 2019, Section 19(b).

⁷ Myanmar, Child Rights Law 2019, Section 4(b).

⁸ For example, Myanmar, Child Rights Law 2019, Sections 4 and 19(b) and in the context of alternative care in Chapter IX.

⁹ Child Rights Law 2019, Section 3(d).

¹⁰ The Philippines, Immigration Law of 1940, Section 29(12).

¹¹ The Philippines, Immigration Law of 1940, Section 29(12).

¹² Singapore, Children and Young Persons Act 1993, Section 4(b).

of decision-making in care proceedings¹³ and justice proceedings,¹⁴ though this would not apply to migration processes and decision-making outside these contexts. Article 22 of **Thailand's** Child Protection Act 2003 requires that, in any treatment of the child, the best interests of the child shall be given 'primary importance.' Article 5 of **Viet Nam's** Child Law 2016 sets out the general principles underlying the approach to children's rights which include the obligation to ensure children's best interests when making decisions concerning children.

Whilst **Malaysia's** Child Act 2001 does not contain any overarching best interests provisions, it nevertheless references the best interests of the child in a number of provisions including, for example, the requirement of a court to treat the best interests of the child as the 'paramount consideration' when considering an order relating to a child in need of care and protection or protection and rehabilitation.¹⁵

A number of child justice laws also contain the obligation to act in the best interests of the child, which could be relevant where children are prosecuted for immigration crimes (as defined under the State's respective laws). **Cambodia's** Law on Juvenile Justice outlines that the objectives of the Law are to safeguard the rights and best interests of minors and stipulates that the best interests of the minor must be taken into consideration 'primarily' in any actions taken against a minor.¹⁶ Article 18 of **Indonesia's** Law on Juvenile Justice System provides that, in juvenile cases, the relevant law enforcement and judicial authorities shall have regard to the best interests of the child and 'strive to ensure a familial atmosphere.' Article 5 of **Lao PDR's** Law on Juvenile Criminal Procedures refers to the protection of the rights and best interests of children when dealing with juvenile cases, confirming that such cases will be resolved in compliance with international law. As noted further above, in addition to general provisions concerning the best interests of the child, **Myanmar's** Child Rights Law defines 'best interests of the child' to include 'actions prioritised towards the best interests of the child in managing the child's affairs or adjudicating of juvenile justice'.¹⁷ The law also mentions the child's best interests in other provisions relating to aspects of child justice, such as diversion.¹⁸ Section 2(b) of the **Philippines' Juvenile Justice and Welfare Act**¹⁹ prescribes policies that the State shall observe at all times, including protecting the best interests of the child through measures that will ensure the observance of international standards of child protection, especially those to which the Philippines is a party.²⁰

Whilst not primary legislation, and only relevant to asylum-seekers, Article 13 of **Cambodia's** Sub-decree on Refugee Status 2009 provides that, 'where necessary' the Ministry of Social Affairs, Veterans and Youth Rehabilitation will provide a representative or legal guardian to asylum-seekers who are minors and that this representative will work on behalf of and 'for the best interest' of the applicant. However, there is no express reference to the best interests of the child being a primary consideration.

In **Thailand**, a Memorandum of Understanding on The Determination of Measures and Approaches Alternative to Detention of Children in Immigration Detention Centres of 2019 ('MOU on Alternatives to Detention') confirms that decisions and actions affecting a child shall always take into account the child's best interests and views.²¹ The standard operating procedures under this MOU confirm that the child's best interests shall

¹³ Singapore, Children and Young Persons Act 1993, Sections 11(4)(a), 15(3)(c), 54(2), 54(13), 54(17), 55(4)(d), 56(9)-(10), 58(1)(d), 58(2)(b), 59(5)(b), 59(15).

¹⁴ Singapore, Children and Young Persons Act 1993, Section 47(9).

¹⁵ Malaysia, Child Act 2001, Sections 30 and 40.

¹⁶ Cambodia, Law on Juvenile Justice 2016, Articles 1 and 5.

¹⁷ Myanmar, Child Rights Law 2019, Section 3(d).

¹⁸ Myanmar, Child Rights Law 2019, Section 3(n).

¹⁹ This Act covers the different stages involving children at risk and children in conflict with the law from prevention to rehabilitation and reintegration (Section 1).

²⁰ The Philippines, Juvenile Justice and Welfare Act 2006, Section 2(b).

²¹ Thailand, Memorandum of Understanding on The Determination of Measures and Approaches Alternative to Detention of Children in Immigration Detention Centres of 2019, para 4.2.

be a primary consideration and that ‘the child’s opinion shall be heard and be considered for any decision-making process that [a]ffects the child.’²²

Guidelines and action plans relating to human trafficking in **Cambodia, Lao PDR, Malaysia** and the **Philippines** also reference the best interests principle. In **Cambodia**, the Agreement on Guidelines for Practices and Cooperation between the Relevant Government Institutions and Victim Support Agencies in Cases of Human Trafficking requires that the best interests of the child must be ‘the prime concern’ in suspected trafficking cases.²³ Although this Agreement precedes the Law on Suppression of Human Trafficking and Sexual Exploitation, which takes precedence in the event of an inconsistency between its provisions and the guidelines,²⁴ there are no equivalent provisions in the Law which may be interpreted as overriding the best interests requirement in the guidelines. In **Lao PDR**, the best interests of the victim must be prioritised in decisions relating to the protection, assistance and referral of victims, with the consent and participation of the victim in the process.²⁵ As one of its activities for strengthening the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act, Malaysia’s National Action Plan on Anti-Trafficking in Persons 2021-2025 provides for a review of the Act and the standard operating procedures of enforcement agencies and protection agencies in order that the best interests of the child are given primary consideration when responding to child victims of trafficking.²⁶ The **Philippines’** Rules and Regulations Implementing the Anti-Trafficking in Persons Act of 2003 also address best interests, with, Section 3(viii) providing that in all actions concerning children, their best interests of the child shall be the paramount consideration.

2.2 Best interests assessments and determinations

Does the law require a ‘best interests assessment’ and ‘best interests determination’ to be undertaken as part of, or to inform, decisions affecting migrant children?

In order to implement the best interests principle in migration-related procedures or decisions that could affect children, best interests assessments and determination procedures should be undertaken systematically as part of, or to inform, migration-related and other decisions that affect migrant children.²⁷

Under Article 12 of the **final draft Thailand-Myanmar MOU** (which has yet to be adopted), the parties agree to conduct a best interests determination when implementing procedures concerning the identification, referral, care and family reunification of unaccompanied or separated children, ‘taking into account the right to family life and family unity.’

With the exception of **Thailand**, there were no express provisions found in the laws of any of the ASEAN Member States requiring a best interests assessment or best interests determination to be undertaken as part of the decision-making process with regard to migrant children. **Thailand’s** Child Protection Act requires a best interests determination to be conducted in any treatment of the child (and would thus include migrant children and children affected by migration more broadly) and cross refers to the application of guidelines. The Guidelines in Ministerial Regulations relating to the Child Protection Act provide an extensive list of factors that must be considered when determining whether an act is in the bests of the child. These include protecting the child against violence, harm and exploitation and also providing the opportunity for the child to participate in decisions that affect the child.²⁸ Rule 9 of the Philippines’ Department Circular 024 on Strengthening the

²² Thailand, Memorandum of Understanding on The Determination of Measures and Approaches Alternative to Detention of Children in Immigration Detention Centres of 2019, para 4.2.

²³ Cambodia, Agreement on Guidelines for Practices and Cooperation between the Relevant Government Institutions and Victim Support Agencies in Cases of Human Trafficking 2007, Article 12.

²⁴ Cambodia, The Law on Suppression of Human Trafficking and Sexual Exploitation 2008, Article 50.

²⁵ Lao PDR, Guidelines on the Protection and Referral of Trafficking Victims, Principle 3, Part II.

²⁶ Malaysia, National Action Plan on Anti-Trafficking in Persons 2021-2025, p. 56.

²⁷ CRC GC No. 22 (2017), para 31.

²⁸ Ministerial Regulation to set up guidelines for determining if an act is in the best interests of the child or unfairly discriminatory to the child 2006.

Refugees and Stateless Persons Protection Unit, Enhancing the Rules for Refugee and Stateless Status Determination, and for other purposes, which provides that the best interests of the child shall be the primary consideration in all actions concerning children, including those who are unaccompanied and separated, goes some way to meeting this requirement by implying the requirement to undertake a best interests assessment and determination during migration processes.

Recommendations:

It is recommended that:

- Provisions are introduced into immigration laws which expressly provide that the best interests of the child shall be a primary consideration in immigration processes and decision-making [all ASEAN Member States apart from the Philippines];
- An overarching provision is introduced in child protection laws requiring the best interests of the child to be a primary consideration in all actions concerning children [Brunei Darussalam, Cambodia, Malaysia, Myanmar and Singapore].
- Consideration is given to including provision for best interests assessments and determinations (in line with international standards and best practice) in immigration laws and ensuring that such assessments and determinations are integrated into all stages of the immigration process [all ASEAN Member States except Thailand].

3 Migration Control and Immigration Detention

	No criminalisation or administrative liability of children for irregular entry/stay or migration status	Prohibition on liability for trafficking victims	Prohibition on child immigration detention	Provision for alternatives to immigration detention
Brunei Darussalam	Red	Green	Red	Yellow
Cambodia	Yellow	Green	Red	Yellow
Indonesia	Red	Green	Red	Yellow
Lao PDR	Red	Green	Red	Yellow
Malaysia	Red	Green	Red	Yellow
Myanmar	Red	Yellow	Red	Yellow
Philippines	Red	Green	Red	Yellow
Singapore	Red	Red	Red	Yellow
Thailand	Red	Green	Red	Green
Viet Nam	Red	Red	Red	Yellow

3.1 Criminal or administrative liability for migration activities or status

To what extent does the law subject children to criminal or administrative liability for migration-related activities or due to the child or their parent’s migration status (or lack thereof)?

International standards prohibit the criminalisation of a child or the imposition of punitive measures based on the child or parent’s migration status.²⁹ Both the Committee on the Rights of the Child (CRC Committee) and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW Committee) have emphasised that children should not be criminalised or subjected to punitive measures, such as detention, because of their parents’ immigration status and that irregular entry and stay do not constitute crimes per se against persons, property or national security.³⁰ Both Committees note that criminalizing irregular entry and stay exceeds the legitimate interest of States parties to control and regulate migration and leads to arbitrary detention.³¹ In relation to trafficking specifically, the ASEAN Convention against Trafficking in Persons stipulates that a State party shall, ‘subject to its domestic laws, rules, regulations and policies, and in appropriate cases, consider not holding victims of trafficking in persons criminally or administratively liable, for unlawful acts committed by them, if such acts are directly related to the acts of trafficking’.³²

3.1.1 Immigration offences – general

In terms of bilateral agreements between the ASEAN Member States, the **Lao PDR-Thailand Employment Cooperation MOU** provides that both Lao PDR and Thailand will take action to realise the effective deportation and return of migrant workers who are remaining in the State illegally after the expiry of their work permit.³³ The parties also agree to prevent and intervene in illegal border crossing, illegal employment services and

²⁹ Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return (CRC GC No. 23 (2017)), CMW/C/GC/4-CRC/C/GC/23, 16 November 2017, para 7.

³⁰ Ibid.

³¹ Ibid.

³² ASEAN Convention against Trafficking in Persons, Especially Women and Children 2015, Article 14(7).

³³ Lao PDR-Thailand Employment Cooperation MOU 2002, Article 1.2.

illegal employment of migrant workers, as well as share information with regard to, among other things, undocumented entry, unlawful employment and unlawful labour practices.³⁴

In terms of the national legal framework, all ASEAN Member States except Lao PDR criminalise entry without valid travel documentation (passport and visa where required). A summary of the legislative provisions is provided in **Table 1**.

Table 1: Criminalisation of Irregular Entry

Brunei Darussalam: Sections 5, 6, 8, 9(4), 26, 32, 36, 46(4) and 55(3A), 56, 58 and 58A, Immigration Act 2014
Is irregular entry a crime: Yes Punishment: fine and duration of imprisonment varies depending on the type and circumstances of irregular entry. For entry without possession of a valid entry permit, pass or residence permit, imprisonment between 3 months and 2 years and, for certain males, ³⁵ whipping with not less than 3 strokes cumulatively or, for persons not punishable with whipping, a fine not exceeding BND 6000; and deportation
Cambodia: Articles 29 and 35, Immigration Law 1994
Is irregular entry a crime: Yes Punishment: Imprisonment for three to six months and deportation
Indonesia: Articles 75, 113 and 119, Law on Immigration 2011
Is irregular entry a crime: Yes Punishment: Fine of up to Rp 100 million or Rp 500 million and/or imprisonment for up to one year or five years (depending on crime); deportation
Lao PDR: Articles 56, 70 and 72-74, Law on Immigration and Foreigner Management 2015
Is irregular entry a crime: No, they are administrative offences (the criminal law does not contain any crimes relating to illegal entry or stay) Punishment: Education measures; fine; deportation
Malaysia: Sections 5, 6, 32 and 57, Immigration Act 1959/63; Sections 2 and 5(1), Passports Act 1966
Is irregular entry a crime: Yes Punishment: Imprisonment for up to five years and/or fine of up to RM 10,000 plus ‘whipping of not more than six strokes’; deportation
Myanmar: Myanmar Immigration (Emergency Provisions) Act 1947, Articles 3 and 7; Law Amending the Myanmar Immigration (Emergency Provisions) Act 1947, Article 2
Is irregular entry a crime: Yes Punishment: Imprisonment of six months to five years or fine of a minimum of K. 1500, or both; and deportation.
Philippines: Section 45, Immigration Act 1940
Is irregular entry a crime: Yes Punishment: Imprisonment for up to two years, a fine and deportation.
Singapore: Sections 5A, 6, 9, 11, 24, 25, 25A, 26, 57 Immigration Act 1959
Is irregular entry a crime: Yes Punishment: fines ranging from \$1,000 to \$10,000; imprisonment for up to five years; caning (except for women, men over 50 years of age and men subject to a non-commuted death sentence); and deportation.
Thailand: Sections 22, 54 and 62, Immigration Act 1979
Is irregular entry a crime: Yes Punishment: Imprisonment for up to two years and fine up to THB 20,000; deportation
Viet Nam: Articles 37 and 347, Criminal Code 2015; Article 20, Law on Foreigner’ Entry into, Exit from, Transit through and Residence in Viet Nam 2014; Articles 4(6) and 35, Law on Entry and Exit of Vietnamese Citizens;

³⁴ Lao PDR-Thailand Employment Cooperation MOU 2002, Articles 1.4 and 21.

³⁵ Whipping is prohibited for females, males sentenced to death and males whom the Court considers to be more than 50 years of age; Brunei Darussalam, Criminal Procedure Code, Enactment No. 16 of 1951, as amended, Revised Edition 2016, Section 258.

Article 18, Decree on 'Administrative Penalties for Violations against Regulations on Social Safety, Security, Order; Social Evils, Fire Prevention and Firefighting; Rescue; Domestic Violence Prevention and Control'; Articles 24(1)(b), 39(6)-(7) and 119, Law on Handling Administrative Offences 2012

Is irregular entry a crime: Yes; it is also an administrative offence

Administrative punishment: Warning or a fine from VND 300,000 to 40 million depending on the specifics of the offence; expulsion (where the offence is committed by a 'foreigner'); custody pending expulsion

Criminal punishment: Imprisonment of six months to three years or fine of VND 5-50 million; deportation

With the exception of Lao PDR, entry without valid travel documentation (passport and visa where required) is criminalised and which can be punished by imprisonment. Although Lao PDR does not criminalise irregular entry, it nevertheless imposes administrative sanctions such as fines and deportation. In **Viet Nam**, irregular entry is also an administrative offence. The immigration laws in **Brunei Darussalam, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand** and **Viet Nam** contain detailed provisions on immigration offences.

In **Brunei Darussalam**, the Immigration Act criminalises the following acts, which are punishable with a fine of BND 2000, imprisonment for six months and deportation:³⁶ failure to enter Brunei Darussalam through an authorised landing place, airport or point of entry is an offence, unless there is reasonable cause or the person is compelled to do so by accident;³⁷ arrival at a place other than an authorised landing place or airport and failing to appear before the nearest Senior Immigration Officer or failing to leave the country when asked according to the Officer's instructions;³⁸ entry into the country of persons who are, in the opinion of the Controller of Immigration, non-citizens, fall under any category of 'prohibited immigrants' listed in Section 8(2) of the Immigration Act (which are defined broadly)³⁹ and who do not have a valid pass;⁴⁰ (re-)entry or stay in the country by non-citizens who are subject to an order of the Minister of Home Affairs prohibiting their entry in the interests of public security or 'by reason of any economic, industrial, social, educational or other conditions';⁴¹ and entry or attempted entry without the consent of the Controller of Immigration or entry with consent but not in compliance with the conditions set by the Controller of Immigration, after having been repatriated from Brunei Darussalam at the cost of the government.⁴² Non-citizens of Brunei Darussalam entering and remaining in the state without a valid entry permit, residence permit or valid pass (or without having their name endorsed on an entry permit of a family member) are subject to imprisonment for a term between three months and two years; for certain males,⁴³ whipping with not less than three strokes cumulatively or, for persons not punishable with whipping, a fine not exceeding BND 6000; and removal.⁴⁴

³⁶ Brunei Darussalam, Immigration Act, Revised Edition 2014, Chapter 17, Sections 5, 8, 26, 32, 58 and 58A; note that compounding is possible for offences under Section 5(3).

³⁷ Brunei Darussalam, Immigration Act, Revised Edition 2014, Chapter 17, Section 5(1) and (3).

³⁸ Brunei Darussalam, Immigration Act, Revised Edition 2014, Chapter 17, Section 26.

³⁹ Includes, among others, persons who are unable to show that they have a means of supporting themselves or their dependants, have definite employment awaiting them or who are likely to become a pauper or charge on the public; prostitutes; vagrants or habitual beggars; persons entering the country illegally; persons who have been repatriated from another country for any reason whatsoever and, for related reasons, is deemed by the Controller of Immigration, to be an 'undesirable immigrant'.

⁴⁰ Brunei Darussalam, Immigration Act, Revised Edition 2014, Chapter 17, Section 8. This offence may even be applied to persons with an entry permit, subject to appeal, pending which the person may be detained in an immigration depot; Brunei Darussalam, Immigration Act, Revised Edition 2014, Chapter 17, Section 8(6).

⁴¹ Brunei Darussalam, Immigration Act, Revised Edition 2014, Chapter 17, Section 9(4).

⁴² Brunei Darussalam, Immigration Act, Revised Edition 2014, Chapter 17, Section 46(4).

⁴³ Whipping is prohibited for females, males sentenced to death and males whom the Court considers to be more than 50 years of age; Brunei Darussalam, Criminal Procedure Code, Enactment No. 16 of 1951, as amended, Revised Edition 2016, Section 258.

⁴⁴ Brunei Darussalam, Immigration Act, Revised Edition 2014, Chapter 17, Sections 6, 12 and 32; Brunei Darussalam, Criminal Procedure Code, Enactment No. 16 of 1951, as amended, Revised Edition 2016, Section 258. See also Section 15 for offences relating to remaining in Brunei Darussalam following the cancellation or expiry of an entry permit or pass.

Persons who have been removed from or lawfully sent out of the country or, in respect of non-citizens, removed from or lawfully sent out of the Commonwealth, and enter or reside in Brunei Darussalam without written permission from the Controller of Immigration commit an offence punishable with a fine of BND 6000, imprisonment between one and three years and removal.⁴⁵ Stay in Brunei Darussalam following the cancellation of an entry permit or expiry of a pass is punishable by up to two years imprisonment, for certain males,⁴⁶ whipping with not less than three strokes cumulatively or, for persons not punishable with whipping, a fine not exceeding BND 6000 (subject to compounding), depending on the duration of unlawful stay, and removal.⁴⁷ The Immigration Law further criminalises related acts, such as attempting to,⁴⁸ or abetting a person to,⁴⁹ enter Brunei Darussalam illegally.⁵⁰ The Minister (undefined in the Act but understood to be the Minister of Home Affairs) may by order exempt, absolutely or conditionally, any person or class of persons from all or any of the provisions of the Immigration Act,⁵¹ including those relating to offences of illegal entry or stay. Brunei Darussalam has no legislation specifically relating to asylum seekers or refugees such that they too would fall under these immigration provisions.

In **Indonesia**, anyone entering or exiting Indonesia without undergoing immigration clearance at an immigration checkpoint is guilty of an offence and can be punished by up to one year of imprisonment and/or a fine of one hundred million Indonesian Rupiah.⁵² Entering or residing in Indonesia without valid immigration documents is subject to up to five years' imprisonment and a fine of up to five hundred million Indonesian Rupiah.⁵³ Administrative action, including deportation, can also be taken.⁵⁴

Lao PDR's Law on Immigration and Foreigner Management provides for educational measures to be taken against individuals who commit minor breaches of the immigration law (for example 'dirty' travel documents); fines (specified in separate regulations) for more serious crimes, such as entry with invalid travel documents, failure to enter via official border checkpoints, overstaying permitted duration and unauthorised work; civil measures involving compensation of losses by those whose breaches result in the loss of life or damage to the health or property of others (including the government); and criminal sanctions pursuant to the Penal Law.⁵⁵ No immigration offences are specified in the Penal Law, however, with the exception of the encouragement of unlawful migration or immigration. The Law on Immigration and Foreign Management also provides for deportation of aliens, foreigners and stateless people in certain circumstances, including following release from penalties, having illegally entered the country or having used invalid travel documents.⁵⁶

Failure to enter or leave **Malaysia** through an authorised landing place, airport or point of entry is an offence.⁵⁷ Anyone entering or leaving Malaysia must produce a passport (and valid visa on entry in the case of a non-

⁴⁵ Brunei Darussalam, Immigration Act, Revised Edition 2014, Chapter 17, Section 36.

⁴⁶ Whipping is prohibited for females, males sentenced to death and males whom the Court considers to be more than 50 years of age; Brunei Darussalam, Criminal Procedure Code, Enactment No. 16 of 1951, as amended, Revised Edition 2016, Section 258.

⁴⁷ Brunei Darussalam, Immigration Act, Revised Edition 2014, Chapter 17, Sections 15, 33 and 58A.

⁴⁸ Punishable by a fine of up to BND 4000, imprisonment for between three months and 2 years (it is not clear whether whipping is also a punishment); Brunei Darussalam, Immigration Act, Revised Edition 2014, Chapter 17, Section 55(1)(i).

⁴⁹ Punishable by imprisonment for a term of between two and seven years and, for certain males, whipping with not less than three strokes cumulatively or, for persons not punishable with whipping, a fine not exceeding BND 6000; Brunei Darussalam, Immigration Act, Revised Edition 2014, Chapter 17, Section 55(1)(ii); Brunei Darussalam, Criminal Procedure Code, Enactment No. 16 of 1951, as amended, Revised Edition 2016, Section 258.

⁵⁰ Brunei Darussalam, Immigration Act, Revised Edition 2014, Chapter 17, Section 55(1).

⁵¹ Brunei Darussalam, Immigration Act, Revised Edition 2014, Chapter 17, Section 54.

⁵² Indonesia, Law on Immigration 2011, Article 113.

⁵³ Indonesia, Law on Immigration 2011, Article 119.

⁵⁴ Indonesia, Law on Immigration 2011, Article 75.

⁵⁵ Lao PDR, Law on Immigration and Foreigner Management 2015, Articles 70 and 72-74.

⁵⁶ Lao PDR, Law on Immigration and Foreigner Management 2015, Article 56.

⁵⁷ Malaysia, Immigration Act 1959/63, Section 5(1).

citizen), with failure to comply by non-citizens being liable to removal from Malaysia.⁵⁸ Section 6 of the Immigration Act provides that any non-citizen who enters Malaysia without a valid entry permit (or is otherwise exempt under Section 55)⁵⁹ shall be guilty of an offence, punishable with a fine of up to 10,000 Ringgit and/or imprisonment of up to five years and, particularly concerning, whipping of not more than six strokes. 'Prohibited immigrants' who enter Malaysia are also guilty of an offence. Section 8 of the Immigration Act deals with 'prohibited immigrants' and sets out the categories of non-citizens who fall within this definition. These include: 'any person who is unable to show that he has the means of supporting himself and his dependents (if any)...' (Section 8(3)(a)); 'any person who ... is not in possession of [valid travel] documents or is in possession of forged or altered travel documents ...' (Section 8(3)(m)); any person whose pass or permit has been cancelled; and 'the family and dependants of a prohibited immigrant' (Section 8(3)(n)). Children who enter Malaysia without a valid pass or whose parents fall within any of these categories are thus considered 'prohibited immigrants.' It is also an offence for a person (and any dependent child) whose pass or permit is cancelled under Article 9 of the Immigration Act to remain in Malaysia. Remaining in Malaysia beyond the expiry date or following cancellation of an entry permit or certificate of status is punishable by a fine of not less than 10,000 Ringgit and/or imprisonment of up to five years. Illegal immigrants convicted of an offence under Section 5, 6, 8 or 9 are liable to be removed from Malaysia under Section 32 of the Immigration Act. The Immigration Act also contains special rules regarding East Malaysia.⁶⁰ These include restrictions on Malaysian citizens' right of entry into East Malaysia and the requirement for internal travel documents. Breach of this requirement is an offence. This could have an impact on children affected by internal migration.

Pursuant to the **Myanmar's** Immigration (Emergency Provisions) Act, foreigners can only enter Myanmar if they have an immigration permit issued by an authorised body, a valid passport endorsed by or on behalf of the President, or valid passport and visa.⁶¹ Myanmar citizens can only enter with a valid Myanmar passport or certificate issued in lieu of the valid passport by the appropriate body.⁶² Foreigners can only enter through prescribed seaports, airports and land stations.⁶³ Foreigners contravening a provision of the Act may be deported, pending which the individual may be detained in such manner as the President of the Union may direct.⁶⁴ A person who enters illegally or overstays their permit, or attempts to do so, are punishable with imprisonment of six months to five years, or with a minimum fine of a of K.1500, or both.⁶⁵ Persons assisting or attempting to assist any person to enter Myanmar illegally or knowing that a foreigner is remaining in Myanmar in violation of the Act and wilfully assists or attempts to assist him to remain in Myanmar, are punishable with imprisonment for a term not exceeding two years and/or a fine.⁶⁶ Carriers who knowingly bring, or attempt to bring, unauthorised persons into Myanmar are also punishable with imprisonment of between six months to five years, or a fine of a minimum of K. 1500 for every such person brought or attempted to be brought into Myanmar, or both.⁶⁷ Further, whoever makes a false statement to be given an immigration permit or tampers with the relevant documents is punishable with a maximum imprisonment

⁵⁸ Malaysia, Passports Act 1966, Sections 2 and 5(1).

⁵⁹ Malaysia, Immigration Act 1959/63, Section 55 grants the Minister the power to exempt any person or class of persons from all or any of the provisions of the Act. It would thus be within the power of the Immigration Minister to legalise the status of asylum-seekers/refugees and not to detain, for example, children.

⁶⁰ Malaysia, Immigration Act 1959/63, Part VII.

⁶¹ Myanmar, Immigration (Emergency Provisions) Act 1947, Section 3(a).

⁶² Myanmar, Immigration (Emergency Provisions) Act 1947, Section 3(b).

⁶³ Myanmar, Immigration (Emergency Provisions) Act 1947, Section 6(1).

⁶⁴ Myanmar, Immigration (Emergency Provisions) Act 1947, Sections 7.

⁶⁵ Myanmar, Immigration (Emergency Provisions) Act 1947, Section 13(1); Myanmar, Law Amending the Myanmar Immigration (Emergency Provisions) Act 1947, Section 2.

⁶⁶ Myanmar, Immigration (Emergency Provisions) Act 1947, Section 13(5).

⁶⁷ Myanmar, Immigration (Emergency Provisions) Act 1947, Section 13(2); Myanmar, Law Amending the Myanmar Immigration (Emergency Provisions) Act 1947, Section 2.

term of two years and/or a fine.⁶⁸ The law criminalises various other related offences, set out mainly in section 13 of the Immigration (Emergency Provisions) Act.

Section 45 of the **Philippines'** Immigration Act sets out the circumstances in which the penal provisions will apply. Aliens who enter into the Philippines without inspection and admission by immigration officials or who obtain entry by wilful, false, or misleading representation, including fraudulently claiming to be a citizen of the Philippines or evading any requirement of the immigration laws, shall be fined and imprisoned for up to two years and deported. There is no exception in the law for children. Aliens who overstay their permission to remain in their visa (tourist or other categories) or who commit a criminal offence or anti-social behaviour within the terms of section 37 of the Immigration Act are also liable to arrest and deportation.⁶⁹

The **Singaporean** immigration legislation stipulates a range of penalties for offences relating to illegal entry, stay and departure. Sections 26 to 26 of the Immigration Act set the punishment for entering Singapore by sea,⁷⁰ air,⁷¹ train⁷² or land⁷³ without appearing before an immigration officer and following the procedures set out in those sections, at imprisonment for up to 12 months and/or at a fine of up to SGD\$4,000.⁷⁴ Entering or departing Singapore without the prescribed immigration documentation (a passport and visa where required) carries a punishment of six months' imprisonment and/or a fine of up to SGD\$1,000.⁷⁵ 'Entry' is explicitly defined in the interpretation section as including a non-citizen child's birth in Singapore,⁷⁶ though Section 6A provides that a 'special pass' will be granted to such a child to authorise him or her to remain legally in the country for 42 days.⁷⁷ The child's parent/s are responsible for making an application to renew the special pass⁷⁸ and will be committing a criminal offence if the child remains in Singapore upon its expiry.⁷⁹ Non-citizens who enter or attempt to enter the country without a lawful entry permit are liable to punishment of at least six months imprisonment and three strokes of caning (or a fine of up to SGD\$6,000 in lieu of caning for women, men over 50 years old and men with a non-commuted death sentence).⁸⁰ Non-citizens who depart Singapore without a completed embarkation form are liable to a fine of up to SGD\$2,000 and/or imprisonment for a period not exceeding six months.⁸¹ There is a rebuttable presumption against a person found within the waters of one of Singapore's ports⁸² that the person is attempting to enter unlawfully if that person either: fails to produce the requisite entry documents; has 'no visible means of subsistence'; or has 'taken precautions to conceal his or her identity or presence from any police officer or immigration officer.'⁸³ Remaining in Singapore for more than 24 hours after (i) expiry of a person's citizenship, without applying for a permit to remain⁸⁴ or (ii) being notified that a person's application for a permit to remain in Singapore has been rejected are offences punishable by a fine of SGD\$4,000 and/or imprisonment for at least six months.⁸⁵ Where a person remains in Singapore for more than 90 days after (i) or (ii) (above), punishment increases to imprisonment for up to six months and 3 strokes of caning (or a SGD\$6,000 fine for those exempt from caning by way of the Criminal

⁶⁸ Myanmar, Immigration (Emergency Provisions) Act 1947, Section 13(7).

⁶⁹ The Philippines, Commonwealth Act No. 613, Immigration Act 1940, Section 37(a),

⁷⁰ Singapore, Immigration Act 1959, Section 24.

⁷¹ Singapore, Immigration Act 1959, Section 25.

⁷² Singapore, Immigration Act 1959, Section 25A

⁷³ Singapore, Immigration Act 1959, Section 26.

⁷⁴ Singapore, Immigration Act 1959, Sections 24, 25, 25A and 26.

⁷⁵ Singapore, Immigration Act 1959, Section 5A.

⁷⁶ Singapore, Immigration Act 1959, Section 2 "entry" (ca).

⁷⁷ Singapore, Immigration Act 1959, Section 6A(1),(2).

⁷⁸ Singapore, Immigration Act 1959, Section 6A(3).

⁷⁹ Singapore, Immigration Act 1959, Section 6A(6).

⁸⁰ Singapore, Immigration Act 1959, Section 6(3)(a); Singapore, Criminal Procedure Code 2010, Section 325(1).

⁸¹ Singapore, Immigration Act 1959, Section 6(3)(b).

⁸² As defined by Singapore, Maritime and Port Authority of Singapore Act 1996, Section 3.

⁸³ Singapore, Immigration Act 1959, Section 6(4).

⁸⁴ Singapore, Immigration Act 1959, Section 11A(6)(a).

⁸⁵ Singapore, Immigration Act 1959, Section 11A(6)(a).

Procedure Code).⁸⁶ Where an order has been made by the Minister for Immigration to prohibit or limit the entry of a particular person or class of person, and that order is violated by an individual entering or remaining in Singapore, the punishment is two to four years' imprisonment and a fine of up to SGD\$6,000.⁸⁷ If, however, the person violating such an order has previously been convicted of an offence that holds a three year minimum term custodial sentence, and the person uses falsified documents to enter Singapore in circumvention of the Minister's order, the punishment increases to two to five years' imprisonment, a fine of up to SGD\$10,000 and caning.⁸⁸ Attempts to enter Singapore unlawfully are criminalised under section 57 and punishable with a custodial sentence of up to two years and a SGD\$4,000 fine.⁸⁹ Section 8 sets out a list of persons who are classed as 'prohibited immigrants' and are as such precluded from entering Singapore, including people infected with HIV⁹⁰ or other contagious diseases⁹¹; prostitutes or those who have ever lived on the proceeds of prostitution⁹²; and 'vagrants and habitual beggars.'⁹³ Section 56 grants the Minister the power to make an order to exempt any person or class of person from any of the provisions of the Act,⁹⁴ which could theoretically be used to protect children affected by migration. Finally, any person found to be a 'prohibited immigrant' is liable to removal from Singapore subject to the provisions set out in Sections 31 to 36 of the Immigration Act (see section 3.2 for more detail).

Judicial corporal punishment, especially when inflicted on children, is incompatible with international human rights standards⁹⁵ and has been abolished for this reason in most countries. **Singapore** has been criticised for the continued use of caning as a criminal sanction, particularly during Universal Periodic Review (UPR) cycles. During the first UPR cycle, several governments, including the United Kingdom, Czech Republic, France and Djibouti submitted recommendations to the Singaporean government to abolish corporal punishment, particularly for immigration offences.⁹⁶ Calls to outlaw corporal punishment, including caning, were echoed in the most recent UPR cycle in 2021.⁹⁷

The **Thai** Immigration Act 1979 requires persons entering or leaving Thailand to pass through immigration check points or other specified areas.⁹⁸ Failure to do so is punishable by imprisonment of up to two years and a fine not exceeding 20,000 Baht.⁹⁹ Section 12(1) of the Act prohibits entry into Thailand for any alien (defined as someone without Thai nationality) who does not have valid travel documentation (including a passport and/or visa (unless exempt)).¹⁰⁰ Such persons, or those who enter in accordance with the Act but stay beyond the permitted time, or whose permission is revoked, are subject to imprisonment of up to two years and/or a

⁸⁶ Singapore, Criminal Procedure Code 2010, Section 325(1) (exempt persons are women, men over 50 years old and men who have received a death sentence that has not been commuted); Singapore, Immigration Act 1959, Section 11A(6)(b).

⁸⁷ Singapore, Immigration Act 1959, Section 9(1)-(5).

⁸⁸ Singapore, Immigration Act 1959, Section 9(6). It is noted that certain persons are exempt from caning (women, men over 50 years old and men who have received a death sentence that has not been commuted); children are not exempt. Singapore, Criminal Procedure Code 2010, Section 325(1).

⁸⁹ Singapore, Immigration Act 1959, Section 57.

⁹⁰ Singapore, Immigration Act 1959, Section 8(3)(ba).

⁹¹ Singapore, Immigration Act 1959, Section 8(3)(b).

⁹² Singapore, Immigration Act 1959, Section 8(3)(e).

⁹³ Singapore, Immigration Act 1959, Section 8(3)(g).

⁹⁴ Singapore, Immigration Act 1959, Section 56.

⁹⁵ Particularly the prohibition of torture and cruel, inhuman or degrading punishment enshrined in the UN International Covenant of Civil and Political Rights (ICCPR) Article 7, ICCPR.

⁹⁶ United Nations General Assembly, Report of the Working Group on the Universal Periodic Review: Singapore, A/HRC/18/11, 11 July 2011.

⁹⁷ United Nations General Assembly, Report of the Working Group on the Universal Periodic Review: Singapore, A/HRC/48/16, 22 July 2021.

⁹⁸ Thailand, Immigration Act 1979, Section 11.

⁹⁹ Thailand, Immigration Act 1979, Section 62.

¹⁰⁰ Section 12 lists a number of other circumstances that preclude entry into Thailand, such as having insufficient means to support a living.

fine not exceeding 20,000 Baht¹⁰¹ and deportation.¹⁰² Any alien who cannot show evidence of lawful entry under Section 12(1) or does not have a residence certificate or identity certificate under the law on alien registration is presumed to have entered Thailand illegally and is subject to arrest and detention.¹⁰³

In **Viet Nam**, the law provides for a series of administrative offences relating to entry, exit, transit, residence and travel which are punishable with a warning and/or fine from VND 300,000 to 40 million, depending on the specifics of the offence.¹⁰⁴ 'Foreigners' may be deported.¹⁰⁵ Pending deportation, the individual may be held in custody.¹⁰⁶ Article 347 of the Penal Code also criminalises illegal entry to, exit from or stay in Viet Nam. The crime is punishable with a fine from 5 million to 50 million VND or six months to three years' imprisonment and expulsion.¹⁰⁷ The law contains provisions on when and how the authorities must handle the matter as an administrative or criminal matter.¹⁰⁸

Cambodia, Indonesia and the **Philippines** exclude asylum-seekers and refugees from prosecution for immigration offences. **Indonesia's** Presidential Regulation 125/2016 Concerning the Handling of Foreign Refugees recognises the role of UNHCR in processing refugee status determinations. Foreigners (including children) who claim refugee status on arrival into Indonesia will thus be processed pursuant to the Presidential Regulation rather than being charged with immigration offences. Department Circular 024 issued in 2022 in the **Philippines** stipulates as a basic principle that the refugee and stateless status determination procedures shall be governed by the principle of non-detention and the preservation of family unity. An applicant for refugee status shall not be penalised on account of illegal entry or presence in the country, provided they present themselves to the authorities and/or show good cause of their illegal entry and presence.¹⁰⁹ Whilst **Cambodia's** Immigration Law does not explicitly refer to asylum-seekers/refugees, it provides that criminal sanctions and deportation will be imposed for unlawful entry except where Cambodia must comply with international treaties to which it is party.¹¹⁰ This would include asylum-seekers and refugees under the 1951 Refugee Convention and Refugee Status Protocol 1967.¹¹¹

3.1.2 Immigration - liability of children

The criminal or administrative liability of children for immigration-related offences is subject to the general criminal or administrative laws of the relevant jurisdiction or child justice laws where these are in place. In summary, in all ASEAN Member States except Lao PDR, children may be held criminally liable for immigration offences, although the minimum age of criminal responsibility differs. Of the nine ASEAN Member States which have migration offences, **Brunei Darussalam** has the lowest minimum age of criminal responsibility of seven

¹⁰¹ Thailand, Immigration Act 1979, Section 81.

¹⁰² Thailand, Immigration Act 1979, Sections 22 and 54.

¹⁰³ Thailand, Immigration Act 1979, Sections 58 and 59.

¹⁰⁴ Viet Nam, Decree on Administrative Penalties for Violations against Regulations on Social Safety, Security, Order; Social Evils, Fire Prevention and Firefighting; Rescue; Domestic Violence Prevention and Control 2021, Article 18; Law on Foreigner' Entry into, Exit from, Transit through and Residence in Viet Nam 2014, Article 18; Law on Entry and Exit of Vietnamese Citizens 2019, Articles 4(6) and 35; Law on Handling Administrative Violations 2012, Articles 24(1)(b) and 39(6)-(7).

¹⁰⁵ Viet Nam, Decree on Administrative Penalties for Violations against Regulations on Social Safety, Security, Order; Social Evils, Fire Prevention and Firefighting; Rescue; Domestic Violence Prevention and Control 2021, Articles 2(d) and 18(8)(b); Law on Handling Administrative Violations 2012, Article 39(7).

¹⁰⁶ Viet Nam, Law on Handling Administrative Violations 2012, Article 119(1) and (7).

¹⁰⁷ Viet Nam, Criminal Code 2015, Articles 347 and 37.

¹⁰⁸ Viet Nam, Decree on Administrative Penalties for Violations against Regulations on Social Safety, Security, Order; Social Evils, Fire Prevention and Firefighting; Rescue; Domestic Violence Prevention and Control 2021, Article 6; Law on Handling Administrative Violations 2012, Articles 62 to 63.

¹⁰⁹ The Philippines, Department Circular No. 024 Strengthening the Refugees and Stateless Persons Protection Unit, Enhancing the Rules for Refugee and Stateless Status Determination and for other Purposes 2022, Section 3.

¹¹⁰ Cambodia, Law on Immigration 1994, Articles 29 and 35.

¹¹¹ Cambodia became party to these instruments on 15 Oct 1992 with no reservations.

years,¹¹² followed by **Malaysia**,¹¹³ **Myanmar**¹¹⁴ and **Singapore** in which the minimum age of criminal responsibility is 10 years of age, though certain provisions in Singapore's national laws are contradictory and suggest that children under the age of 10 may be held criminally responsible in certain circumstances.¹¹⁵ The highest minimum age of criminal responsibility across these nine ASEAN Member States is in the **Philippines**, at 15 years. However, children aged seven to 12 years in **Brunei Darussalam**, and 10 to 12 years in **Malaysia**, **Myanmar** and **Singapore**, may be found to lack sufficient maturity and understanding to judge the nature and consequence of their conduct.¹¹⁶ The relevant provisions are explained in more detail below.

In **Brunei Darussalam**, the Juvenile Court or other court handling the case has the power to impose alternative measures to the sanctions outlined in the Immigration Act on children alleged, accused or found guilty of an immigration offence. These alternative measures include, among other things, 'discharging the offender' with or without him/her entering into a bond for good behaviour or to comply with any such conditions as may be imposed; committing the child to the care of a relative or other fit person for a period specified by the court; or subject to the provisions of any other law, placing the child under probation for between six months and three years.¹¹⁷ The consideration and use of these alternative measures are not compulsory, though the court is required to make the best interests of the child the paramount consideration when applying these provisions in respect of any question relating to the welfare of the child.¹¹⁸

In **Singapore**, sections 6(a) and 82 of the Penal Code provide for a minimum age of criminal responsibility of 10 years, subject to an exception for children aged 10 to (and excluding) 12 who have not attained sufficient maturity of understanding to judge of the nature and consequence of their conduct on that occasion.¹¹⁹ However, contradictory provisions are provided in the Criminal Procedure Code, which provides that 'juveniles,' defined in the Act as persons from the age of 7 to (and excluding) 16 years,¹²⁰ who are convicted of an offence punishable by imprisonment and/or a fine *may* be dealt with in accordance with the Children and Young Persons Act 1993.¹²¹ Similarly, child justice provisions in the Children and Young Persons Act apply to children (defined as a person under 14 years of age) or young person (defined for the purposes of child justice provisions as a person aged 14 to 15 years,¹²² without setting a minimum age of criminal responsibility. Though it would appear that the minimum age of 10 would apply, the contradicting provisions across the Penal Code, Criminal Procedure Code and Children and Young Persons Act create some ambiguity with potentially significant repercussions for children born in Singapore without citizenship. As is noted in section 3.1.1 above, birth in Singapore without citizenship constitutes 'entry' for the purposes of immigration legislation, though children are automatically granted a pass permitting them to remain in Singapore legally for 42 days after birth.¹²³ Whilst the Immigration Act is silent on whether children would be criminalised for remaining in the country upon expiry of the special pass (in contrast to criminal liability of the child's parent/s, which is expressly set out), this appears to be a risk given contradicting provisions relating to the minimum age of criminal responsibility.

¹¹² Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Section 2(1); Brunei Darussalam, Penal Code No. 16 of 1951 as amended, Revised Edition 2016, Chapter 22, Section 82.

¹¹³ Malaysia, Penal Code 1976, Section 82.

¹¹⁴ Myanmar, Child Rights Law 2019, section 78(a).

¹¹⁵ Singapore, Penal Code 1871, Revised Edition 2020, Chapter 2, Section 6(a).

¹¹⁶ Malaysia, Penal Code 1976, Section 78; Brunei Darussalam, Penal Code No. 16 of 1951 as amended, Revised Edition 2016, Chapter 22, Section 83; Singapore, Penal Code 1871, Chapter 2, Section 6(a); Myanmar, Child Rights Law 2019, section 78(b).

¹¹⁷ Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Sections 51(1) and 91; Brunei Darussalam, Criminal Procedure Code, Enactment No. 16 of 1951, Revised Edition 2016, Chapter 7, Section 262.

¹¹⁸ Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Section 2(4).

¹¹⁹ Singapore, Penal Code 1871, Revised Edition 2020, sections 6(a), 82 and 83.

¹²⁰ Singapore, Criminal Procedure Code 2010, Definitions Section.

¹²¹ Singapore, Criminal Procedure Code 2010, Section 323.

¹²² For the purposes of sections 35, 36(1), 37, 38, 39, 41, 42, 43, 44, 45, 46, 47, 49, 50, 60(1), 79, 80 or 81 of the Act.

¹²³ Singapore, Children and Young Persons Act 1993, Section 6A.

In January 2022, the Parliament of **Thailand** adopted amendments to the Penal Code to increase the minimum age of criminal responsibility from 10 to 12.¹²⁴ Section 74 of the Criminal Code provides that children aged between 12 and 15 (i.e. children in conflict with the law aged 12, 13 and 14) must not be punished, but can be rebuked and warned; ordered back into the care and supervision of the parents, guardian or other person residing with the child with stipulations for a period not exceeding three years and an order for the parents/guardian/other person to pay a fine up to 10 thousand Baht; placing the child under probation with conditions while in the care of the parents/guardian/other person residing with the child; send the child to an educational institution, organisation for the care, training or instruction of the child or a 'mental institution', for a specified period until the child reaches 18 years of age.¹²⁵ Where the child is placed with an organisation for their care, training or instruction, and where the organisation agrees, the court may issue an order for the organisation to, among other things, supervise, train and teach the child, determine where the child should live, set up the child for work and deliver child welfare protections according to the law.¹²⁶ For those aged 15 to 18, the court can impose a reduced sentence or adopt one of the measures specified in Section 74.¹²⁷

In **Cambodia**, a child under the age of 14 cannot be held criminally or administratively¹²⁸ liable. Article 7 of the Law on Juvenile Justice and Article 39 of the Penal Code provide that the age of criminal liability is 18, although a court may impose criminal responsibility on minors aged 14 and above if warranted by the circumstances of the offence or the personality of the minor. A child under 14 is referred to his or her designated representative except when in need of care and protection, in which case he or she is referred to the department of social affairs (Article 14, Law on Juvenile Justice). Article 39 of the Penal Code provides that minors who have committed an offence are subject to measures of surveillance, education, protection and assistance (see Section 3.3 below).

The **Indonesian** Juvenile Justice System Law provides for a minimum age of criminal responsibility of 12 years.¹²⁹ However, measures may be taken by an investigator, probation officer or social worker in respect of a child under 12 who has committed or is suspected of committing a criminal act. These include returning the child to his or her parents or guardian or placing the child in a social welfare centre or other institution for education, guidance or counselling.¹³⁰ Children in conflict with the law from the age of 14 who are convicted by the court may be sanctioned or subject to particular 'measures' while children in conflict with the law aged 12 or 13 may only be subject to *tindakan*, i.e. particular 'treatment' or 'measures'.¹³¹ Measures include returning the child to the custody of his/her parents, placing the child in the custody of a designated person, placing the child in a 'mental hospital', 'treatment in a social welfare institution', requiring the child to participate in formal education and/or training run by a State or private institution, revocation of the juvenile's driving licence and/or repairing any damage caused by the offence.¹³² The court is also empowered not to hand down a criminal verdict or subject the child to a certain measure on the basis of justice and humanity, after considering the degree of crime, the child's personal state or wellbeing at the time he/she committed the crime.¹³³

In **Myanmar**, the minimum age of criminal responsibility is 10 years of age, although children between 10 and 12 who have not attained sufficient maturity of understanding to judge the nature and consequences of their conduct on that occasion, are also not regarded as committing a crime.¹³⁴ Children in conflict with the law

¹²⁴ Act to Amend the Penal Code (No. 29) B.E. 2522, Section 3, which amends Section 73 of the Penal Code.

¹²⁵ Thailand, Penal Code 1956, Section 74.

¹²⁶ Thailand, Penal Code 1956, Section 74.

¹²⁷ Thailand, Penal Code 1956, Section 75.

¹²⁸ Cambodia, Chapter 16 (Tort) of Book 5, Civil Code 2008, Article 745 (Lack of competence to assume liability)

¹²⁹ Indonesia, Law on Juvenile Justice System 2012, Article 1.

¹³⁰ Indonesia, Law on Juvenile Justice System 2012, Article 21.

¹³¹ Indonesia, Law on Juvenile Justice System 2012, Article 69.

¹³² Indonesia, Law on Juvenile Justice System 2012, Article 82.

¹³³ Indonesia, Law on Juvenile Justice System 2012, Article 70.

¹³⁴ Myanmar, Child Rights Law 2019, Section 78.

must be handled in accordance with the Child Rights Law. When arresting a child for an offence, the police officer must not keep the child in police custody, must send the child to the juvenile court if the child has not already been diverted and, if it is not possible to send the child to a juvenile court promptly, release the child upon signing a bond pledging good conduct.¹³⁵ Diversion is defined as a programme aimed toward ethical correction and reintegrating of children into society for the best interests of a child charged without sentencing the child for the alleged crime and before prosecuting the child in the juvenile court or during the trial in the juvenile court.¹³⁶ Diversion is not available for children suspected of a crime punishable by imprisonment of 7 years or above, the death penalty, life imprisonment or imprisonment for an unlimited number of years,¹³⁷ such that diversion would be available for the immigration offences listed in Part 3.1.1 above. However, if there is sufficient evidence that the child's character has deteriorated beyond reformation or that the child is a delinquent beyond control, or the child has committed a previous offence punishable by imprisonment of three years or above, the child is not eligible for diversion.¹³⁸ Diversion measures include issuing the child in conflict with the law with a warning.¹³⁹ Children tried in the juvenile court may be subject to alternative sentences, detailed in Part 3.3.

Article 12 of **Viet Nam's** Criminal Code 2015 sets the age of criminal responsibility for specified 'very serious' or 'extremely serious' criminal offences at 14 and for other criminal offences at 16. As immigration offences are punishable by a maximum of three years, they fall within the category of less serious crimes¹⁴⁰ and thus a child under the age of 16 cannot be held criminally responsible for this crime. For children over this age, criminal prosecutions can only be initiated if necessary, taking account of the child's record, the danger to society of the alleged offence and the requirements of crime prevention.¹⁴¹ As regards administrative sanctions, children aged 14 to 16 can be administratively sanctioned for intentional violations (and receive a warning), whereas those aged 16 or over can be administratively sanctioned for all administrative violations.¹⁴² Foreign individuals who commit administrative violations within Vietnamese territory are sanctioned according to Vietnamese law but cannot be subject to 'administrative handling measures' (which include educational measures).¹⁴³ However, less serious crimes (which would include immigration offences) committed by those under 18 do not appear to come within the provision for administrative handling measures in any event.¹⁴⁴ Children aged 16 and 17 who commit an administrative immigration offence are punishable with a warning and/or fine, depending on the specifics of the offence, though the fine cannot exceed half of that applicable to adults and may be imposed on the parents or guardians if the child does not have the money to pay.¹⁴⁵ The police, border guards and coast guards have authority to impose warnings/cautions and fines under Articles 39 to 41 of the Law on Handling of Administrative Violations. Children who have committed an administrative violation which must be sanctioned by a warning and who voluntarily report and honestly repent their violation, may instead be given a verbal reminder on the spot.¹⁴⁶

According to section 6 of the **Philippines'** Juvenile Justice and Welfare Act of 2006, any child aged fifteen years or under at the time of the commission of the offence shall be exempt from criminal liability. A child between

¹³⁵ Myanmar, Child Rights Law 2019, Section 80.

¹³⁶ Myanmar, Child Rights Law 2019, Section 3(n).

¹³⁷ Myanmar, Child Rights Law 2019, Section 72(a).

¹³⁸ Myanmar, Child Rights Law 2019, Section 72(b)-(c).

¹³⁹ Myanmar, Child Rights Law 2019, Section 75(b)(1).

¹⁴⁰ Viet Nam, Criminal Code 2015, Article 9(1).

¹⁴¹ Viet Nam, Criminal Code 2015, Article 91(3).

¹⁴² Viet Nam, Law on Handling of Administrative Violations, Articles 5(1)(a), 22, 134.

¹⁴³ Viet Nam, Law on Handling of Administrative Violations 2012, Article 5.

¹⁴⁴ Viet Nam, Law on Handling of Administrative Violations 2012, Part 3, Chapter 1.

¹⁴⁵ Viet Nam, Law on Handling of Administrative Violations, Article 134(3). Article 135 of the Law on Handling of Administrative Violations provides that sanctions for minors include: warnings; fines; and confiscating material evidence and/or means of administrative violations. It does not refer to expulsion. It is therefore interpreted that the sanction of expulsion cannot be applied to under 18s.

¹⁴⁶ Viet Nam, Law on Handling Administrative Violations, Articles 138 to 140.

15 and 18 years old shall likewise be exempt from criminal liability, unless they have acted with ‘discernment’, in which case, the child shall be subjected to the appropriate proceedings. A child in conflict with the law shall be subject to an intervention programme under the custody of their parents or guardians.¹⁴⁷

In **Lao PDR**, as outlined above, although irregular entry is not a criminal offence, the law nevertheless requires administrative sanctions for breaches of migration law. Children are subject to the same administrative legal regime as adults with there being no minimum age of *administrative* responsibility in the law. Potential sanctions for children therefore include the education¹⁴⁸ and warning of individuals for minor breaches of migration law such as improper stay or ‘dirty’ travel documents;¹⁴⁹ civil measures such as compensation for the loss of life, health or property of others caused by the breach; fines, the rate of which is required to be specified in regulations;¹⁵⁰ and deportation.¹⁵¹

3.1.3 Trafficking exemptions

With the exception of **Viet Nam** and **Singapore**, the anti-trafficking laws or related guidelines in the ASEAN Member States expressly grant immunity from criminal prosecution to victims of trafficking.¹⁵² Some of the provisions are fairly general in scope: for example **Lao PDR’s** anti-trafficking law stipulates that victims of trafficking are exempt from criminal liability and cannot be detained for illegal immigration;¹⁵³ **Indonesia’s** law provides that a trafficking victim who commits a crime under coercion shall not be liable to criminal charges;¹⁵⁴ the **Philippines** Anti-Trafficking in Persons Act¹⁵⁵ recognizes trafficked persons as victims, and as such, shall not be penalized for unlawful acts committed as a direct result of, or as an incident or in relation to being trafficked, or in obedience to an order of the trafficker.¹⁵⁶

Brunei Darussalam, Malaysia, Myanmar and **Thailand’s** laws are more detailed. Section 47 of **Brunei Darussalam’s** Anti-Trafficking in Persons Order 2019 provides that a trafficked person shall not be liable to criminal prosecution for illegal entry or unlawful residence in Brunei Darussalam, or for procuring or possessing any fraudulent travel or identity documents which the trafficked person obtained or with which the trafficked person was supplied for the purposes of entering Brunei Darussalam, where such acts are the direct consequence of an alleged or actual offence of people trafficking.

Section 25 of **Malaysia’s** Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 specifies that a trafficked person will have immunity from criminal prosecution in respect of illegal entry, unlawful residence or the procurement or possession of fraudulent travel or identity documents obtained for the purpose of entering the receiving or transit country. Further, Section 54(1) provides for the release of trafficked persons who are citizens or permanent residents of Malaysia or who are foreign nationals who have ‘valid documents’

¹⁴⁷ The Philippines, Juvenile Justice and Welfare Act of 2006, Section 6 and 20.

¹⁴⁸ This term is undefined in the law.

¹⁴⁹ Lao PDR, Law on Immigration and Foreigner Management 2014, Article 70.

¹⁵⁰ Lao PDR, Law on Immigration and Foreigner Management 2014, Article 72.

¹⁵¹ Lao PDR, Law on Immigration and Foreigner Management 2014, Article 56.

¹⁵² Note that the **Lao PDR-Thailand Trafficking MOU** 2002, Article 17, on trafficking provides that trafficking victims must not be subjected to further victimisation or trauma in legal proceedings, but it is not clear whether this relates to criminal proceedings against the suspect only.

¹⁵³ Lao PDR, Law on Anti-Trafficking in Persons 2016, Article 39; Law on Development and Protection of Women 2004, Article 25 also provides that victims of trafficking cannot be prosecuted for illegal immigration.

¹⁵⁴ Indonesia, Law on the Eradication of the Criminal Act of Human Trafficking 2007, Article 18. Indonesia, Law on Immigration 2011, Article 86 also provides that victims of trafficking (and people smuggling) are not subject to immigration administrative sanctions, although they can be placed in an immigration detention centre or other accommodation.

¹⁵⁵ The Philippines, Republic Act No 9208, (2003) as amended by Republic Act 10364, the Expanded Anti-Trafficking in Persons Act of 2012.

¹⁵⁶ The Philippines, Republic Act No 9208, (2003), as amended by Republic Act 10364, the Expanded Anti-Trafficking in Persons Act of 2012, Section 17.

and are employed, upon revocation or expiry of a protection order. For foreign nationals without valid documents or who are not employed, the law requires that they are released to an immigration officer to be returned to their country of origin in accordance with immigration laws, though it is understood that the immunity from criminal prosecution would continue to apply. Further, the immigration officer is required to take 'all necessary steps' to facilitate the return of the trafficked person to the country of origin 'without unnecessary delay' and 'with due regard for his safety.' Safety measures which may be taken include obtaining a court order to place the trafficked person in a place of refuge for a further period that the Magistrate deems fit if the person is in need of further care and protection or for managing the person's repatriation.¹⁵⁷

Article 16 of **Myanmar's** Prevention and Suppression of Trafficking in Persons Law states that no action shall be taken against a trafficked victim *for their involvement in the trafficking*, whether it was consented to or not; for illegal entry into, passing through, leaving for, illegally residing in or working in a *foreign country*; or for acquiring or possessing any fraudulent travel documents. However, this exemption does not appear to extend to protecting the victim from prosecution for illegal entry or stay in Myanmar (as opposed to in a foreign country). Indeed, Article 17 states that when a trafficked victim is found guilty of a crime that was committed as a consequence of their trafficking, the prosecuting bodies must seek the approval of the Central Body for the Suppression of Trafficking in Persons to be able to take an action against the trafficked victim, which further reinforces the absence of a blanket exemption from prosecution for the victim for offences arising as a result of the victim's trafficking.

Pursuant to Section 41 of **Thailand's** Anti-Trafficking in Persons Act, criminal proceedings cannot be initiated against victims of trafficking in respect of the following offences: entering, leaving, or residing in Thailand unlawfully, giving false information to an official, forging or using a forged travel document, prostitution or working unlawfully.

In **Cambodia**, the Agreement on Guidelines for Practices and Cooperation between the Relevant Government Institutions and Victim Support Agencies in Cases of Human Trafficking provide that victims of cross-border trafficking, particularly women or children, 'shall not be considered an offender under the Immigration Law'.¹⁵⁸ Although the Guidelines precede the 2008 Law on Suppression of Human Trafficking and Sexual Exploitation, which takes precedence over the Guidelines in the event of an inconsistency, there is nothing in the Law which appears to conflict with this provision in the Guidelines, such that it should continue to apply.

Neither **Singapore** nor **Viet Nam's** anti-trafficking legislation contain any explicit protection from prosecution for trafficking victims and thus, technically, such victims could be prosecuted for crimes committed as a direct result of their trafficking. However, given the support available to trafficking victims under Article 32 of the Law on Prevention and Suppression of Human Trafficking in **Viet Nam** and Section 19 of the Prevention of Human Trafficking Act 2014 in **Singapore**, criminal sanctions may be unlikely in practice. In particular, the Singaporean anti-trafficking law contains a provision on the 'Protection of Informers,' which prohibits 'complaints' about one of the trafficking offences listed in Part 2 of the Act from being admitted as evidence in any criminal or civil proceedings.¹⁵⁹ Whilst, arguably, this could be relied upon to protect victims who make a complaint or testify against their traffickers from prosecution, the protection offered by the provision is narrow. It would only be useful in circumstances where the victim's statement and/or testimony is the only evidence of the victim's 'illegal' activity, which is unlikely to be the case given the victim's presence in Singapore is evidence of irregular entry and stay in and of itself. Further, the Singaporean Women's Charter 1961 provides that female victims of trafficking can be detained in a 'place of safety' during the course of criminal proceedings against their alleged trafficker¹⁶⁰ and can be arrested for absconding from that place,¹⁶¹

¹⁵⁷ Malaysia, Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (as amended), Section 54(3).

¹⁵⁸ Cambodia, Agreement on Guidelines for Practices and Cooperation between the Relevant Government Institutions and Victim Support Agencies in Cases of Human Trafficking 2007, Article 5.

¹⁵⁹ Singapore, Prevention of Human Trafficking Act 2014, Article 21.

¹⁶⁰ Singapore, Women's Charter 1961, Section 155.

¹⁶¹ Singapore, Women's Charter 1961, Section 169(2).

indicating that victims criminal law enforcement measures are applied against victims who may, as a result, be treated in much the same way as an offender.

3.2 Immigration Detention

Does the law permit immigration detention of children? Does the law prohibit it?

Under Article 37(b) of the CRC, children must not be deprived of their liberty unlawfully or arbitrarily, and detention must be used only as a measure of last resort and for the shortest appropriate period of time. All ASEAN Member States are party to the CRC and are therefore bound by this provision, except that two ASEAN Member States have issued reservations in respect of Article 37: **Malaysia** reserves the position to apply Article 37 only in conformity with its Constitution and national laws and policies; **Singapore** reserves the position that Article 37 does not prohibit the application of any prevailing measures prescribed by law for maintaining law and order, or measures and restrictions which are prescribed by law and which are necessary in the interests of national security, public safety, public order, the protection of public health or the protection of the rights and freedoms of others (see Annex 3: Status of Ratification of Key International Treaties by ASEAN Member States). In the context of migration, the CRC Committee and CMW Committee have affirmed that children should never be detained for reasons related to their or their parents' migration status, that such detention contravenes the principle of the best interests of the child, and that child immigration detention should be prohibited by law.¹⁶² Relating to separated and unaccompanied children in cross border contexts, the CRC Committee similarly emphasises that detention cannot be justified solely on the basis of the child being separated or unaccompanied, or on their migratory or residence status, or lack thereof.¹⁶³ In light of the serious and disproportionate impact that COVID-19 was having on migrants and their families, in 2020, the CMW Committee and UN Special Rapporteur on the human rights of migrants called upon States to immediately release families with children and unaccompanied and separated children from immigration detention facilities to non-custodial and community-based alternatives with full access to rights and services, including healthcare.¹⁶⁴

None of the ASEAN Member States expressly prohibit the immigration detention of children. There are, however, restrictions placed on the detention of children in the ASEAN Member States: these are either found in the immigration laws or in child protection or juvenile justice laws. In many cases – particularly where juvenile justice laws are concerned – the provisions are relevant to the detention of a child suspected to have committed a criminal offence. However, many of the restrictions on detention outlined below will not be applicable to cases where children are held in immigration detention as an administrative measure.

Immigration laws

Immigration instruments in **Indonesia** and **Thailand** contain provisions specifically relating to the detention of children, whilst those of **Brunei Darussalam**, **Lao PDR**, **Malaysia**, **Myanmar**, **the Philippines**¹⁶⁵ and **Singapore** make no distinction between children and adults when addressing detention. In **Cambodia** and **Viet Nam**,¹⁶⁶ the immigration legislation reviewed did not contain any provisions on detention.

¹⁶² CRC GC No. 23 (2017), para 5

¹⁶³ Committee on the Rights of the Child, General comment No. 6 (2005), Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, 1 September 2005 (CRC GC No. 6 (2005), para 61.

¹⁶⁴ UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and UN Special Rapporteur on the human rights of migrants, Joint Guidance Note on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants, 26 May 2020, para. 11, <<https://www.ohchr.org/sites/default/files/2021-12/CMWSPMJointGuidanceNoteCOVID-19Migrants.pdf>>, accessed 5 October 2022.

¹⁶⁵ The Philippines, Department of Justice Circular 024 of 2022, Section 3.

¹⁶⁶ Although the Law on Handling of Administrative Violations in Viet Nam permits the custody of persons to prevent or ensure the handling of an administrative offence, it only applies to administrative offences where there is a need to

The **Indonesian** Law on Immigration permits the detention of foreign nationals in an immigration detention facility where they have been refused entry into Indonesia and are awaiting removal,¹⁶⁷ or they are residing in Indonesia without a valid permit or lawful travel document, are subject to immigration administrative action or awaiting deportation.¹⁶⁸ Where the person is a minor, the immigration officer may detain the minor in 'other places' (which includes 'accommodation which are easily controlled by Immigration officers'¹⁶⁹). The law is silent as to whether such 'other places' are open or closed institutions. A specific immigration regulation stipulates that asylum-seekers and refugees living in Indonesia shall be placed in an immigration detention facility, immigration detention centre or 'other location' where approved by immigration authorities.¹⁷⁰ Child asylum-seekers/refugees (along with people in other specified situations) are those who can be placed in a location other than an immigration detention facility/centre.¹⁷¹ However, 'Circular Note of the Directorate General of Immigration, Ministry of Law and Human Rights on Restoring the Function of Immigration Detention Centres' MIUM 01.01.2827 signed in July 2018, reportedly provides that people seeking asylum and refugees are exempt from immigration detention despite having entered the country irregularly,¹⁷² though this Circular was not available to the authors for review. Whilst trafficking victims are not subject to immigration administrative action, they can still be placed in an immigration detention centre or other accommodation pending their immediate return to their country of origin, although they receive 'special treatment' which differs from other detainees.¹⁷³

In **Thailand**, the Immigration Act, which makes no distinction between adults and children, permits the detention of 'aliens' (which covers all migrants) 'at any place' for inspection and consideration of whether or not the alien is forbidden from entering the country.¹⁷⁴ This power can be exercised only in so far as it is necessary in the circumstances with an initial time limit of 48 hours, extendable to seven days.¹⁷⁵ An alien can also be detained for as long as necessary pending deportation. Power is granted, however, to the Immigration Minister (with Cabinet approval) under Section 17 of the Immigration Act to permit any alien or group of aliens to stay in Thailand under certain conditions or to exempt them from provisions of the Act. The authorities would thus be able to release children from immigration detention or exempt children (or any group of refugees/asylum-seekers) from the detention provisions, though this is a discretionary power. However, it is reported that Article 17 has been used in practice to exempt and enable individuals and groups to remain in Thailand.¹⁷⁶ Thailand's MOU on Alternatives to Detention stipulates that children shall not be detained 'except in necessary and unavoidable circumstances, whereby they may be detained at the Immigration Detention Centres, as the last resort and for the shortest possible duration'. It further provides that reception centres of the Ministry of Social Development and Human Security, or privately-run reception centres shall be the last resort and used for the shortest possible duration.¹⁷⁷ There are also specific provisions on the custody of

'prevent, stop immediately acts causing public disturbance, causing injury to other persons' (Articles 119(1) and 122), which is unlikely to apply to immigration offences.

¹⁶⁷ Indonesia, Law on Immigration 2011, Article 13.

¹⁶⁸ Indonesia, Law on Immigration 2011, Article 83. Individuals can be detained for up to 10 years (Article 85).

¹⁶⁹ Indonesia, Law on Immigration 2011 (elucidation).

¹⁷⁰ Indonesia, Regulation of the Director General of Immigration No. IMI-0352.GR.02.07 (2016) on the Handling of Illegal Migrant Claiming to be Asylum-Seeker or Refugee 2016, Article 4(1) and (3).

¹⁷¹ Indonesia, Regulation of the Director General of Immigration No. IMI-0352.GR.02.07 (2016) on the Handling of Illegal Migrant Claiming to be Asylum-Seeker or Refugee 2016, Article 4(2).

¹⁷² United Nations, Immigration Detention and Alternatives to Detention in the Asia Pacific Region, Annex: Country profiles, May 2022, p. 23; News Republica, *Para Pencari Suaka tak Lagi Huni Rudenim Sejak 2018* (Bahasa), 4 July 2019, <<https://news.republika.co.id/berita/nasional/umum/19/07/04/pu4g8f414-para-pencari-suaka-tak-lagi-huni-rudenim-sejak-2018>>, accessed 22 March 2023.

¹⁷³ Indonesia, Law on Immigration 2011, Articles 86 to 88.

¹⁷⁴ Thailand, Immigration Act 1979, Sections 19 and 20.

¹⁷⁵ Thailand, Immigration Act 1979, Section 20. Further extensions to detention can be granted by the court, which also has the power to make an order the individual's provisional release.

¹⁷⁶ United Nations, Immigration Detention and Alternatives to Detention in the Asia Pacific Region- Annex: Country profiles, May 2022, p. 47.

¹⁷⁷ Thailand, MOU on Alternatives to Detention 2019, para. 4.

trafficked persons under the Anti-Trafficking in Persons Act. Pursuant to Section 29, a trafficked person can be held temporarily in custody where this is necessary for the protection of the person for no longer than 24 hours (or seven days by court order). The person must be detained in an ‘appropriate place’, which shall not be a detention cell or prison, and this right must be exercised in accordance with human rights principles.

It is reported that Thailand is developing a ‘National Screening Mechanism,’ which would include screening of individuals with ‘protection claims’ and grant a ‘protected person status’ to eligible applicants.¹⁷⁸ However, according to these reports, the protections afforded to persons with protected status are unclear, including whether this would include protection from immigration detention.¹⁷⁹ In February 2023, the State of Council reviewed and approved the Operation Guide for the National Screening Mechanism to come into force in August or September 2023.

Immigration legislation in **Brunei Darussalam, Lao PDR, Malaysia, Myanmar, the Philippines and Singapore** all allow for immigration detention, but include some, albeit limited, safeguards. In **Brunei Darussalam**, various offences relating to illegal entry or stay are punishable with imprisonment (see **Part 3.1.1**). Where a person is deemed to be a ‘prohibited immigrant’, the Controller of Immigration may also prohibit the person from disembarking or detain the person at an immigration depot or other place designated by the Controller, ‘until an opportunity arises’ to return the person to his place of embarkation or country of birth or citizenship.¹⁸⁰ Further, persons appealing to the Minister of Home Affairs against a refusal of entry on the grounds of being a ‘prohibited immigrant’ (including persons with an entry permit) must be detained in an immigration depot unless released on a pass, with or without conditions, issued by the Controller of Immigration at his/her discretion.¹⁸¹ Where a Senior Immigration Officer ‘is in doubt’ over the right of a person to enter the country, he/she may direct the person to an immigration depot, where that person must stay until he/she is permitted to leave by the officer or Controller of Immigration, up to a maximum of seven days, subject to such longer period as the Controller of Immigration may order.¹⁸² The Immigration Act also permits the arrest without warrant and detention of any person reasonably believed to be a person liable to be removed from Brunei Darussalam under any provision of the Immigration Act.¹⁸³ The individual may be detained in any prison, police station or immigration depot for a maximum period of 14 days pending a decision of whether or not a removal should be made.¹⁸⁴ Similarly, a person ordered to be removed from Brunei Darussalam may lawfully be detained in custody for such period as may be necessary to make arrangements for their removal.¹⁸⁵ The place of detention may be any prison, police station, immigration depot or other place appointed for that purpose by the Controller of Immigration or, pending an appeal against the order, a suitable vessel or aircraft within the limits of Brunei Darussalam.¹⁸⁶ However, the Controller of Immigration has the power to release the individual pending determination of an appeal against the order for removal, on such conditions as the Controller deems fit.¹⁸⁷ Further, as noted in **Part 3.1.1**, the Minister may by order exempt, absolutely or conditionally, any person or class of persons from all or any of the provisions of the Immigration Act,¹⁸⁸ which would include the provisions on detention.

The Law on Immigration and Foreigner Management of the **Lao PDR** permits the detention of persons breaching immigration law ‘in case of necessity’ and for a maximum of 48 hours for investigation.¹⁸⁹ **Malaysian**

¹⁷⁸ United Nations, *Immigration Detention and Alternatives to Detention in the Asia Pacific Region*, May 2022, p. 19.

¹⁷⁹ United Nations, *Immigration Detention and Alternatives to Detention in the Asia Pacific Region*, May 2022, p. 19.

¹⁸⁰ Brunei Darussalam, *Brunei Darussalam, Immigration Act, Revised Edition 2014*, Chapter 17, Section 31.

¹⁸¹ Brunei Darussalam, *Brunei Darussalam, Immigration Act, Revised Edition 2014*, Chapter 17, Section 8(6).

¹⁸² Brunei Darussalam, *Brunei Darussalam, Immigration Act, Revised Edition 2014*, Chapter 17, Section 27.

¹⁸³ Brunei Darussalam, *Brunei Darussalam, Immigration Act, Revised Edition 2014*, Chapter 17, Section 35.

¹⁸⁴ Brunei Darussalam, *Brunei Darussalam, Immigration Act, Revised Edition 2014*, Chapter 17, Section 35.

¹⁸⁵ Brunei Darussalam, *Brunei Darussalam, Immigration Act, Revised Edition 2014*, Chapter 17, Section 34(1).

¹⁸⁶ Brunei Darussalam, *Brunei Darussalam, Immigration Act, Revised Edition 2014*, Chapter 17, Section 34(2) and (3).

¹⁸⁷ Brunei Darussalam, *Brunei Darussalam, Immigration Act, Revised Edition 2014*, Chapter 17, Section 34(2).

¹⁸⁸ Brunei Darussalam, *Immigration Act, Revised Edition 2014*, Chapter 17, Section 54.

¹⁸⁹ Lao PDR, *Law on Immigration and Foreigner Management 2014*, Article 54.

immigration law permits custody in an immigration depot whilst investigations are conducted into a person's right to enter Malaysia and also permits the detention of persons who have entered or remained in Malaysia unlawfully, pending their removal from the country.¹⁹⁰ Pending removal, the person may be detained in an immigration depot, vessel, aircraft, or other place designated by the Director General.¹⁹¹ In line with protections in Article 5 of the Malaysian Constitution, Section 51(5)(b) of the Immigration Act provides that a non-citizen who is arrested or detained under the Act shall within 14 days be brought before the Magistrate who shall make an order for detention for as long as deemed necessary for investigation or for effecting removal from Malaysia. No distinction is made in the Immigration Act between children and adults. However, the Immigration Act provides the Director General of Immigration with the discretion to order the conditional release of a person from an immigration depot where there are investigations into the right to enter¹⁹² or pending a person's appeal against an order for removal.¹⁹³ The Minister of Home Affairs also has the power to exempt any person(s) from any or all of the provisions of the Immigration Act under Section 55. The Minister of Home Affairs would thus have the power to release children from immigration detention or exempt children (or any group of refugees/asylum-seekers) from the detention provisions. However, the discretionary powers in Malaysia are reportedly rarely used in practice.¹⁹⁴

In **Myanmar**, as outlined in Part 3.1.1, persons who commit an immigration offence may be punished with imprisonment and/or are subject to deportation, pending which the individual may be detained. However, the foreigner may be granted bail pending deportation upon such terms and conditions as the President may prescribe.¹⁹⁵ Any foreigner who has been brought into Myanmar illegally must be detained by the carrier, who shall, if required at any time by any immigration official not below the rank of Assistant Immigration Officer, remove the foreigner from Myanmar.¹⁹⁶ Generally, however, the President has the power to exempt any person or classes of persons from any or all the provisions of the immigration law, with or without conditions,¹⁹⁷ which could be used to exempt children from immigration detention.

As noted above, the **Philippines'** Department Circular No. 024¹⁹⁸ provides that, as a basic principle, a person shall not be detained on account of being an applicant for refugee status or as a refugee or a stateless person. However, this does not override the Philippines Immigration Act, which allows for the detention of aliens for the purpose of determining whether the person belongs to any class excluded by the immigration laws.¹⁹⁹ There is no exemption of children from detention in the Immigration Act.

In **Singapore**, 'any person who is reasonably believed to be liable to removal from Singapore' may be arrested and detained for up to 14 days pending a decision as to whether a removal order should be issued in respect of that person.²⁰⁰ Should a removal order be made, the person may be detained in any prison, police station or immigration depot for as long as is necessary for arrangements to be made for their removal from Singapore. There are no time limits on detention pending removal.²⁰¹ A person who appeals against an order for removal can be released pending the result of the appeal at the discretion of the Controller of Immigration.²⁰² However, there is an obligation placed on 'prohibited immigrants' to reimburse the

¹⁹⁰ Malaysia, Immigration Act 1959/63, Sections 27, 31 and 34.

¹⁹¹ Malaysia, Immigration Act, Sections 27, 31 and 34.

¹⁹² Malaysia, Immigration Act 1959/63, Section 27 (1)(ii).

¹⁹³ Malaysia, Immigration Act 1959/63, Section 34(1).

¹⁹⁴ United Nations, Immigration Detention and Alternatives to Detention in the Asia Pacific Region- Annex: Country profiles, May 2022, p. 31.

¹⁹⁵ Myanmar, Myanmar Immigration (Emergency Provisions) Act 1947, Section 7(5).

¹⁹⁶ Myanmar, Myanmar Immigration (Emergency Provisions) Act 1947, Section 12.

¹⁹⁷ Myanmar, Myanmar Immigration (Emergency Provisions) Act 1947, Section 8.

¹⁹⁸ Strengthening the Refugees and Stateless Persons Protection Unit, Enhancing the Rules for Refugee and Stateless Status Determination and for other Purposes, 2022, Section 3.

¹⁹⁹ The Philippines, Commonwealth Act No. 613 The Philippine Immigration Act of 1940, Article 25.

²⁰⁰ Singapore, Immigration Act 1959, Section 35.

²⁰¹ Singapore, Immigration Act 1959, Section 34(1) and (5).

²⁰² Singapore, Immigration Act 1959, Section 34(2).

Singaporean government for the cost of their detention and removal from Singapore and the Controller of Immigration has authority to seize any money in the person's possession in order to cover these costs.²⁰³ 'Prohibited immigrants' arriving in Singapore who are denied entry may be detained or prevented from disembarking, pending their removal.²⁰⁴

Child protection and child justice laws

Restrictions on the detention of children more generally are found in child protection laws and, in the criminal justice context, child justice provisions. In **Brunei Darussalam**, the restrictions are narrow. The provisions permitting bail²⁰⁵ for children in conflict with the law do not go so far as to prohibit the use of detention of children for immigration offences. Further, for children found guilty of an immigration offence, Article 262 of the Criminal Procedure Code empowers the court to deal with the child in accordance with the Children and Young Persons Act, but does not make this compulsory.²⁰⁶ As such, the powers of the court under the Children and Young Persons Act to impose alternative measures on a child found guilty of an offence, such as discharging the child,²⁰⁷ are not mandatory. Further, the range of alternative measures available to the court under the Children and Young Persons Act include other forms of detention, including in a 'place of detention' for up to six months or in an approved institution for up to 52 'weekends', placement in an approved school for a period of between two and three years or, in certain circumstances, detention in a training in a reformatory training centre.²⁰⁸ The Children and Young Persons Act prohibits the court from placing children between the ages of 10 and 14 years in an approved school, remand home or place of detention *except where* the court is satisfied that the child cannot be suitably dealt with otherwise.²⁰⁹ More generally, children must not be imprisoned for non-payment of a fine, though children may nevertheless still be detained in other categories of institutions.²¹⁰ Further, children between the ages of 14 and 18 may also be imprisoned where the court is satisfied that the child is of 'so unruly a character that he cannot be detained in a place of detention or an approved school.'²¹¹ There is, nevertheless, a requirement in the Children and Young Persons Act for the court to have regard to the child's welfare, take steps to remove the child from 'undesirable surroundings' and ensure that proper provision is made for the child's education and training, with the best interests of the child as the paramount consideration,²¹² which could be used to limit the use of immigration detention in practice.

Child protection provisions in Brunei Darussalam do not prohibit and, in some instances, contemplate, the de facto detention of children in need of protection. This includes the power of the protector or police officer to take a child reasonably believed to be in need of protection 'into temporary custody and commit him to a place of safety' following which the child must be brought before the Juvenile Court, as a general rule, within 3 working days.²¹³ The Juvenile Court has the power to make a range of orders to protect the child, which

²⁰³ Singapore, Immigration Act 1959, Section 47A.

²⁰⁴ Singapore, Immigration Act 1959, Section 31.

²⁰⁵ Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Sections 41, 47(5)(a), 49(11)(c) and 61; Brunei Darussalam, Criminal Procedure Code, Enactment No. 16 of 1951, Revised Edition 2016, Chapter 7, particularly Sections 33 and 34.

²⁰⁶ Similarly, under the Children and Young Persons Act, as a general rule, the Magistrates, Intermediate and High Courts may exercise the same powers as the Juvenile Court, as set out in the Children and Young Persons Act, but again does not make this compulsory; Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Section 91.

²⁰⁷ Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Sections 51(1) and 91; Brunei Darussalam, Criminal Procedure Code, Enactment No. 16 of 1951, Revised Edition 2016, Chapter 7, Section 262.

²⁰⁸ Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Section 51(1)(g),(h), (i) and (k).

²⁰⁹ Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Section 2(1) (definition of child) and Section 12.

²¹⁰ Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Section 44.

²¹¹ Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Section 44.

²¹² Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Sections 2(4) and 12(1).

²¹³ Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Sections 17 and 56.

include both residential placements and non-residential alternatives. Residential placements include placement ‘in a place of safety’ for a period of three years or until the child reaches the age of 18 (whichever is longer).²¹⁴ The Minister may, by notification published in the Gazette, declare any place to be a place of safety for these purposes,²¹⁵ though there is no prohibition against detention in the place of safety or any requirement to provide a community- or family-based alternative care arrangement. However, the Juvenile Court must treat the child’s best interests as the paramount consideration when determining which order to make.²¹⁶ Where the child is proved to be ‘beyond parental control’, the child may be placed in an approved home for a period of between two and three years.²¹⁷ There is no prohibition against the detention of children in approved homes; in fact, persons placed in approved homes are referred to as being ‘detained’ and are deemed to be in ‘lawful custody’ until they are discharged from the home.²¹⁸

Indonesia’s Laws on Child Protection, Juvenile Justice System and Human Rights contain restrictions on a child’s deprivation of liberty, confirming that it shall be used only as a measure of last resort, for the shortest period of time and only in accordance with the law.²¹⁹ Additionally, detention in the juvenile justice context is only permitted where a child is over the age of 14 and the crime is punishable with at least seven years’ imprisonment and would thus not apply to immigration offences (for which the maximum penalty is five years).²²⁰ There is special provision for children accused of offences perpetrated in an ‘emergency situation’. This includes situations where people are displaced, public order disturbances, natural disasters, and armed conflicts. In such cases, law enforcement and judicial personnel must consider the need for special protection (defined as ‘non-aggravated sanction’).²²¹ The three laws also contain a prohibition on torture and other ill-treatment, which might be relevant in a detention context.

In the **Philippines**, the Juvenile Justice and Welfare Act 2006 permits the deprivation of liberty of children aged 15 and above, both pre and post-trial but, in line with Article 37(b) of the CRC, only as a matter of last resort and for the shortest appropriate period of time.²²² To prevent deprivation of liberty, the Act provides for a range of alternatives to detention and diversion.²²³

In **Thailand**, Article 26 of the Child Protection Act prohibits torture, which is defined in Article 4 as ‘any commission or omission of acts which cause the deprivation of freedom of, or mental or physical harm to, a child’. The Child Protection Act provides that children can be sent to an institution (which may include a remand home, welfare centre or juvenile observation centre) where it is deemed necessary for their protection, although transfer to an institution shall be adopted only as the last resort.²²⁴ There are no prohibitions in the law against the detention of children in such institutions.

Legislation in **Malaysia** provides safeguards for children in conflict with the law, except for those suspected of certain serious offences, such as those under the Essential (Security Cases) Regulations 1975, which limit the

²¹⁴ Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Section 57(1)(d).

²¹⁵ Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Section 97.

²¹⁶ Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Section 57(6).

²¹⁷ Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Section 58.

²¹⁸ Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Sections 74, 76 and 84.

²¹⁹ Indonesia, Law on Child Protection 2002, Articles 16 and 64(g); Law on Juvenile Justice System 2012, Articles 2 to 3 and 81 and Law Concerning Human Rights 1999, Article 66 (note that Article 66(5) of the Law Concerning Human Rights expressly provides that, where a child is deprived of liberty, he/she shall not be separated from his/her parents unless it is in the child’s interest).

²²⁰ Indonesia, Law on Juvenile Justice System 2012, Article 32.

²²¹ Indonesia, Law on Juvenile Justice System 2012, Article 17.

²²² The Philippines, Republic Act 9344, Juvenile Justice and Welfare Act 2006, Section 5.

²²³ The Philippines, Republic Act 9344, Juvenile Justice and Welfare Act 2006, Sections 36 and 37.

²²⁴ Thailand, Child Protection Act 2003, Articles 33, 42, 44 and 56.

safeguards available.²²⁵ In relation to immigration offences which do not involve these serious offences, the Child Act includes time limits for bringing children before a court and release of children on bail²²⁶ and restrictions on imprisonment; a child under 14 years of age cannot be imprisoned for any offence, and a child over 14 should not be imprisoned if he or she can be suitably dealt with in any other way.²²⁷ In effect, imprisonment should thus be the last resort.

In **Myanmar**, police officers arresting a child for an offence are prohibited from keeping the child in police custody under any circumstances and children may be diverted for an immigration offence provided that there is no evidence that the child's character has deteriorated beyond reformation or that the child is a delinquent beyond control, and that the child has not committed a previous offence punishable by imprisonment of three or more years.²²⁸ However, diversion measures include the placement of the child under the reformation and custody of training schools, in shelters or temporary care stations to provide him or her with education and vocational training for the best interests of the child.²²⁹ For children who have not been diverted, the police officer must promptly refer the child to the juvenile court, or, failing that, release the child upon signing a bond pledging good conduct. If that is not possible, the child 'should' be placed in a temporary care station or other appropriate place.²³⁰ The juvenile court is prohibited from issuing a detention order to hold the child in police custody or prison for any reason.²³¹ Imprisonment of the child is a measure of last resort in the juvenile court and only when there is an absence of alternative care or diversion programmes.²³² The law also prohibits the imprisonment of children for failure to pay a fine.²³³ However, alternatives to imprisonment include placement in a 'training school' for at least two years or until the child reaches the age of 18 or 20 years if the child's character has 'deteriorated', the child has no parents or guardians, or the child is unlikely to benefit from admonishment or the protection and safeguarding of his/her parents.²³⁴ Other alternative sentences include the placement of the child in a 'shelter' or 'temporary care station' for a certain period of time subject to conditions deemed appropriate by the juvenile judge.²³⁵ However, there are no requirements in the law that the alternative measures to imprisonment or placement of the child in temporary care stations, training schools, shelters or other places must not involve the detention of children. With regard to children affected by migration who are in need of care and protection, under the Child Rights Law, these may be placed in a training school, a temporary care station or shelter while a social investigation is being carried out,²³⁶ without any prohibitions against the detention of children in these institutions. However, the 'best interests' principle and the use of these institutions as a measure of last resort may be used to limit the application of institutional care in practice.²³⁷ As detailed in Part 3.3, whilst residential care is a measure of last resort for children without parental care, there are no prohibitions against the detention of children in residential care placements.

In **Singapore**, children in conflict with the law *may* be handled in accordance with the Children and Young Persons Act though this is neither compulsory for all children nor for all crimes and does not provide

²²⁵ Ministry of Women, Family and Community Development of the Government of Malaysia, UNICEF Malaysia and Child Frontiers, *The Malaysian Juvenile Justice System: A Study of Mechanisms for Handling Children in Conflict with the Law*, UNICEF, 2013, p. 25.

²²⁶ Malaysia, Child Act 2001, Section 84.

²²⁷ Malaysia, Child Act 2001, Section 96.

²²⁸ Myanmar, Child Rights Law 2019, Section 80(e).

²²⁹ Myanmar, Child Rights Law 2019, Section 75(B)(7).

²³⁰ Myanmar, Child Rights Law 2019, Section 80(j).

²³¹ Myanmar, Child Rights Law 2019, Section 83(e).

²³² Myanmar, Child Rights Law 2019, Section 88(a).

²³³ Myanmar, Child Rights Law 2019, Section 88(e).

²³⁴ Myanmar, Child Rights Law 2019, Section 89(e).

²³⁵ Myanmar, Child Rights Law 2019, Section 89(f).

²³⁶ Myanmar, Child Rights Law 2019, Section 58(b).

²³⁷ Myanmar, Child Rights Law 2019, Sections 3(d) and 33(c).

comprehensive protections against immigration detention.²³⁸ Most notably, children aged 16 and 17 are excluded from the child justice provisions in the Children and Young Persons Act, such that the jurisdiction of the Youth Court and corresponding safeguards against detention do not apply to them.²³⁹ Where a child is handled in accordance with the Child and Young Persons Act, there is a safeguard in section 42(1) stipulating that ‘children’ (i.e. defined as persons under the age of 14) cannot be sentenced with imprisonment for any offence or in default of payment of a fine.²⁴⁰ Further, ‘young people’ (aged 14 to 15 years) may not be imprisoned, unless the court considers them to be ‘of so unruly a character that [they] cannot be detained in a place of detention or juvenile rehabilitation centre.’²⁴¹ However, the alternatives to ‘imprisonment’ still require the detention of the child. The Youth Court has the power to order a child (under 14 years) or young person (14-15 years) to be detained in either a ‘place of detention’ for up to six months, an ‘approved institution’ for up to 26 weekends, or a ‘juvenile rehabilitation centre’ for up to three years.²⁴² The upper age limit for these facilities is 18 years for ‘places of detention’, 19 years for ‘juvenile rehabilitation centres’ and 21 years for ‘places of safety.’²⁴³ Section 34(2) prohibits children under the age of 10 from being sent to juvenile detention centres, remand homes or places of detention ‘unless for any reason, including the want of a fit person of his or her own religious persuasion who is willing to undertake the care of him or her, the court is satisfied that he or she cannot suitably be dealt with otherwise’,²⁴⁴ such that there is no absolute prohibition against detention of children of any age. Further, the Youth Court has the power to sentence 16–20-year-olds, and 14–15-year-olds who have previously been sentenced, to attend a juvenile rehabilitation centre to undergo ‘reformatory training’ where it is considered necessary to ‘reform him or her and to prevent crime.’²⁴⁵ Reformatory sentences involve detention for a period not exceeding 54 months.²⁴⁶ The Women’s Charter 1961, grants the Director-General the power to detain girls in ‘places of safety’ in certain circumstances, including where the girl is considered to be in ‘moral danger’,²⁴⁷ in need of protection,²⁴⁸ where her guardian has requested her detention²⁴⁹ or pending conclusion of judicial proceedings of a crime to which the girl is a victim.²⁵⁰ The Director-General holds full discretion on the period of time a girl is detained²⁵¹ until she turns 21 or gets married, at which point she must be released.²⁵² Such placements are also regarded as a form of immigration detention.

Although domestic criminal laws in **Lao PDR** also contain safeguards for children in conflict with the law, these would not apply to illegal entry or stay, which are administrative as opposed to criminal offences. Children may therefore be detained under the Law on Immigration and Foreigner Management which permits the

²³⁸ This is evident from the Criminal Procedure Code, Section 323, which provides that juveniles (i.e. persons above seven years but below 16) may be sentenced in accordance with the Children and Young Persons Act the court may, instead of being sentenced by the court to a fine or imprisonment. Similarly, under the Children and Young Persons Act, Section 39, the Youth Court only has exclusive summary jurisdiction for children and young people (i.e. persons up to but excluding 16 years of age)

²³⁹ Singapore, Children and Young Persons Act, Revised Edition 2020, Sections 2(1) (*Interpretation*), 34 to 52.

²⁴⁰ Singapore, Children and Young Persons Act 1993, Section 41(1). Section 43 contains an exception to this rule for children and young people convicted of grave crimes (murder, or of culpable homicide not amounting to murder, or of attempted murder, or of voluntarily causing grievous hurt) who are liable to be ‘detained in such place and on such conditions as the Minister may direct’²⁴⁰ although this would not apply to children charged with immigration offences as they would not meet the threshold of severity.

²⁴¹ Singapore, Children and Young Persons Act 1993, Section 42(2).

²⁴² Singapore, Children and Young Persons Act 1993, Section 49(1)(g)-(i).

²⁴³ Singapore, Children and Young Persons Act 1993, Section 51(a)-(c).

²⁴⁴ Singapore, Children and Young Persons Act 1993, Section 34(2).

²⁴⁵ In accordance with Criminal Procedure Code 2010, Section 305(1).

²⁴⁶ Singapore, Criminal Procedure Code 2010, Section 305(8)(a).

²⁴⁷ Singapore, Women’s Charter 1961, Section 160(1)(d).

²⁴⁸ Singapore, Women’s Charter 1961, Section 160(1)(c).

²⁴⁹ Singapore, Women’s Charter 1961, Section 160(1).

²⁵⁰ Singapore, Women’s Charter 1961, Section 155.

²⁵¹ Singapore, Women’s Charter 1961, Section 160(4).

²⁵² Singapore, Women’s Charter 1961, Section 161(1).

detention of persons breaching immigration law ‘in case of necessity’ for a maximum of 48 hours for investigation.²⁵³

Pursuant to Article 5 of **Cambodia’s** Law on Juvenile Justice, use of detention (as well as arrest and sentencing) of minors as a last resort and for the shortest period of time is a basic principle applicable to juvenile cases. The juvenile justice law also contains specific provisions confirming that police custody and pre-trial detention can only be used as a measure of last resort for children over the age of 14.²⁵⁴ Pursuant to the Code of Criminal Procedure, there are time limits on police custody and provisional detention that correspond with the gravity of the offence and age of the child.²⁵⁵ As outlined earlier, children under the age of 14 cannot be held criminally liable and cannot be detained. Under Code of Criminal Procedure, such children can be returned temporarily to their guardians or, where there are no guardians, to a Provisional Education and Care Centre until a decision has been made by the court²⁵⁶ on the granting of parental power. Children from the age of 14 can be imprisoned following court judgement, although the sentence is half of the adult sentence.²⁵⁷

The Criminal Code of **Viet Nam** provides that imprisonment shall be imposed on juvenile offenders only if ‘it is considered that other punishments and educational measures do not have sufficient deterrent effects’.²⁵⁸ Where a prison sentence is imposed, it must be as short as ‘is reasonable’ and ‘more lenient’ than that imposed on a person aged 18 and above. The Constitution also contains a number of rights that are applicable to everyone in Viet Nam (not just citizens). These include protections against torture and other ill-treatment and against unlawful arrest or detention.²⁵⁹ Specifically with regard to children, the Constitution states that ‘harassing, persecuting, maltreating, abandoning or abusing children, exploiting child labour or other acts that violate children’s rights are prohibited’.²⁶⁰ However, these rights are not absolute; they may be ‘restricted when prescribed by law in imperative circumstances for the reasons of national defence, national security, social order and security, social morality and community well-being.’²⁶¹ Finally the Child Law provides ‘coercive action and limitations on freedom’ should only be taken where other prevention and education measures are not appropriate.²⁶²

3.3 Alternative Measures to Detention

Are there any alternatives to immigration detention of children under the law and, if so, what are they?

The ASEAN Declaration on the Rights of Children in the Context of Migration encourages States to develop alternatives to child immigration detention and to ensure that, where possible, children are kept with their families in a non-custodial and clean and safe environment (paragraph 9). Such alternatives to detention might include community-based care arrangements or residence in open centres (i.e. those which do not involve the deprivation of liberty)²⁶³ in line with the UN Guidelines for the Alternative Care of Children.²⁶⁴ Further, all except two of the ASEAN Member States (**Brunei Darussalam**, which was not present and **Singapore**, which

²⁵³ Lao PDR, Law on Immigration and Foreigner Management 2015, Article 54.

²⁵⁴ Cambodia, Law on Juvenile Justice 2016, Article 17 and 39.

²⁵⁵ Cambodia, Code of Criminal Procedure 2007, Articles 96, 213 and 214.

²⁵⁶ Cambodia, Code of Criminal Procedure 2007, Article 212.

²⁵⁷ Cambodia, Penal Code 2009, Article 160.

²⁵⁸ Viet Nam, Criminal Code 2015, Article 91(6).

²⁵⁹ Viet Nam, Constitution 2013, as amended, Article 20.

²⁶⁰ Viet Nam, Constitution 2013, as amended, Article 37.

²⁶¹ Viet Nam, Constitution 2013, as amended, Article 14(2).

²⁶² Viet Nam, Child law 2016, Article 70(9).

²⁶³ The deprivation of liberty means the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority; United Nations, Rules for the Protection of Juveniles Deprived of their Liberty, General Assembly Resolution 45/113, United Nations, 14 December 1990, para 11(b).

²⁶⁴ United Nations, Guidelines for the Alternative Care of Children, General Assembly Resolution A/RES/64/142, United Nations, 24 February 2010.

abstained), voted in favour of the Global Compact for Safe, Orderly and Regular Migration, which includes a commitment use immigration detention only as a measure of last resort and work towards alternative, including action to ‘promote, implement, and expand alternatives to detention, favouring non-custodial measures and community-based care arrangements, especially in the case of families and children.’²⁶⁵

The **final draft Thailand-Myanmar MOU** (which has not yet been adopted) on children affected by migration expressly provides that the parties shall endeavour to develop effective procedures and alternatives to prevent the use of child immigration detention. The wording of Article 13 mirrors that of the ASEAN Declaration in providing that the parties shall ‘ensure that, where possible, children are kept together with their families in a non-custodial, and clean and safe environment’.

The immigration laws and related instruments in **Brunei Darussalam, Indonesia, Malaysia, Myanmar, Singapore** and **Thailand** contain provisions which permit the release or exemption of a person from immigration detention or provide alternatives to detention, though placements in alternative accommodations would amount to detention if the facilities operate a closed regime. Some of these provisions were outlined in **Part 3.2. Thailand’s** MOU on Alternatives to Detention contains the most comprehensive provisions of all the ASEAN countries, which are largely compliant with international standards. In **Cambodia, Malaysia, Myanmar, Philippines** and **Thailand**, there are specific provisions for trafficking victims to be placed in shelters though, these too will amount to detention if the shelter operates a closed regime. Indeed, in **Brunei Darussalam** and **Singapore**, the provisions on placements of victims of trafficking in shelters or places of safety make it clear that such placements involve the detention of the victim. Child protection laws and child justice provisions in all of the ASEAN countries address alternatives to detention, although some of these alternatives may not be relevant in a migration context (for example, restoration). These provisions are detailed below.

Immigration Laws

In **Thailand**, the Immigration Act authorises a competent official to allow a person who is awaiting a decision as to whether they may enter the country or who is subject to deportation to stay at an ‘appropriate’ or ‘prescribed’ place, provided that the person agrees to present him or herself to the competent official at a specified time and place, or provides a bond and/or security.²⁶⁶ These provisions have reportedly been used to exempt and enable individuals and groups to remain in Thailand.²⁶⁷ However, no guidance is given in the Immigration Act on what an appropriate or prescribed place might include. The 2019 MOU on Alternatives to Detention provides much more detail on procedures for the non-detention of migrant children. Article 4 of the MOU provides that family-based care must be the priority when considering ways to provide care for migrant children entering Thailand, and that, when placing the child under alternative care, authorities must take into consideration the child’s physical and mental development and seek a sustainable solution. The standard operating procedures under the MOU stipulate that a multi-disciplinary working group must be ready to respond upon receipt of a child at the immigration centre, identifying the child’s vulnerabilities and providing for alternative care for the child.²⁶⁸ When considering alternative care arrangements, this will be based on the assessment of the child and any immediate concerns, and children should not be separated from their parents unless necessary.²⁶⁹ Alternative care arrangements include placing a child and their family in their community, arranging for foster care, placing children and their mothers in government institutions

²⁶⁵ United Nations Digital Library, Global Compact for Safe, Orderly and Regular Migration, 2018, <<https://digitallibrary.un.org/record/1656414?ln=en>>, accessed 6 October 2022; United Nations, Global Compact for Safe, Orderly and Regular Migration, General Assembly Resolution A/RES/73/195, United Nations, 11 January 2019, Objective 13, para. 29(a).

²⁶⁶ Thailand, Immigration Act 1979, Article 19 and 54.

²⁶⁷ United Nations, Immigration Detention and Alternatives to Detention in the Asia Pacific Region- Annex: Country profiles, May 2022, p. 47.

²⁶⁸ Thailand, SOP under MOU on Alternatives to Detention 2019, Article 5.

²⁶⁹ Thailand, SOP under MOU on Alternatives to Detention, Article 6.5.

under the Ministry of Social Development and Human Security or in registered private shelters.²⁷⁰ However, it is reported that children continue to be arrested and detained for immigration offences in Thailand, such that the MOU is only applied once the child is in detention.²⁷¹

The relevant provision in the **Indonesian** immigration law was outlined in **Part 3.2** above. Article 83(2) of the Indonesian Law on Immigration grants the power to immigration officers to place children in an alternative location rather than immigration detention facilities, although the use of the word 'detain' in the provision and the fact that alternative accommodation must be 'easily controlled' by immigration officers suggests that this could still amount to deprivation of liberty.²⁷² No other alternatives are specified. There are specific provisions relating to child asylum-seekers and refugees. Presidential Regulation 125/2016 categorises child refugees as 'refugees with special needs'.²⁷³ As such, they can be placed outside shelters (subject to approval by the relevant authorities²⁷⁴) and provided with special care taking account of their best interests.

Under the **Malaysian** Immigration Act (as referenced in **Part 3.2** above) the Director General has discretion to release a person from an immigration depot where there are investigations into the right to enter or pending an appeal against a removal order with conditions (such as the provision of security).²⁷⁵ The Minister of Home Affairs also has the power to exempt any person(s) from any or all of the provisions of the Immigration Act.²⁷⁶ Similarly, **Singapore's** Immigration Act grants the Controller of Immigration the discretion to release a person pending the outcome of an appeal of a removal order, with any conditions deemed necessary by the Controller.²⁷⁷ In **Brunei Darussalam**, release with or without conditions or security is available in a narrow range of circumstances (for 'prohibited immigrants' appealing against a prohibition order; or pending an appeal against a decision of a removal order) although the decision use this alternative is within the discretion of the Controller of Immigration.²⁷⁸ The Minister of Home Affairs may also by order exempt, absolutely or conditionally, any person or class of persons from any provision of the Act.²⁷⁹ In **Myanmar**, foreigners pending deportation under immigration laws may be granted bail by such authority and upon such terms and conditions as may be prescribed by the President.²⁸⁰ More broadly, the President may exempt any person or classes of persons from any or all the provisions of the immigration law with or without conditions, which could be used to limit the use of immigration detention of children.²⁸¹

Anti-Trafficking Laws

Provisions in anti-trafficking legislation in **Cambodia, Malaysia, Myanmar, the Philippines and Thailand** may also operate as alternatives to detention. In **Cambodia**, the Agreement on Guidelines for Practices and Cooperation between the Relevant Government Institutions and Victim Support Agencies in Cases of Human Trafficking provides for the establishment of clean and safe shelters for trafficking victims aimed at assisting

²⁷⁰ Thailand, SOP under MOU on Alternatives to Detention, Article 6.5.2.

²⁷¹ United Nations, Immigration Detention and Alternatives to Detention in the Asia Pacific Region, May 2022, p. 22.

²⁷² Defined as, 'any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority'; United Nations, Rules for the Protection of Juveniles Deprived of their Liberty, General Assembly Resolution 45/113, United Nations, 14 December 1990, para 11(b).

²⁷³ Indonesia, Presidential Regulation no. 125/2016 Concerning the Handling of Foreign Refugees 2016, Article 27.

²⁷⁴ Article 27(1), although Article 27(2) provides approval is not required during emergency situations or for placement outside a shelter that is within the same regency/city.

²⁷⁵ Malaysia, Immigration Act 1959/63, Sections 27(1)(ii) and 34(1).

²⁷⁶ Ibid. Section 55.

²⁷⁷ Singapore, Immigration Act 1959, Section 34(2).

²⁷⁸ Brunei Darussalam, Immigration Act, Revised Edition 2014, Chapter 17, Sections 9(6) and 34(1).

²⁷⁹ Brunei Darussalam, Immigration Act, Revised Edition 2014, Chapter 17, Section 54.

²⁸⁰ Myanmar, Immigration (Emergency Provisions) Act 1947, section 7(5).

²⁸¹ Myanmar, Immigration (Emergency Provisions) Act 1947, section 8.

with their rehabilitation and reintegration.²⁸² Article 36 of Guidelines confirm that siblings younger than 13 years of age will not be separated, and pursuant to Article 49, victims are permitted to have communications with family members. Victims (or their guardian) must consent to staying at the shelter²⁸³ and have the right to leave the shelter to live with their families or in a community.²⁸⁴ Where the victim asserting this right is a child, special procedures must be followed.²⁸⁵ Cambodia also has a policy on alternative care,²⁸⁶ which covers both residential and non-residential care for children in need of special protection. This includes child victims of exploitation which encompasses children who have been trafficked. The policy confirms that institutional care should be a last resort and temporary solution, and that family care and community care are the best options.

Pursuant to Section 44 of **Malaysia's** Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act, a court can issue a 21-day interim order for a person who is believed to have been trafficked to be placed in a 'place of refuge' whilst an investigation and enquiry is conducted. If, following investigation, a person is confirmed to be a trafficked person in need of care and protection, the court can make a protection order for up to three months in a place of refuge.²⁸⁷ A 'place of refuge' is any house, building or place declared by a Minister to be a place of refuge for the care and protection of trafficked persons pursuant to Section 42(1) of the Act.²⁸⁸ Although trafficking victims might be required to remain in these places of refuge for the duration of the protection orders,²⁸⁹ Section 51A of Act provides that permission may be granted to the individual 'to move freely' (and to work) while under a protection order (interim or otherwise). On revocation or expiry of the order, a trafficked person who is a Malaysian citizen, permanent resident or foreigner with 'valid documents' and who is employed, must be released although a court order may be sought to place the individual in a place of refuge for his/her care and protection for such period as the court deems fit.²⁹⁰ In all other cases, the trafficked person must be released to an immigration officer to be returned to his or her country of origin in accordance with immigration laws and may be placed in a place of refuge pursuant to a court order for the purposes of managing his/her repatriation.²⁹¹ However, there are no prohibitions against the detention of children in the place of refuge.

In **Myanmar**, the law requires a working committee, in cooperation with other stakeholders, to make certain arrangements to protect and provide assistance to victims and witnesses of trafficking, including child victims and witnesses.²⁹² These arrangements include 'providing necessary protection' to the victim or witness against

²⁸² Cambodia, Agreement on Guidelines for Practices and Cooperation between the Relevant Government Institutions and Victim Support Agencies in Cases of Human Trafficking 2007, Chapter 9. As these provisions do not conflict with the provisions of the Law on Suppression of Human Trafficking and Sexual Exploitation 2008, it is understood that they continue to apply.

²⁸³ Cambodia, Agreement on Guidelines for Practices and Cooperation between the Relevant Government Institutions and Victim Support Agencies in Cases of Human Trafficking 2007, Article 63.

²⁸⁴ Cambodia, Agreement on Guidelines for Practices and Cooperation between the Relevant Government Institutions and Victim Support Agencies in Cases of Human Trafficking 2007, Article 66.

²⁸⁵ Cambodia, Agreement on Guidelines for Practices and Cooperation between the Relevant Government Institutions and Victim Support Agencies in Cases of Human Trafficking 2007, Article 66.

²⁸⁶ Cambodia, Policy on Alternative Care for Children, April 2006.

²⁸⁷ Section 51(3)(a). The time limit can be extended by the court on application of enforcement officer or protection officer.

²⁸⁸ Malaysia, Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007, Sections 2 and 42(1).

²⁸⁹ Note that one of the aims of Malaysia's National Action Plan on Anti-Trafficking in Persons (2021-2025) (pp. 68 and 69) is to consider implementing various types of shelters or alternative accommodation, including community-based living. It also refers to the use of family-based care and protection.

²⁹⁰ Malaysia, Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act, Sections 54(1) and 54(3).

²⁹¹ Malaysia, Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act, Sections 54(1)(b) and (c).

²⁹² Myanmar, Prevention and Suppression of Trafficking in Persons Law, State Administration Council Law No. 41/2022, 16 June 2022, section 13.

any threats or harms so that they can present themselves before the court to testify.²⁹³ More specifically, justice professionals must arrange the relocation of the victim or witness to a suitable place for their security or temporary accommodation and keep their personal profile and information confidential.²⁹⁴ In addition, if a victim of trafficking is repatriated or returns to Myanmar, the working committee and other stakeholders must arrange a safe place or a suitable shelter for their temporary stay.²⁹⁵ The working committee must send the child back to his/her parents or guardian if, after scrutiny, it is found that that is the best condition for them or arrange another 'suitable and secure location or a suitable shelter or a charitable social shelter' where there is 'no condition for repatriation to the parents or guardian, or inappropriate condition for repatriation'.²⁹⁶ In doing so, the working committee must take into consideration the age, gender identity and special needs of the trafficked victim.²⁹⁷ However, like Malaysia, there are no provisions prohibiting the deprivation of a child's liberty in the shelters or other accommodation and may, therefore, constitute de facto detention of the child victim or witness.

Sections 16(b) of the **Philippines'** Anti Trafficking in Persons Act and section 17(b) of the Rules and Regulations Implementing the Anti-Trafficking in Persons Act, provide that the Department of Social Welfare and Development shall implement rehabilitative and protective programs for trafficked persons and their family, including free temporary shelter and food facilities. The Rules and Regulations give examples of programmes for recovery and rehabilitation for victims / survivors of trafficking, including residential care, placement of children, educational assistance, and other actions to prevent re-victimization.²⁹⁸ There are no explicit provisions against the detention of children in residential care institutions or shelters.

Similar provisions regarding the placement of trafficking victims in shelters and permission to work or stay can be found in **Thailand's** Anti-Trafficking in Persons Act. This imposes an obligation on the Ministry of Social Development and Human Security to consider and, where appropriate, provide assistance to trafficked persons and gives competent officials the power to place trafficked victims in shelters, including children's shelters.²⁹⁹ There is also provision for trafficked persons to be provided with assistance in obtaining temporary permission to stay and work in Thailand under Section 37 of the Act.³⁰⁰ However, similar to Malaysia, Myanmar and the Philippines, there is no provision prohibiting the detention of children in these alternatives.

Although the laws in **Brunei Darussalam** and **Singapore** contain provisions on placing victims of trafficking in a 'shelter' or 'place of safety,' the legislation indicates that such placements involve detention. In **Brunei Darussalam**, the Anti-Trafficking in Persons Order empowers the Director of the Department of Community Development to provide a trafficking victim with such assistance as the Director considers appropriate in the particular circumstances of the case, including shelter and temporary accommodation.³⁰¹ The Minister can declare any place to be a shelter for these purposes,³⁰² though there is no provision prohibiting the detention of children in the shelter or temporary accommodation. Indeed, it is an offence for a person to knowingly assist

²⁹³ Myanmar, Prevention and Suppression of Trafficking in Persons Law, State Administration Council Law No. 41/2022, 16 June 2022, section 13(e).

²⁹⁴ Myanmar, Prevention and Suppression of Trafficking in Persons Law, State Administration Council Law No. 41/2022, 16 June 2022, section 15(b).

²⁹⁵ Myanmar, Prevention and Suppression of Trafficking in Persons Law, State Administration Council Law No. 41/2022, 16 June 2022, section 21.

²⁹⁶ Myanmar, Prevention and Suppression of Trafficking in Persons Law, State Administration Council Law No. 41/2022, 16 June 2022, section 23(b).

²⁹⁷ Myanmar, Prevention and Suppression of Trafficking in Persons Law, State Administration Council Law No. 41/2022, 16 June 2022, section 23(f).

²⁹⁸ The Philippines, Rules and Regulations Implementing Republic Act No 9208, Article IX, Section 33.

²⁹⁹ Thailand, The Anti-Trafficking in Persons Act 2008, Section 33.

³⁰⁰ Thailand, Immigration Act 1979, Section 19 also provides that, where a child or woman enters Thailand and there is a reasonable suspicion that they have been trafficked or smuggled, they may be granted a temporary stay for the purposes of investigation.

³⁰¹ Brunei Darussalam, Anti-Trafficking in Persons Order 2019, Section 43(1).

³⁰² Brunei Darussalam, Anti-Trafficking in Persons Order 2019, Section 41.

or induce a trafficked person to ‘escape’ from the shelter, knowingly harbour or conceal such persons, prevent them from returning to the shelter, or knowingly assisting in such acts, suggesting that trafficked persons are de facto detained in shelters.³⁰³ Further, trafficked persons removed from shelters without lawful authority, or who escape from the shelter may be ‘retaken by any authorised officer and immediately returned to such shelter’,³⁰⁴ further suggesting that placement in the shelter amounts to de facto detention. The Women and Girls Protection Act similarly explicitly permits the court to order the detention of a girl (or woman) who is victim of an offence stipulated in the Act.³⁰⁵ The girl must be ‘detained’ in a place of safety until she is released by the court or upon the determination of the criminal proceedings against the accused.³⁰⁶ Further, the Commissioner may order the detention of a girl (or woman) in a place of safety on a range of grounds, including upon request by her legal guardian or, broadly, the child is in need of protection.³⁰⁷ However, a ‘discharge committee’ may be appointed to review cases and recommend the release and discharge or placement under ‘conditional parole licence’ of the child.³⁰⁸ In **Singapore**, under the Prevention of Human Trafficking Act, the Director-General of Social Welfare may provide trafficking victims with temporary shelter, where it is ‘practicable and necessary in the circumstances of the case.’³⁰⁹ There is no provision prohibiting the deprivation of a child’s liberty in the shelter. In fact, as set out in Part 3.2 above, the Women’s Charter 1961 requires any women or girl who is the victim of trafficking (or other listed offence³¹⁰) to be *detained* in a place of safety for the entirety of proceedings against her alleged trafficker.³¹¹ Even after the conclusion of proceedings, the Director-General may order the continued detention of the victim if it is deemed necessary for her welfare and protection³¹² and if she is below 21 years old and unmarried.³¹³ Further, the Director-General has the power to issue a warrant to detain a girl in a ‘place of safety’ in other circumstances, including if she is in ‘moral danger.’³¹⁴ If she absconds, she is liable to arrested,³¹⁵ further reflecting the law enforcement, as opposed to child protection and social welfare, approach taken in respect of trafficking victims.

Child protection laws

The child protection laws in **Brunei Darussalam, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand** and **Viet Nam** include provisions on alternative care for children. **Indonesia, Lao PDR, Myanmar, Thailand** and **Viet Nam** prioritise the use of family or community-based care over institutional care. The legislation in **Brunei Darussalam, Malaysia** and **Singapore** do not provide for this explicitly but it may be implied from obligations to make decisions concerning alternative care in the best interests of the child.

In **Indonesia**, children who are separated from their parents where this is in the child’s best interests and children who need special protection (including *pengungsi* and child trafficking victims) must be provided with alternative care.³¹⁶ *Pengungsi* ordinarily translates as ‘refugee’ or ‘internally displaced person.’³¹⁷ However, interpretations of this term have varied among Government officials, with some interpreting it to refer solely

³⁰³ Brunei Darussalam, Anti-Trafficking in Persons Order 2019, Section 42(1).

³⁰⁴ Brunei Darussalam, Anti-Trafficking in Persons Order 2019, Section 42(2).

³⁰⁵ Brunei Darussalam, Women and Girls Protection Act 1984, Section 10(1).

³⁰⁶ Brunei Darussalam, Women and Girls Protection Act 1984, Section 10(2).

³⁰⁷ Brunei Darussalam, Women and Girls Protection Act 1984, Section 15.

³⁰⁸ Brunei Darussalam, Women and Girls Protection Act 1984, Section 24.

³⁰⁹ Singapore, Prevention of Human Trafficking Act 2014, Section 19(1).

³¹⁰ Any offence under Part 11, Women’s Charter 1961 or under section 312, 313, 317, 354, 370, 371, 372, 373, 373A, 375, 376, 376A, 376B, 376C, 376D, 376E, 376F, 376G or 377B of the Penal Code 1871 or defined in section 321, 322, 339, 340, 350, 351, 360, 361 or 362 of the Penal Code 1871.

³¹¹ Singapore, Women’s Charter 1961, Section 155(1).

³¹² Singapore, Women’s Charter 1961, Section 133(3).

³¹³ Singapore, Women’s Charter 1961, Section 161.

³¹⁴ Singapore, Women’s Charter 1961, Section 160.

³¹⁵ Singapore, Women’s Charter 1961, Section 169(2).

³¹⁶ Indonesia, Law on Child Protection (as amended in 2017), Articles 33 and 37; Government Regulation No. 44 of 2017 Concerning the Implementation of Child Care, Article 3.

³¹⁷ UNICEF Indonesia Country Office, written comments emailed to Coram International sent on 11 July 2022.

to 'internally displaced persons' and not also to 'refugees'.³¹⁸ For children eligible for alternative care, priority is on providing childcare on a family basis (by relatives or foster parents) and outside institutions, with institutional care being the last resort.³¹⁹ Institutional care may, however, be appropriate in a number of specified circumstances including where the child's family has abdicated responsibility for the child or is unable to care for the child even with support, the child has no family or the family's whereabouts is unknown, is separated from family due to disasters (social conflicts and natural), is a victim of violence, abuse, neglect or exploitation and/or is in need of special protection.³²⁰ The National Standard of Care for Child Welfare Institutions 2011 affirms that 'infants and children up to the age of five should always be placed in family-based alternative care and only be placed in Child Welfare Institutions for the shortest period of time and as an emergency measure until suitable foster or adoptive parents are identified.'³²¹

The **Lao PDR's** Law on the Protection of the Rights and Interests of Children provides that the best interests of the child shall be 'the main factor' when considering care, with residential care being a measure of last resort.³²² When placing a child with a guardian, preference is to be given to family members, except where this conflicts with the child's best interests.

In **Myanmar**, children without a parent or guardian, children working under the worst forms of child labour, street children, children who have been sexually exploited, children who have been trafficked, children who beg and children who are affected by natural disasters or armed conflicts, are considered to be 'children in need of care and protection.'³²³ The social worker undertaking the social investigation is empowered to entrust the child to the parent or guardian, training school, shelter or temporary care station.³²⁴ Such placements are subject to the best interests principle (for which see Part 2.1). The State (more specifically, the Department of Social Welfare) is also required to put arrangements in place to prioritise the provision of alternative care (kinship care, foster care, training school-based care and care at a temporary care station etc.) for children who have lost or are deprived of parental care.³²⁵ Placement of the child in training school-based care or in a temporary care station must be a last resort.³²⁶ The Department of Social Welfare is also required to review the placement regularly and reassess the possibility of entrusting the child back to their family.³²⁷ However, there is nothing in the law prohibiting the deprivation of liberty of a child in residential care.

In the **Philippines**, Section 3 of the Special Protection of Children against Abuse, Exploitation and Discrimination Act 1991³²⁸ defines children in need of special protection as including those being in a community where there is armed conflict or affected by armed conflict-related activities; working under conditions hazardous to life, safety and morals which unduly interferes with their normal development; living in or fending for themselves in the streets without the care of parents or a guardian or any adult supervision needed for their welfare; being a member of an indigenous cultural community and/or living under conditions of extreme poverty or in an area which is undeveloped and/or lack or has inadequate access to basic services needed for a good quality of life; being a victim of a man-made or natural disaster calamity; or circumstances analogous to those above stated which endanger life, safety or normal development of children. Where a child requires alternative care, Article 68 of the Child and Youth Welfare Code provides that assignment of the child to a foster home shall be preferred to institutional care. In addition, unless absolutely necessary, a child below nine years of age shall not be placed in an institution. An older child may be taken into an institution for child

³¹⁸ UNICEF Indonesia Country Office, written comments emailed to Coram International sent on 11 July 2022.

³¹⁹ Indonesia, Government Regulation No. 44 of 2017 Concerning the Implementation of Child Care 2017, Article 6.

³²⁰ Indonesia, Government Regulation No. 44 of 2017 Concerning the Implementation of Child Care 2017, Article 33.

³²¹ National Standard of Care for Child Welfare Institutions 2011, Chapter 2, Principle H(4).

³²² Lao PDR, Law on the Protection of the Rights and Interests of Children 2007, Article 42.

³²³ Myanmar, Child Rights Law 2019, Section 57.

³²⁴ Myanmar, Child Rights Law 2019, Section 58(b).

³²⁵ Myanmar, Child Rights Law 2019, Section 33(a).

³²⁶ Myanmar, Child Rights Law 2019, Section 33(c).

³²⁷ Myanmar, Child Rights Law 2019, Section 33(f).

³²⁸ The Philippines, Republic Act No. 7610, as amended by Republic Act 9231 2003, Section 3.

care but only if, following a thorough social case study indicates that the child will derive more benefit from an institutional placement.

Chapter 3 of **Thailand's** Child Protection Act provides for welfare assistance for certain categories of children which include 'street children or orphans', 'abandoned or lost children', children whose guardians are unable to care for them, 'children who have been unlawfully brought up, exploited, abused, or subjected to any other conditions which are likely to cause them to behave in an immoral manner or suffer physical or mental harm, children with disabilities, children in 'difficult circumstances' and 'children in situations warranting welfare assistance' as stipulated in ministerial regulations.³²⁹ Such children can be placed in the care of an appropriate person or foster family or sent to an institution,³³⁰ although placement in a welfare centre or safety protection centre should be used only as a last resort.³³¹

Article 4 of **Viet Nam's** Child Law defines 'surrogate care' for children who are unable to live with their parents, with the aim of ensuring the safety and best interests of these children. These include children who have been abandoned, who are affected by natural disasters or armed conflict, as well as refugee children whose parents have not been identified.³³² Surrogate care must ensure the child's safety, children should be under the care of family where possible and kept together with any siblings, and contact or reunion with their parents and other family members should be facilitated unless it is unsafe or not in the child's best interest.³³³ Surrogate care is to be prioritised over the use of social support establishments.³³⁴

In **Brunei Darussalam**, the Juvenile Court has the power to make a range of orders to protect the child, including orders for community- or family-based care arrangements, subject to a requirement to treat the best interests of the child as the paramount consideration.³³⁵ Protection orders can include the guardian entering into a bond to exercise proper care and guardianship, placing the child in the custody of a 'fit person', or placing the child under the supervision of a 'protector' or other person appointed by the court, for a period specified by the court.³³⁶ The court may alternatively make an order to place the child in the custody of a foster-parent though the child is placed in a 'place of safety' pending such placement,³³⁷ which may include placement in a closed institution. Where a child is placed in an approved home (which may be the case if the child is considered to be 'uncontrollable' by the parent), the Director, on the advice of the advisory board and notwithstanding any order made by any court, has the power to order the release of the child on licence, at any time following the period of one year in detention and before the completion of the full period of detention, on such conditions imposed by the Director, including placing the child under supervision of a person specified in the order.³³⁸

In **Malaysia**, the Child Act grants the Court for Children the authority to place a child who is in need of care, protection or rehabilitation (see [Part 4.2](#)) in family-based care, which can include placing the child in the care of the parent or guardian, a fit and proper person, a foster parent, in a centre or place of safety or refuge, or

³²⁹ Thailand, Child Protection Act 2003, Article 32.

³³⁰ Thailand, Child Protection Act 2003, Article 33.

³³¹ Thailand, Child Protection Act 2003, Article 56.

³³² Viet Nam, Child Law 2016, Article 62.

³³³ Viet Nam, Child Law 2016, Article 60.

³³⁴ Viet Nam, Child Law 2016, Article 47(4).

³³⁵ Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Section 57(6).

³³⁶ Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Section 57(1)(a)-(c).

³³⁷ Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Section 57(1)(e).

³³⁸ Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Section 83(2).

under social welfare supervision.³³⁹ The best interests of the child must be the paramount consideration in determining any placement.³⁴⁰

The youth court in **Singapore** has the power to make an order to place a child (person under 14 years) or young person (person from 14 to (and excluding) 18 years) in need of protection in the care of either ‘a fit person’ or in a ‘place of safety’ or ‘place of temporary care and protection.’³⁴¹ The court is obliged to uphold the welfare of the child as the paramount consideration when deciding on the placement and to gather sufficient information relating to the child in order to allow the court to ‘deal with the case in the best interests of the child or young person.’ Further, the law requires the welfare and best interests of the child to be ‘first and paramount consideration’ in all decisions relating to the application of the Children and Young Persons Act,³⁴² which include decisions relating to such placements. The law is silent on the prioritisation of family-based care or relying on institutional care only as a last resort, though this may be implied from the obligation to act in the best interests of the child as the paramount consideration.

Child justice legislation

Child justice legislation in all but one of the ASEAN countries (there was no child justice legislation for review in Thailand) provide for alternatives to detention for children who have committed an offence. Some of these alternatives (such as community service or reconciliation) are unlikely to be appropriate for breaches of immigration law and, as such, detention may be more likely. In Lao PDR, these are unlikely to apply to immigration offences, which are administrative and not criminal offences, and where detention is undertaken for interrogation. Further, in the case of Singapore, these alternatives are only available to children under the age of 16.³⁴³ The following non-custodial alternatives are provided for: family conference (**Brunei Darussalam**);³⁴⁴ reprimand (**Brunei Darussalam**;³⁴⁵ **Indonesia**,³⁴⁶ **Malaysia**,³⁴⁷ **Myanmar**³⁴⁸ and **Viet Nam**³⁴⁹); discharge the child (**Brunei Darussalam**);³⁵⁰ discharge with good behaviour bond (**Brunei Darussalam**,³⁵¹ **Malaysia**; and **Singapore**³⁵²); reconciliation or apology (**Brunei Darussalam**;³⁵³ **Philippines**; **Viet Nam**); return to custody of parent/guardian for supervision or with a bond to exercise proper care and guardianship (**Brunei Darussalam**;³⁵⁴ **Cambodia**,³⁵⁵ **Indonesia**,³⁵⁶ **Lao PDR**,³⁵⁷ **Malaysia**; **Myanmar**;³⁵⁸ **Philippines**; and **Singapore**³⁵⁹);

³³⁹ Malaysia, Child Act 2001, Article 30 (in respect of children in need of care or protection) and Article 40 (in respect of children in need of protection or rehabilitation).

³⁴⁰ Malaysia, Child Act 2001, Articles 30(5) and 40(2).

³⁴¹ Singapore, Children and Young Persons Act 1993, Revised Edition 2020, sections 2(1) and 54(1)(b)(i).

³⁴² Singapore, Children and Young Persons Act 1993, Section 4(b).

³⁴³ Singapore, Children and Young Persons Act 1993, sections 2(1) (definition of young person) and 49.

³⁴⁴ Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Section 52(1)(a).

³⁴⁵ Via the family conference; Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Section 52(1)(a).

³⁴⁶ Alternatives to detention are contained in Indonesia, Law on Juvenile Justice System 2012, Articles 71 and 82.

³⁴⁷ Alternatives to detention are contained in Malaysia, Child Act 2001, Section 91.

³⁴⁸ Myanmar, Child Rights Law 2019, Section 89(a).

³⁴⁹ Alternatives to detention are contained in Viet Nam, Criminal Code 2015, Articles 93-95 and 98-100.

³⁵⁰ Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Section 51(1)(a).

³⁵¹ Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Section 51(1)(b).

³⁵² Singapore, Children and Young Persons Act 1993, Section 49(1)(b).

³⁵³ Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Section 51(1)(a).

³⁵⁴ Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Section 51(1)(d).

³⁵⁵ Alternatives to pre-trial detention are contained in Article 40, Law on Juvenile Justice and Article 40, Penal Code.

³⁵⁶ Indonesia, Law on Juvenile Justice System 2012, Article 82(1)(a).

³⁵⁷ Alternatives to detention are contained in Lao PDR, Penal Code 2017, Article 85. Note that the Law on Juvenile Criminal Procedures 2013, Article 64 specifies alternatives to custody during the investigation-interrogation process, expressly providing that detention, arrest and remand ‘should be the last resort’. These include issuing a warrant to have the child appear for interrogation and house custody (Article 64).

³⁵⁸ Myanmar, Child Rights Law 2019, Section 89(c).

³⁵⁹ Singapore, Children and Young Persons Act 1993, Section 49(1)(d).

probation or release on licence under the supervision of a person (**Brunei Darussalam**;³⁶⁰ **Cambodia**; **Malaysia**; **Myanmar**;³⁶¹ and **Singapore**³⁶²); warning and caution (**Brunei Darussalam**;³⁶³ **Cambodia**;³⁶⁴ **Viet Nam**); payment of a fine, costs of damages (**Brunei Darussalam**;³⁶⁵ **Malaysia**; **Philippines**; **Singapore**³⁶⁶ and **Viet Nam**); education or training (**Indonesia**;³⁶⁷ **Lao PDR**; **Philippines**; and **Viet Nam**); judicial protection (**Cambodia**); counselling, psychotherapy or other programme for addressing relationship problems, rehabilitation, parenting and wellbeing (**Brunei Darussalam**);³⁶⁸ commit the child to the care of a relative or fit person for a specified period (**Brunei Darussalam**);³⁶⁹ and community service (**Brunei Darussalam**;³⁷⁰ **Cambodia**; **Indonesia**;³⁷¹ **Malaysia**; **Philippines**; **Singapore**³⁷² and **Viet Nam**).

Recommendations:

- Amend immigration legislation to remove criminal and administrative liability for children for migration-related offences or based on the migration status of the child or his/her parents/guardians;
- Include express provision in anti-trafficking legislation granting immunity from criminal prosecution to victims of trafficking for offences committed in connection with their trafficking situation, particularly immigration offences (Singapore, Myanmar and Viet Nam);
- Consider deleting the reservations to Article 37 of the CRC [Malaysia and Singapore];
- Expressly prohibit in primary legislation the use of immigration detention of children, specifying that this includes any placement of a child in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority, and covering all stages of the immigration process including initial 'investigation' and pending repatriation;
- Include provisions explicitly prioritising family-based or community-based options, such as foster care services, according to the child's best interests as a primary consideration [all States except Thailand and the Philippines];
- Abolish all types of corporal punishment for children, including for immigration offences [Brunei Darussalam; Malaysia; and Singapore].

³⁶⁰ Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Sections 51(1)(e) and, for children detained in an approved school for at least one year, 83.

³⁶¹ Myanmar, Child Rights Law 2019, Section 89(d).

³⁶² Singapore, Children and Young Persons Act 1993, Section 49(1)(e).

³⁶³ Via the family conference; Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Section 52(1)(b).

³⁶⁴ Cambodia, Law on Juvenile Justice 2016, Article 13.

³⁶⁵ Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Sections 51(1)(j) and 52(1)(c).

³⁶⁶ Singapore, Children and Young Persons Act 1993, Section 49(1)(j).

³⁶⁷ Indonesia, Law on Juvenile Justice System 2012, Article 82(1)(e).

³⁶⁸ Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Section 53.

³⁶⁹ Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Section 51(1)(c).

³⁷⁰ Through the family conference; Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Section 52(1)(e).

³⁷¹ Indonesia, Law on Juvenile Justice System 2012, Article 76.

³⁷² Singapore, Children and Young Persons Act 1993, Section 49(1)(f).

4 Child protection

	Integration of children affected by migration in the child protection system	Obligation on professionals to make child protection referral	Obligation to make child protection referral for UASC	Right to family tracing/reunification	No return if principle of refoulement, real risk of irreparable harm or reasonable risk of violation of child's human rights
Brunei Darussalam					
Cambodia	Legislation unavailable for review.				
Indonesia					
Lao PDR					
Malaysia					
Myanmar					
Philippines					
Singapore					
Thailand					
Viet Nam					

4.1 Integration in the child protection system

To what extent are children affected by migration integrated into the national child protection system?

In the ASEAN Declaration on the Rights of Children in the Context of Migration, ASEAN Member States confirm their commitment to addressing the rights and needs of children affected by migration in their national child protection systems, and acknowledge the need to further strengthen national child protection systems and enhance their accessibility for such children, including those who are unaccompanied or separated from their families and those requiring protection and assistance.³⁷³ Under international law, child protection systems at the national and local levels should mainstream child migrants into their programmes, regardless of whether the State is a country of origin, transit, destination or return.³⁷⁴

Pursuant to Article 3 of the **final draft Thailand-Myanmar MOU** on children affected by migration (which has not yet been adopted), the parties undertake to improve access for children affected by migration, including those who are unaccompanied or separated, to their national child protection system. They further commit to establish or enhance measures to prevent unsafe migration of children and all forms of violence against children affected by migration, and to intervene and provide rehabilitation for child victims of violence, irrespective of the immigration status of their parents.³⁷⁵

³⁷³ ASEAN Declaration on the Rights of Children in the Context of Migration 2019, paras 2 and 4.

³⁷⁴ CRC GC No. 22 (2017), para. 7.

³⁷⁵ MOU between the Government of the Kingdom of Thailand and the Government of the Republic of the Union of Myanmar on Strengthening the Cooperation to Protect Children Affected by Migration, adopted on 20 February 2020, Articles 4 and 11.

The child protection laws of all ASEAN countries, where they exist,³⁷⁶ are applicable to all children and are not restricted to nationals. However, the child protection legislation in **Viet Nam** only applies to children up to the age of 16. **Cambodia** has yet to adopt a standalone child protection law. Further, the rights and protections set out in the Cambodian Constitution apply only to Khmer citizens.³⁷⁷ The child protection laws of seven of the ASEAN Member States prohibit discrimination against children on various grounds,³⁷⁸ with some expressly including place of birth (**Thailand**), origin (**Myanmar**) ethnicity (**Indonesia, Lao PDR, Myanmar, Thailand** and **Viet Nam**), race (**Indonesia, Lao PDR, Malaysia, Thailand**), colour and caste (**Myanmar**), nationality (**Myanmar** and **Viet Nam**), legal status (**Indonesia**), citizenship (**Myanmar**) and personal status (**Thailand**). The laws of Malaysia, Philippines and Thailand include non-restrictive language: **Malaysia's** Child Act (in its preamble) refers to protection of all children 'without regard to distinction of any kind' and, after listing a number of grounds, includes the wording 'or any other status'; Article 3 of the **Philippines'** Child and Youth Welfare Code entitles all children to the rights 'without distinction'; Article 22 of **Thailand's** Child Protection Act prohibits 'discrimination of an unfair nature' and, in ministerial regulations, lists some of the grounds that might be included.³⁷⁹ Such language broadens the range of possible grounds of discrimination that are prohibited. Whilst the Constitution of **Singapore** contains a non-discrimination provision, discrimination on the grounds of religion, race, descent or place or birth is prohibited only in relation to citizens of Singapore.³⁸⁰

In some jurisdictions (**Brunei Darussalam; Indonesia, Lao PDR, Myanmar** and **Thailand**), certain types of migrant children fall within specific categories of children identified as children in need of special protection. In **Brunei Darussalam**, a child who is or is believed to be a victim of an offence in the Children and Young Persons Act and whose guardian committed or is believed to have committed the offence, or has not protected or is unlikely to protect the child from the offence, is regarded as being in need of protection. Such offences include trafficking and importation of children by false pretences (as these offences are defined in the legislation).³⁸¹ Children who are found begging, or have no guardian or who have been abandoned by their guardian and after reasonable inquiries the guardian cannot be found and no other suitable person is willing and able to care for the child, are also regarded as 'in need of protection.'³⁸²

The **Indonesian** Law on Child Protection lists 'children in emergency situations' among a range of other categories of children³⁸³ as requiring 'special protection' as stipulated in the law.³⁸⁴ 'Children in emergency situations' includes (among others) 'child victims of natural disasters', 'children in situations of armed conflict' as well as *pengungsi*,³⁸⁵ which, as described above, ordinarily translates as 'refugee' or 'internally displaced person but which is not necessarily interpreted to include refugees in practice.'³⁸⁶ The Law on the Protection

³⁷⁶ Cambodia does not have a standalone child protection law.

³⁷⁷ In some jurisdictions (for example, Viet Nam and Malaysia), the protection of fundamental human rights and freedoms under the Constitution is applicable to everyone within that jurisdiction and not citizens only. In others, however, some freedoms apply generally to all, but certain rights are reserved for citizens only (for example, Lao PDR).

³⁷⁸ Note that in Myanmar, non-discrimination of children is framed as an objective of the Child Rights Law; Myanmar, Child Rights Law 2019, Sections 3(u) and 4(f).

³⁷⁹ Ministerial Regulation to set up guidelines for determining if an act is in the best interests of the child or unfairly discriminatory to the child 2006.

³⁸⁰ Singapore, Constitution of Singapore (2020 Ed.), Article 12(2).

³⁸¹ Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Sections 2(2)(i), 35 and 36.

³⁸² Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Sections 2(2)(e) and (k).

³⁸³ These include among others: children in conflict with the law, 'children from minority and isolated groups', children who have been subject to economic or sexual exploitation, children who are 'victims of kidnapping, sale and trafficking', child victims physical and/or psychological violence, 'child victims of sexual crimes', children with disabilities, child victims of abuse and neglect, children with 'deviant social behaviours' and children who are 'victims of stigmatization from labelling based on the condition of their parents'; Indonesia, Law on Child Protection (as amended in 2017), Article 59.

³⁸⁴ Indonesia, Law on Child Protection 2002, Article 59 and Part Five more generally. Note that the Indonesian Law Concerning Human Rights also provides that members of disadvantaged groups (including children) are entitled to greater protection of human rights and this is applicable to all persons (and not only citizens).

³⁸⁵ Indonesia, Law on Child Protection (as amended in 2017), Article 60.

³⁸⁶ UNICEF Indonesia Country Office, written comments emailed to Coram International sent on 11 July 2022.

of the Rights and Interests of Children in **Lao PDR** explicitly includes child victims of trafficking, exploited and displaced children and those who have been abandoned or are without parental care within the definition of children in need of special protection.³⁸⁷ In **Myanmar**, children without any parent or guardian, children working under the worst forms of labour, trafficked children, children who are begging, street children, and children affected by natural disasters or armed conflict, are regarded as being in need of care and protection.³⁸⁸ Further, the Ministry of Social Welfare, Relief and Resettlement has the power to designate other categories of children as in need of care and protection.³⁸⁹

Thailand's Child Protection Act includes street children, abandoned or lost children, children whose guardians are unable to care for them for any reason and children who have been exploited or abused within the category of children warranting welfare assistance.³⁹⁰ Article 40 of the same Act defines children warranting safety protection as including those who have been tortured, are vulnerable to wrongdoing or otherwise require protection under ministerial regulations (which include children under the minimum age of criminal responsibility but accused of committing an offence, those referred by a court or observation centre for safety protection and children engaged in potentially harmful occupations³⁹¹).

Viet Nam's Child Law is the most comprehensive in addressing the rights and needs of child migrants, although protection is only afforded to children up to the age of 16. Pursuant to Article 1 of the Child Law, a child is defined as a human being under the age of 16 (in contrast to the other focus countries which include any person under the age of 18³⁹²). Article 36 of the Child Law expressly provides for the protection and provision of humanitarian assistance to stateless children residing in the territory of Viet Nam and refugee children. All children (under the age of 16) are integrated into the national child protection system with disadvantaged children identified as children requiring specific support and protection. Children who have been 'abandoned', exploited or trafficked or are 'immigrant and refugee children whose parents are not yet identified' come within the definition of 'disadvantaged children'.³⁹³ Article 47 of the Child Law provides that disadvantaged children should be assisted with 'functional rehabilitation and social inclusion' and Article 49(d) provides that disadvantaged children and their families should be assisted in securing 'access to social support policies and other supporting sources for improving living conditions for children'. Article 50 outlines interventions that may be made in respect of abused children and to assist disadvantaged children with functional rehabilitation and social inclusion.

4.2 Identification and referrals

Is there a legal obligation for professionals and practitioners (particularly border and migration control officials) to make a child protection referral for children affected by migration who are in need of care and protection?

The prompt identification of children in migration and border-control procedures is essential for ensuring that anyone claiming to be a child is treated as such and promptly referred to child protection and other relevant services where needed.³⁹⁴ Legislation should therefore include obligations on professionals and practitioners to refer children who are in need of care and protection to the relevant authorities.

³⁸⁷ Lao PDR, Law on the Protection of the Rights and Interests of Children 2007, Article 2.

³⁸⁸ Myanmar, Child Rights Law 2019, Section 57.

³⁸⁹ Myanmar, Child Rights Law 2019, Section 57(p).

³⁹⁰ Thailand, Child Protection Act 2003, Article 32.

³⁹¹ Ministerial Regulation to determine children who are in need of safety protection 2006.

³⁹² Note that Thailand's Child Protection Act applies to all persons under the age of 18 unless they have attained majority earlier through marriage, and Lao PDR's Law on the Protection of the Rights and Interests of Children applies to all children under the age of 18 including the unborn.

³⁹³ Vietnam, Child Law 2016, Article 10.

³⁹⁴ CRC GC No. 22 (2017), para. 32(h).

Pursuant to Article 5 of the **final draft Thailand-Myanmar MOU** on children affected by migration (which has yet to be adopted), the parties agree to enhance the protection, assistance and referral of all children affected by migration. In Article 10, the parties agree to strengthen identification procedures for identifying children at risk by incorporating children affected by migration into their child protection risk assessment mechanisms. No further details are provided on the processes or on specific obligations on officials to make referrals.

Thailand has the most comprehensive legal framework for the referral of child migrants identified by immigration authorities as in need of care and protection. All ASEAN Member States, except **Indonesia** and **Singapore**, have some referral provisions in respect of victims of trafficking. There are provisions for referral of cases involving violence or abuse of children under child protection laws in all of the ASEAN countries, though the extent of these referral obligations varies considerably. Further, while migrant children may fall within these child protection provisions, in practice, border and migration control officials may not be aware of the requirements under these laws.

Thailand's MOU on Alternatives to Detention contains a number of provisions in Article 6 relating to children entering Thailand. Pursuant to this Article, the Royal Thai Police and Ministry of Social Development and Human Security and concerned agencies must cooperate to ensure that children are protected and assisted by a multi-disciplinary team³⁹⁵ during screening processes and when determining appropriate care. Article 6 of the standard operating procedures under the MOU on Alternatives to Detention provides that unaccompanied or separated children, as well as child victims of trafficking and children with disabilities or medical needs, must be prioritised during the immigration screening process by the Immigration Bureau. It also provides that any factors relating to a child or family that might influence assistance and protection will be taken into account. A case file must be provided to the Department of Children and Youth (DCY) (or Provincial Office of Social Development and Human Security or Provincial Shelter for Children and Families), which must promptly provide and implement the relevant protection and welfare measure under the Child Protection Act (see below) and provide information to the Immigration Bureau regarding any immediate measures to ensure a child's safety. A multi-disciplinary working group considers and approves an assistance plan based on information supplied by the DCY (or Provincial Office/Shelter) and a case manager is appointed to coordinate and refer the child to access services.

Pursuant to **Indonesia's** Presidential Regulation 125/2016 Concerning the Handling of Foreign Refugees, local communities and government agencies who find refugees are under an obligation to report to the police, who are responsible for the safeguarding of refugees.³⁹⁶ There are no provisions specifically relating to the referral of child refugees to the relevant child protection authorities.

The most comprehensive referral requirements for trafficking victims are found in the **Lao PDR's** anti-trafficking law and related guidelines. These relate to trafficking victims in general: there are no specific provisions requiring a child protection referral. There is an obligation on victims, family members of victims and close relatives, neighbours, 'other persons', domestic and international organisations to report cases of trafficking to the police under Article 32 of the Law on Anti-Trafficking in Persons. Article 47 also stipulates that doctors who suspect that a person they are treating might be a victim of trafficking must report this promptly to anti-trafficking in persons officers (appointed police officers) or refer the suspected victim to a specific medical unit responsible for assisting trafficking victims. On receipt of a report on or information about a case of trafficking, border officials (as well as police officers and diplomatic or consular officers) must assume responsibility to collaborate with relevant sectors to protect and provide assistance to the victim and the victim must be referred to a temporary safe shelter.³⁹⁷ The Guidelines on the Protection and Referral of

³⁹⁵ The team includes representatives from the Immigration Bureau, the Department of Children and Youth, UNHCR, IOM and UNICEF, a child protection competent officer under the Child Protection Act and an officer from the Investigation Division (Standard Operating Procedures under MOU on Alternatives to Detention, Article 5).

³⁹⁶ Indonesia, Presidential Regulation no. 125/2016 Concerning the Handling of Foreign Refugees 2016, Articles 8, 18 and 31.

³⁹⁷ Lao PDR, Law on Anti-Trafficking in Persons 2015, Articles 40 and 41.

Trafficking Victims 2020 provide further details on the obligations of police and border officials to report to and coordinate with the anti-trafficking police and the Lao Women's Union for the transfer of the victim to a safe place. Where the trafficking victim is foreign, the police officer must notify the Ministry of Foreign Affairs and other relevant parties to provide urgent protection and assistance. The Ministry of Foreign Affairs must then contact the embassy or consulate of the victim's country to provide assistance and arrange repatriation.³⁹⁸

Other anti-trafficking provisions are less detailed. Pursuant to Section 44(1) of **Malaysia's** Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act, an enforcement officer has the power (but not the obligation) to take a person into temporary custody if there is reasonable suspicion that the person is a trafficked person and to bring the person before a magistrate within 24 hours to obtain an interim protection order. The magistrate shall then make an interim order to place the person in a place of refuge for 21 days for the purposes of conducting an investigation into whether the person has been trafficked and an enquiry into the background of the person.³⁹⁹ If the person is in need of medical attention, the enforcement officer may take the person to a medical officer instead of a magistrate.⁴⁰⁰ If the trafficked person is a child and the medical officer is of the opinion that hospitalisation is necessary, the enforcement officer may authorise the child to be hospitalised instead of being sent to the place of refuge.⁴⁰¹ One of the stated objectives in the National Action Plan on Anti-Trafficking in Persons is to establish a formalised National Referral Mechanism for all trafficking in persons cases and related forms of exploitation. This would be based on standardised identification and referral procedures and would enable victims to access justice, receive protection and assistance.⁴⁰²

Section 17A of the **Philippines'** Anti Trafficking in Persons Act of 2003⁴⁰³ provides that the rescue of victims should be done as much as possible with the assistance of the Department of Social Welfare and Development or an accredited NGO that offers services to trafficked victims. In addition, a law enforcement officer who has a reasonable suspicion that a person is a victim of an offence defined under the Act, including attempted trafficking, shall immediately place that person in the temporary custody of the local social welfare and development office, or any accredited or licensed shelter for trafficking victims.

Under **Cambodia's** Law on Tourism 2009, all tourism business operators are obliged to report instantly any known or suspected cases of child trafficking and sexual exploitation to the Tourist Police or other competent authorities.⁴⁰⁴ The Agreement on Guidelines for Practices and Cooperation between the Relevant Government Institutions and Victim Support Agencies in Cases of Human Trafficking 2007 also contain provisions regarding identification and referral. Where it is suspected that a person has been trafficked, the police or the victim support agency that first encounters the suspected victim has a duty to make a preliminary determination as to whether the individual is a victim of trafficking.⁴⁰⁵ The police must send victims to the Provincial/Municipal Department of the Ministry of Social Affairs, Veterans and Youth Rehabilitation.⁴⁰⁶ There are also obligations on the first contact agency (which could be any government agency or NGO) to provide initial services to victim and notify the Provincial Department of Social Affairs if it refers a victim to a shelter.⁴⁰⁷ Given that these

³⁹⁸ Lao PDR, Guidelines on the Protection and Referral of Trafficking Victims 2020 (translation), Part IV, chapter 2.

³⁹⁹ Malaysia, Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007, Sections 44(2) and 51.

⁴⁰⁰ Malaysia, Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007, Section 45.

⁴⁰¹ Malaysia, Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007, Section 47.

⁴⁰² NAPTIP, p. 61.

⁴⁰³ The Philippines, Republic Act 9208 as amended by Republic Act 10364 2022.

⁴⁰⁴ Cambodia, Law on Tourism 2009, Article 48

⁴⁰⁵ Cambodia, Agreement on Guidelines for Practices and Cooperation between the Relevant Government Institutions and Victim Support Agencies in Cases of Human Trafficking 2007, Article 6.

⁴⁰⁶ Cambodia, Agreement on Guidelines for Practices and Cooperation between the Relevant Government Institutions and Victim Support Agencies in Cases of Human Trafficking 2007, Article 4.

⁴⁰⁷ Cambodia, Agreement on Guidelines for Practices and Cooperation between the Relevant Government Institutions and Victim Support Agencies in Cases of Human Trafficking 2007, Article 73.

provisions do not appear to conflict with the subsequent Law on Suppression of Human Trafficking and Sexual Exploitation, they are regarded as still being in force.

Chapter III of **Viet Nam's** anti-trafficking law requires agencies and organisations to handle trafficking acts of which they have been notified or which they have detected or to notify competent agencies of such acts. Agencies or individuals within the People's Public Security Force and People's Army with specific human trafficking duties are required to cooperate with other relevant agencies or act as focal points in handling trafficking acts and apply measures to protect victims. In the case of domestically trafficked victims, once an agency or organisation has been notified of a trafficking case, the victims must be transferred to the commune-level People's Committee which in turn must notify the Division on Labour, War Invalids and Social Affairs. This Division must receive and support the victims within 3 days of being notified.⁴⁰⁸ Where Public Security Agencies, Border Military or Marine Police have rescued trafficking victims, they are required to meet the essential needs of victims and transfer them to the Division on Labour, War Invalids and Social Affairs.⁴⁰⁹

In **Myanmar**, the Prevention and Suppression of Trafficking in Persons Law contains detailed provisions on the search and rescue of victims of trafficking (adults and children). These include the mandatory entry and search of non-public places to arrest the offenders, seize assets and 'rescue' the victims, where sufficient information is obtained that an offence or attempted offence of human trafficking has taken place.⁴¹⁰ Similarly, if credible information is obtained that an offence or attempted offence of human trafficking has taken place in a public area, law enforcement officers of a specified rank are required to 'rescue' the victims as part of the operation.⁴¹¹ Further, if a danger to a trafficking victim exists, community-based human trafficking identification teams are required to seek assistance from the respective police force and to refer the matter to a 'township group on the prevention of trafficking in persons.'⁴¹²

No mandatory identification and referral procedures could be located in the anti-trafficking legislation of **Brunei Darussalam** or **Singapore**. In Singapore, whilst the anti-trafficking legislation grants the Director-General of Social Welfare the power to provide temporary shelter and counselling services to trafficking victims,⁴¹³ this is not a mandatory obligation. The law is silent on duties and/or procedures for identification and referral of both adult and child trafficking victims.

Requirements to report violence against and abuse of children exist to some degree in all ASEAN Member States, though the laws vary in terms of their coverage, detail and specificity. In **Cambodia**, under Article 530 of the Criminal Law, it is an offence for a person with knowledge of mistreatment or sexual abuse against a child under the age of 15 years, to fail to inform the court or administrative authority. The offence is punishable by imprisonment of up to three years and a fine.⁴¹⁴ In **Indonesia**, the role of the 'community' to report violations of the rights of the child to the authorities is acknowledged in the law.⁴¹⁵ 'Community' for this purpose includes individuals, child protection institutions, social welfare institutions, community organisations, educational institutions, 'mass media' and 'the business world'.⁴¹⁶ Similarly, under Article 60 of Indonesia's Anti-Trafficking Law, the 'community' is required to 'participate' in assisting in the prevention of trafficking and the handling of victims. This includes 'the provision of information and/or lodging of reports' of trafficking cases to law enforcement authorities or authorised officials.⁴¹⁷ **Viet Nam's** Child Law places responsibility on agencies, organisations, schools, families and individuals to provide information on, report

⁴⁰⁸ Vietnam, Law on Prevention and Suppression of Human Trafficking 2011, Article 24.

⁴⁰⁹ Vietnam, Law on Prevention and Suppression of Human Trafficking 2011, Article 25.

⁴¹⁰ Myanmar, Prevention and Suppression of Trafficking in Persons Law 2022, Section 25.

⁴¹¹ Myanmar, Prevention and Suppression of Trafficking in Persons Law 2022, Section 26.

⁴¹² Myanmar, Prevention and Suppression of Trafficking in Persons Law 2022, Section 11(c).

⁴¹³ Singapore, Prevention of Human Trafficking Act 2014, Section 19(1).

⁴¹⁴ Cambodia, Criminal Code 2009, Article 530.

⁴¹⁵ Indonesia, Law on Child Protection (as amended in 2017), Article 72(3)(c).

⁴¹⁶ Indonesia, Law on Child Protection (as amended in 2017), Article 72(2).

⁴¹⁷ Indonesia, Anti-Trafficking Law 2007, Article 60(2).

and denounce cases where children are abused or in danger of violence, exploitation or abandonment to the competent authorities (the Division of Labour, War Invalids and Social Affairs, police and commune-level People's Committees). These agencies must then investigate accordingly.⁴¹⁸ There is a further provision requiring parents, teachers and medical professionals to report cases of abuse or threatened abuse to the relevant authorities.⁴¹⁹ The **Philippines'** Child and Youth Welfare Code⁴²⁰ provides that it is the community's duty to cooperate with private and public welfare agencies in providing care, training and protection to destitute, abandoned, neglected, abused, handicapped and disturbed children.⁴²¹ It also imposes a duty to report abandonment. Where a child's parent or guardian is dead or if living, has abandoned the child, or has left the child with another person or a licensed child placement agency or hospital for six months or more, Article 161 of the Child and Welfare Code provides that this fact shall be reported immediately to the Department of Social Welfare.⁴²² Hospital, clinics and other institutions receiving a child suspected of suffering maltreatment, abuse or exploitation of an employed child also have the duty to report.⁴²³ The Code also provides that where a report is made in good faith, the person or organisation and other entities shall be free from any civil or criminal legal liability.⁴²⁴

Malaysia's Child Act covers the referral of children in need of care and protection (defined as including harm/abuse or substantial risk of harm/abuse; abandonment – or otherwise being without parents; and being the victim of a number of offences including kidnapping, abduction, slavery and forced labour). Section 19 of the Child Act provides that protectors (which include social welfare officers and police officers) must take a child in need of care and protection to the court within 24 hours of the time that a child is removed to a place of safety.⁴²⁵ Similar obligations are placed on protectors who believe that a child is in need of protection and rehabilitation under Part IV of the Child Act. These include children who have been brought into or are to be sent out of Malaysia for the purposes of sexual exploitation and where the custody of the child has been purchased or obtained by fraud.⁴²⁶ Under Section 27 of the Child Act, there is a duty on a medical officer or registered medical practitioner examining or treating a child to inform a Social Welfare Officer where he or she believes on reasonable grounds that the child is physically or emotionally injured as a result of being ill-treated, neglected, abandoned or exposed, or is sexually abused.⁴²⁷ Failure to inform is a criminal offence.⁴²⁸

Similarly, **Brunei Darussalam's** Children and Young Person's Act empowers any protector or police officer who is satisfied on reasonable grounds that a child is need of protection to, without warrant and with such assistance by such force as is necessary, enter any premises to take the child into temporary custody and commit the child to a place of safety, unless the protector or police officer is satisfied that the taking of proceedings in relation to the child is undesirable in his/her best interests or that proceedings are about to be taken by some other person.⁴²⁹ As a general rule, the child must then be brought before the Juvenile Court within three working days to make a determination of whether or not the child is in need of protection and, if so, make a protection order.⁴³⁰ Medical officers have an obligation to immediately notify a protector or police officer where child protection concern arises, namely, where the medical officer believes that a child who has

⁴¹⁸ Viet Nam, Child Law 2016, Article 51.

⁴¹⁹ Viet Nam, Child Law 2016, Article 100(3).

⁴²⁰The Philippines, Presidential Decree No 603, Children and Youth Welfare Code, 1974.

⁴²¹ The Philippines, Presidential Decree No 603, Children and Youth Welfare Code, 1974, Article 85.

⁴²² The Philippines, Presidential Decree No 603, Children and Youth Welfare Code, 1974, Article 161.

⁴²³ The Philippines, Presidential Decree No 603, Children and Youth Welfare Code, 1974, Article 166.

⁴²⁴ The Philippines, Presidential Decree No 603, Children and Youth Welfare Code, 1974, Article 167.

⁴²⁵ Although a child in need of medical attention can be taken to a medical officer for appropriate examination and treatment before being brought before the court (ss. 20 and 25 Child Act).

⁴²⁶ Malaysia, Child Act 2001, Section 38.

⁴²⁷ Malaysia, Child Act 2001, Section 27(1). The duty to inform is extended to members of the family under Article 28 and child care providers under Article 2, with the same criminal liability for failure to comply.

⁴²⁸ Malaysia, Child Act 2001, Section 27(2).

⁴²⁹ Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Section 17(1).

⁴³⁰ Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Section 17.

been examined or treated has been physically or emotionally injured as a result of being ill-treated, neglected, abandoned or exposed.⁴³¹ Similar obligations are imposed on the child's family members and child care centres, with additional grounds for reasonable belief that the child has been sexual abused.⁴³² Failure to do so is a criminal offence.⁴³³ However, where the child is treated by a private medical officer, referral of the child to a Government medical officer is regarded to be sufficient for the private medical officer to discharge the reporting obligation.⁴³⁴

Lao PDR has a state network to assist and protect children that comprises representatives from village authorities, police, village organisations, teachers, doctors and child-care centres. Included within this network's responsibilities are activating emergency measures to remove children from a precarious situation and reporting that situation immediately to the Committee for Protection and Assistance for Children.⁴³⁵ Additionally, the Law on the Protection of the Rights and Interests of Children provides that *any* person or organisation that is aware of any child in need of special protection must notify the Committee (or an investigation authority if it is a criminal offence). There are also obligations under Article 29 of the Law on Preventing and Combatting Violence against Women and Children 2014 on all individuals (as well as legal entities and organisations) to provide protection and assistance to victims of violence. These obligations include reporting incidents of violence to one of a number of institutions (including the village authorities, the Child Protection and Assistance Network, the Committee for Protection and Assistance of Children or the police). Doctors, other health care professionals, teachers, care givers or other professionals must report cases of violence against women and children to their own organization or the police. Such organisations must cooperate with the Child Protection and Assistance Network or Committee for Protection and Assistance of Children to intervene in protecting and assisting children promptly. Failure to assist a child victim of serious violence can result in criminal responsibility under the Penal Code.⁴³⁶ Finally, under Article 10 of the Decree on the Adoption of Children 2014, there is an obligation on individuals or organisations to report to 'village administrative authorities, Labour and Social Welfare sector or other concerned sector' if they become aware of a child who is without parents or other care or who has been neglected, abandoned, orphaned or exploited. The authorities must then provide 'primary assistance' and conduct an assessment of the child and family circumstances before considering alternative care arrangements.

In **Myanmar**, the Child Rights Law contains a non-mandatory provision for the referral of children believed to be in need of care and protection to the social welfare officer. As set out in Part 4.1, children in need of care and protection includes several categories of children under which children affected by migration may fall.⁴³⁷ The social welfare officer is then required to investigate whether the child is in fact in need of care and protection and to submit the findings to the Department of Social Welfare.⁴³⁸ If it becomes clear from the social investigation that an offence has been committed against the child, the social welfare officer must report the matter to the police station.⁴³⁹

Thailand's Child Protection Act contains two types of intervention: welfare assistance and safety protection. The categories of children who fall within the definition of children warranting welfare assistance or safety protection are set out in Part 4.1 above. Pursuant to Article 29 of the Child Protection Act, a person who finds a child in a situation that warrants welfare assistance or safety protection must provide basic assistance and

⁴³¹ Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Section 23(1).

⁴³² Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Sections 25 and 26.

⁴³³ Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Sections 23(2), 25(2)-(3) and 26(2).

⁴³⁴ Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Section 23(3).

⁴³⁵ Lao PDR, Law on the Protection of the Rights and Interests of Children 2007, Article 38 and, Decree on the Implementation of the Law on the Protection of the Rights and Interests of Children 2007, Articles 15-16.

⁴³⁶ Lao PDR, Law on Preventing and Combatting Violence against Women and Children 2014, Article 80.

⁴³⁷ Myanmar, Child Rights Law 2019, Section 58(a).

⁴³⁸ Myanmar, Child Rights Law 2019, Section 58(b).

⁴³⁹ Myanmar, Child Rights Law 2019, Section 58(c).

notify a ‘competent official’ (appointed by the relevant ministry) or other person with responsibility to provide assistance and protection to children without delay.⁴⁴⁰ Health officials, teachers and employers are under an obligation to report immediately to a competent official (or other person with specific duties) any suspicion of or knowledge that a child has been tortured or is sick due to ‘unlawful care’. Article 30 permits a competent official to question a child (and detain him for up to 12 hours) to obtain information so as to arrange for assistance and protection. The competent official must consult with experts in social welfare and medicine before sending any child under his/her care to any remand home, welfare centre, safety protection centre or development and rehabilitation centre.⁴⁴¹ Certain local officials (including, for example, provincial governors, district chiefs and assistant district officer) also have the obligation to protect the safety of children living in areas under their jurisdiction and have the same duties as ‘competent officials’ under the Act.⁴⁴²

In **Singapore**, professionals and practitioners are only legally required to report child protection concerns in a narrow range of circumstances. The Children and Young Persons Act grants certain actors (the Director-General of Social Welfare, ‘protectors’⁴⁴³ or police officers of sergeant level or above⁴⁴⁴) with the power (not the obligation) to remove a child who they have reasonable grounds to believe is in need of care and protection for assessment by an approved professional⁴⁴⁵ before placement in a place of temporary care and protection.⁴⁴⁶ Any registered medical practitioner, psychologist or welfare officer who, in the course of their assessment of the child, develops a reasonable belief that the child is suffering harm resulting from ill-treatment, is obliged to report this to the actor who referred the child to the assessment.⁴⁴⁷

Finally, the juvenile justice laws of some of the focus countries contain referral requirements in the context of children suspected of committing offences. The juvenile justice law of **Cambodia** requires judicial police to refer children in need of care and protection to the social affairs department.⁴⁴⁸ And the juvenile justice law of **Indonesia** places an obligation on investigators to seek the advice of a parole officer as soon as possible after an offence has been reported and, if considered necessary, to seek advice of psychologists, social workers and/or other relevant professionals.⁴⁴⁹

4.3 Unaccompanied or separated children affected by migration

Do border and migration control officials have a legal obligation to make a child protection referral if they suspect that the child is unaccompanied or separated (UASC)?

Regarding unaccompanied and separated children moving across international borders, the CRC Committee recommends that States Parties should prioritise the ‘identification of a child as separated or unaccompanied immediately upon arrival at ports of entry or as soon as their presence in the country becomes known to the authorities.’⁴⁵⁰ This action is the necessary first step in the initial assessment of the child in order to determine the priority of the child’s protection needs.⁴⁵¹

⁴⁴⁰ Under Article 41, there is a requirement on anyone who has witnessed, or comes to know, that a child has been tortured to notify/report a competent official or person with a duty to protect a child under Article 24.

⁴⁴¹ Thailand, Child Protection Act 2003, Article 33.

⁴⁴² Thailand, Child Protection Act 2003, Article 24.

⁴⁴³ Any public officer or other person who is appointed or authorised by the Director-General under section 3(3) to exercise the powers and perform the duties of a protector under this Act.

⁴⁴⁴ Singapore, Children and Young Person Act 1993, Section 10(2).

⁴⁴⁵ A registered medical practitioner, a psychologist or an approved welfare officer.

⁴⁴⁶ Singapore, Children and Young Person Act 1993, Section 11(1).

⁴⁴⁷ Singapore, Children and Young Persons Act 1993, Section 12(2).

⁴⁴⁸ Cambodia, Law on Juvenile Justice 2016, Article 13.

⁴⁴⁹ Indonesia, Law on Juvenile Justice System 2012, Article 27.

⁴⁵⁰ CRC GC No. 6 (2005), para 31(i).

⁴⁵¹ CRC GC No. 6 (2005), para 31(i).

Pursuant to Article 12 of the **final draft Thailand-Myanmar MOU** on children affected by migration (which has yet to be adopted), the parties undertake to establish specialised procedures for unaccompanied or separated children in identification, referral, care and family reunification.

In relation to national laws, obligations on officials (and others) to make child protection referrals were outlined above. Only **Thailand** contains specific provisions relating to unaccompanied or separated migrant children.

In the **Philippines**, unaccompanied children who wish to be recognised as a refugee or stateless person must be referred to the appropriate government agency and/or NGO for their care, welfare including access to legal services, including the filing of an application with the Refugees and Stateless Persons Protection Unit. Unaccompanied non-national, non-resident children under the age of 15 who do not intend to claim refugee or stateless status and do not intend to join their parents, are considered excluded classes under the Immigration Act and will only be allowed to enter in the country at the discretion of the Commissioner of Immigration.⁴⁵² In these cases, there is no requirement to make a child protection referral.

In **Viet Nam**, it is expressly provided that children under 14 years of age who are without parents, guardians or authorised custodians can be refused entry into the country.⁴⁵³ However, there are no specific provisions on making a child protection referral for such children and undertaking an initial assessment to identify their protection needs.

To what extent are the provisions on family tracing and reunification (if any) in line with international standards?

Article 9(1) of the CRC requires States parties to ensure that a child is not separated from his or her parents against their will except where separation is necessary in the best interests of the child. In accordance with this obligation, States Parties are required to deal with applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification ‘in a positive, humane and expeditious manner.’ Article 22 of the CRC also requires States parties to cooperate with UN bodies and other organisations to protect and assist child asylum-seekers and refugees to trace his/her family, although note **Thailand’s** reservation to Article 22 that the application of this provision shall be subject to the national laws, regulations and prevailing practices in Thailand. To implement these obligations with respect to unaccompanied or separated children in cross-border migration contexts, the CRC Committee recommends that States Parties should identify a ‘durable solution’ that addresses the child’s protection needs, takes into account the child’s views and ‘wherever possible, leads to overcoming the situation of a child being unaccompanied or separated.’⁴⁵⁴ Family tracing is an important part of identifying a durable solution for the child and considering the possibility of family reunification.⁴⁵⁵ The CRC Committee recommends that family tracing ‘should be prioritized except where the act of tracing, or the way in which tracing is conducted, would be contrary to the best interests of the child or jeopardize fundamental rights of those being traced.’⁴⁵⁶ This means that ‘all efforts should be made to return [the child]...to his or her parents except where further separation is necessary for the best interests of the child, taking full account of the right of the child to express his or her views.’⁴⁵⁷

The bilateral agreements contain brief provisions on family tracing and reunification. In Article 12 of the **final draft Thailand-Myanmar MOU** (which has yet to be adopted), the parties agree to establish specialised procedures for family reunification in respect of unaccompanied or separated children and use such procedures only after a best interests determination has been undertaken, taking account of the right to family life and family unity. The parties also undertake (under Article 21) to ‘encourage the expedition’ of family

⁴⁵² The Philippines, Commonwealth Act 613, Immigration Act of 1940, Section 29 (12).

⁴⁵³ Viet Nam, Law on Entry, Exit, Transit and Residence of Foreigners in Viet Nam 2000, Article 21.

⁴⁵⁴ CRC GC No. 6 (2005), para 79.

⁴⁵⁵ CRC GC No. 6 (2005), para 80.

⁴⁵⁶ CRC GC No. 6 (2005), para 80.

⁴⁵⁷ CRC GC No. 6 (2005), para 81.

tracing and reunification of such children. Under Article 17 of the **Lao PDR-Thailand Trafficking MOU** on trafficking, the parties agree to implement measures to reunite trafficking victims with their families and society safely and effectively, with the aim of restoring their dignity and well-being. It requires parties to take account of the victim's age and gender, acting in the best interests of the child in the reintegration process, and closely monitor, manage and oversee (by the exchange of information) reintegration.

Of the national laws and related documents reviewed, **Thailand** and **Viet Nam** have the most comprehensive provisions on family tracing and reunification that are broadly in line with international standards. In Thailand, these provisions are found mainly in an immigration-related instrument; in Viet Nam, they are contained in the child protection and anti-trafficking laws. The child protection laws of **Brunei Darussalam**, **Indonesia**, **Lao PDR**, **Myanmar** and the **Philippines** contain some provisions regarding family reunification, as do the anti-trafficking instruments of **Indonesia**, **Lao PDR**, **Malaysia** and **Cambodia**. The **Philippines'** Special Protection of Children in Situations of Armed Conflict Act also contains provisions regarding family reunification.⁴⁵⁸ These go some way to meeting international standards but are not comprehensive in terms of the categories of children covered or steps that must be taken. No relevant provisions were found in **Singapore's** laws.

In **Thailand**, Article 6.7 of the standard operating procedures under the MOU on Alternatives to Detention refers to seeking durable solutions in the context of reintegration into the family and society. It provides that where children or their family are 'persons of concern' (as verified by UNHCR),⁴⁵⁹ the Immigration Bureau must collaborate with the UNHCR to arrange for resettlement to a third country where appropriate, voluntary repatriation to the country of origin, or reunification with family in the country of origin or a third country. In the case of unaccompanied or separated children who are 'persons of concern', the Immigration Bureau must coordinate with the UNHCR and ICRC to trace the family to reunite the child with his or her parents in the country of origin or a third country. Where unaccompanied or separated children are not 'persons of concern' the Immigration Bureau must coordinate with the DCY to trace the family and return the child to the country of origin or a third country. Article 4 of the standard operating procedures provides that the best interests of the child must be a primary consideration in all decisions affecting the child and that the child's opinion must be heard and considered.

The anti-trafficking laws of **Indonesia**, **Lao PDR**, **Malaysia** and **Viet Nam** contain some provisions on family reunification. **Indonesia's** anti-trafficking law provides that a trafficking victim is entitled to receive 'social reintegration' from the government, which must be provided within 7 days of a request.⁴⁶⁰ The Elucidation of the Anti-Trafficking Law clarifies that 'social reintegration' includes the reunification of a trafficking victim with his/her family or a foster family which can provide protection to and meet the needs of the victim.⁴⁶¹

In **Lao PDR**, Article 50 of the Law on Anti-Trafficking in Persons addresses reintegration assistance provided to victims. It provides that the national committee on anti-trafficking in persons will cooperate with local authorities where the victim lives to trace the family and relatives and assess the preparedness of both the family and victim for the return of the victim to the family. Where the victim cannot be returned, other options for further assistance will be explored. The Guidelines on Protection and Referral of Trafficking Victims confirms that the victim will only be reintegrated into their families following an assessment and where it is considered 'suitable' to return them. Additionally, follow-up monitoring is conducted to monitor the reintegration and ensure further assistance as required.

Malaysia's Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act provides that a parent, guardian or relative of a trafficked person who is a citizen or permanent resident of Malaysia and who is in a place of refuge can apply to court to have that person placed in their custody.⁴⁶² A protection officer must report to

⁴⁵⁸ The Philippines, Republic Law No 111888 (2019), Chapter II, Section 7(m).

⁴⁵⁹ Note that the standard operating procedures do not define 'persons of concern.'

⁴⁶⁰ Indonesia, Anti-Trafficking Law 2007, Articles 51(1) and 52(1).

⁴⁶¹ Indonesia, Elucidation of the Anti-Trafficking Law 2011, Article 51(1).

⁴⁶² Malaysia, Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007, Section 53(1).

the court after conducting a review of the trafficked person, his/her family, the status of the investigation and other relevant factors to enable the court to determine the application in the best interests of the trafficked person.⁴⁶³ If it is deemed to be in his/her best interests, the court can commit the person into the care and protection of the parent, guardian or relative (with any specified conditions) or require the trafficked person to be placed under the supervision of a protection officer.⁴⁶⁴

In **Viet Nam**, in child trafficking cases (provided that the victim has the relevant documentation proving their victim status), the Division on Labour, War Invalids and Social Affairs must arrange for the return of the child to his/her relatives unless the child requires health or psychological care or expresses the desire to remain in a care institution.⁴⁶⁵

No specific provisions relating to family tracing and reunification were found in **Cambodia's** legislation. The Agreement on Guidelines for Practices and Cooperation between the Relevant Government Institutions and Victim Support Agencies in Cases of Human Trafficking 2007 refer to the right for trafficking victims residing in shelters to communicate with family and friends (unless it is suspected that the persons in question were involved in the trafficking).⁴⁶⁶ They also contain provisions on the reintegration of victims into society, specifying that, in the case of child victims, the shelter must confirm the details of the child's guardian(s) on reintegration, the place where the victim will live and the follow-up, monitoring and evaluation procedure. The shelter must also arrange the involvement of a parent or relative in the rehabilitation and reintegration process where possible.⁴⁶⁷ Similarly, in the Philippines, the Anti-Trafficking Rules and Regulations 2003 provide that the Department of Social Welfare and Development, local government units and other concerned agencies shall provide a comprehensive, gender-sensitive and child friendly programme for the recovery and reintegration of trafficked victims but does not specifically refer to family tracing.⁴⁶⁸

The child protection laws of **Brunei Darussalam, Indonesia, Lao PDR, Myanmar, Thailand** and **Viet Nam** also contain some relevant provisions, although, with the exception of Indonesia, these are fairly brief. In **Brunei Darussalam**, a child (defined as 0-13 years) or young person (defined as 14-17 years) who has no guardian, or who has been abandoned by their guardian, is only regarded as in need of protection if 'after reasonable inquiries, the guardian cannot be found and no other suitable person is willing and able to care for him',⁴⁶⁹ suggesting that family tracing should be undertaken before the child is regarded as in need of protection on these grounds. Family tracing is also reinforced by Article 57(3)-(4) of the Children and Young Persons Act, which prohibits the Juvenile Court from making a protection order without giving the child/young person's guardian the opportunity to attend and be heard, unless the guardian, having been required to attend, fails to attend or cannot be found within a reasonable time.⁴⁷⁰ In **Lao PDR**, a child has the right not to be separated from parents unless necessary to protect the child's interests⁴⁷¹ and, where separated, should be returned to their parents or guardians where appropriate.⁴⁷² Pursuant to Article 33 of **Myanmar's** Child Rights Law, the Department of Social Welfare must ensure that the removal of children from their family environment is temporary and of the shortest possible duration unless permanent removal is in their best interests and

⁴⁶³ Malaysia, Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007, Section 53(3).

⁴⁶⁴ Malaysia, Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007, Section 53(5).

⁴⁶⁵ Viet Nam, Law on Prevention and Suppression of Human Trafficking 2011, Article 24(3) and 25(2). This also applies where trafficked victims are returned from other countries to Viet Nam.

⁴⁶⁶ Cambodia, Agreement on Guidelines for Practices and Cooperation between the Relevant Government Institutions and Victim Support Agencies in Cases of Human Trafficking 2007, Article 49.

⁴⁶⁷ Cambodia, Agreement on Guidelines for Practices and Cooperation between the Relevant Government Institutions and Victim Support Agencies in Cases of Human Trafficking 2007, Article 76. Note that monitoring, follow-up and evaluation is not applicable to foreign victims who have returned to their home country.

⁴⁶⁸ The Philippines, Rules and Regulations Implementing Republic Act No 9208 2022, Section 33. See also Sections 17(b)(iii) and (iv), Section 19(e), 20(d)

⁴⁶⁹ Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Section 2(2)(e).

⁴⁷⁰ Brunei Darussalam, Children and Young Persons Act, Revised Edition 2012, Chapter 219, Section 57(3)-(4).

⁴⁷¹ Lao PDR, Law on the Protection of the Rights and Interests of Children 2006, Article 3.

⁴⁷² Lao PDR, Law on the Protection of the Rights and Interests of Children 2006, Articles 40 and 41.

regularly review a child's alternative care programme to 'reassess the possibility of entrusting them back to their family', implying that family tracing for separated and unaccompanied children is necessary. Further details are contained within the Minimum Standards of Care and Protection for Children in Residential Facilities guidelines, which state that family tracing shall be carried out for children in residential facilities, with family reintegration being the 'prime target',⁴⁷³ though this does not require family tracing at the outset for separated and unaccompanied migrant children. Trafficking victims who are repatriated to Myanmar must also be reunited with their parents or guardians if that is 'the best condition for them'.⁴⁷⁴ Under **Thailand's** Child Protection Act, where the authorities have been notified of a child warranting welfare assistance or safety protection, the aim is to facilitate the return of children to their parents or guardians following 'tracing and observation' of the child's family to determine whether this would be appropriate or what safety measures may be required.⁴⁷⁵

The child protection provisions of **Viet Nam** and **Indonesia** are particularly relevant to the context of children affected by migration. The laws of Viet Nam and Indonesia protect the right of the child to be cared for by his/her parents and not to be separated from them except in certain circumstances and when in the best interests of the child.⁴⁷⁶ Both countries' laws cover situations where parents reside in different countries or are detained. Pursuant to **Indonesia's** Law on Child Protection, separation includes situations where a child's parents have left Indonesia to work abroad or where the child's parents are detained or imprisoned.⁴⁷⁷ The law provides that, where separated, the child has the right to meet in person and have regular contact with his/her parents.⁴⁷⁸ However, there are no specific provisions in the primary legislation regarding family reunification. Regulations on the implementation of child care do, however, provide for family reunification where children have been cared for by foster parents or social institutions. The process is facilitated by social workers or social welfare personnel and conducted in the best interests of the child.⁴⁷⁹ In **Viet Nam**, Article 23 of the Child Law provides for the right for the child to 'stay in touch or contact' with both parents where they or their parent(s) reside(s) in different countries or are detained or expelled'. Article 23 further provides that children must 'have their immigration facilitated to be united with their parent(s)' and 'are protected from illegal transport to the outside of the territory of Viet Nam and provided with information when their parent(s) is (are) missing'. Article 36 stipulates that stateless children residing in the territory of Viet Nam and refugee children are entitled to search for their parents and families as regulated by the law of Viet Nam and the international agreements to which the Socialist Republic of Viet Nam is a signatory.'

4.4 Non-refoulement and return to country of origin

Are the provisions on return of a child affected by migration in line with international standards?

Under refugee law,⁴⁸⁰ States are prohibited from returning a refugee where his/her life or freedom would be threatened on account of the person's race, religion, nationality, membership of a particular social group or political opinion. There are very limited exceptions to this principle (where there are reasonable grounds for regarding the refugee as a danger to the security of the country, or where the refugee has been convicted by a final judgment of a particularly serious crime and constitutes a danger to the community of the country in

⁴⁷³ Myanmar, Minimum Standards of Care and Protection for Children in Residential Facilities September 2017, Article 37

⁴⁷⁴ Myanmar, Prevention and Suppression of Trafficking in Persons Law 2022, Section 23(a).

⁴⁷⁵ Thailand, Child Protection Act 2003, Articles 35 and 56.

⁴⁷⁶ Viet Nam, Child Law 2016, Article 22 (which also provides that children must be assisted to stay in contact with their parent(s) and family, unless this might cause adverse influence on their best interests'); Indonesia, Law on Child Protection 2002, Article 14, and Law Concerning Human Rights 1947, Articles 56 and 59.

⁴⁷⁷ Indonesia, Law on Child Protection (as amended in 2017), Elucidation of Article 14(1).

⁴⁷⁸ Indonesia, Law on Child Protection (as amended in 2017), Article 14(2)(a).

⁴⁷⁹ Indonesia, Government regulation no. 44 year 2017 Concerning Implementation of Child Care, Articles 13 and 35. See also the National Standard of Care for Child Welfare Institutions, chapter IV (pp. 47 and 61).

⁴⁸⁰ Refugee Convention 1951 (and customary international law), Article 33(1)-(2).

which he/she is in), which should be applied with utmost caution.⁴⁸¹ There is also a non-refoulement provision in the Convention against Torture which prevents the return or extradition of a person to another State where the person would be in danger of being subjected to torture.⁴⁸² Under international child rights law, a child affected by migration must not be returned to his or her country of origin if the principle of refoulement applies, namely, 'where there are substantial grounds for believing that there is a real risk of irreparable harm to the child,' either in the country to which the child will be removed or in any other country to which the child may subsequently be removed, or there is a 'reasonable risk' that such return would result in the violation of fundamental human rights of the child.⁴⁸³ Return to the country of origin must only be arranged if it is in the best interests of the child.⁴⁸⁴ Additionally, where the parents or members of the extended family are unable to provide care, a child should not be returned, in principle, without 'advance secure and concrete arrangements of care and custodial responsibilities upon return to the country of origin.'⁴⁸⁵

Two of the bilateral agreements reviewed contain provisions on the return of children but neither contains an express prohibition on refoulement. Article 16 of the **Lao PDR-Thailand Trafficking MOU** on trafficking provides for the parties to work closely together on repatriation, arranging the return of victims with consideration for their safety and dignity. It also includes duties to notify relevant authorities in the country to which the victim is being returned and to repatriate victims in accordance with the MOU rather than pursuant to immigration law procedures. The **final draft Thailand-Myanmar MOU** contains provisions regarding the repatriation (and reintegration) of children affected by migration.⁴⁸⁶ It refers to ensuring the 'safe and timely repatriation' of children, with advanced notification of the relevant authorities to arrange repatriation, and confirms that children will be repatriated through coordination of relevant agencies in each country and in accordance with the provision of the MOU (although it does not refer to immigration law procedures). **Thailand** and **Myanmar** agree to develop bilateral standard operating procedures on the management of cases and repatriation of children affected by migration, with the standard operating procedures guided by the best interests of the child and being in accordance with the laws of both countries. Under Article 20, the parties undertake to make 'all possible efforts towards the safe and effective reintegration of children', and Article 21 provides that they shall 'encourage the expedition' of each stage of the repatriation process (identification, family tracing, assessment, national verification, repatriation and reunification). The parties further agree to establish joint protection teams which will assist with, and 'provide security, safety and dignity' in, the repatriation process.⁴⁸⁷

As outlined in **Part 3.1.1**, the immigration laws of all ASEAN Member States provide for the deportation of non-citizens in the event of illegal entry. However, some of the laws (such as that of **Cambodia**⁴⁸⁸ and **Lao PDR**⁴⁸⁹) expressly provide that deportation procedures will comply with international treaties to which the State is party. Of all the ASEAN Member States, only **Cambodia** and the **Philippines** have ratified both the Refugee Convention and the Convention against Torture and are thus bound by the prohibition on refoulement under these conventions. **Brunei Darussalam, Malaysia, Myanmar** and **Singapore** have not

⁴⁸¹ United Nations, Convention Relating to the Status of Refugees, United Nations, 28th July 1951 (the Refugee Convention), Article 33(1)-(2); UNHCR, Note on Non-Refoulement, EC/SCP/2, 23 August 1977, para. 14.

⁴⁸² United Nations, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, United Nations, 10th December 1984, Article 3.

⁴⁸³ CRC GC No. 6 (2005), paras 27 and 84.

⁴⁸⁴ CRC GC No. 6 (2005), para 84.

⁴⁸⁵ CRC GC No. 6 (2005), para 84.

⁴⁸⁶ MOU between the Government of the Kingdom of Thailand and the Government of the Republic of the Union of Myanmar on Strengthening the Cooperation to Protect Children Affected by Migration, adopted on 20 February 2020, Articles 17-21.

⁴⁸⁷ MOU between the Government of the Kingdom of Thailand and the Government of the Republic of the Union of Myanmar on Strengthening the Cooperation to Protect Children Affected by Migration, adopted on 20 February 2020, Article 27.

⁴⁸⁸ Cambodia, Law on Immigration 1994, Articles 29 and 35.

⁴⁸⁹ Lao PDR, Law on Immigration and Foreigner Management 2015, Article 56.

ratified either convention, and the remaining States (**Indonesia, Lao PDR, Thailand** and **Viet Nam**) have ratified/acceded to the Convention against Torture only. All ASEAN Member States are party to the CRC and are thus bound by its provisions, which enshrines a prohibition against torture in Article 37(a), although note the reservations and declarations of **Malaysia** and **Singapore**, particularly to Article 37 (see [Annex 3: Status of Ratification of Key International Treaties by ASEAN Member States](#) for details). However, the principle of non-refoulement is regarded as a principle of customary international law⁴⁹⁰ to which all ASEAN Member States are bound under international law, regardless of whether or not they have ratified the Refugee Convention or Convention against Torture. It has also been argued that non-refoulement has acquired the status of *jus cogens* (i.e. a peremptory norm of international law from which no derogation is permitted).⁴⁹¹ In no ASEAN State are the national laws fully in line with their international obligations in this regard.

In 2022, in line the non-refoulement principle in CAT, **Thailand** passed a new law, the Act to Prevent and Suppress Torture and Enforced Disappearance, Article 13 of which provides that, “*No government organizations or public officials shall expel, deport, or extradite a person to another country where there are substantial grounds for believing that the person would be in danger of torture, cruel, inhuman, or degrading treatment, or enforced disappearance.*”. The Act entered into force in February 2023. However, on February 14, 2023, the Thai government approved a decree to postpone the enforcement of key articles 22 to 25 of the Act⁴⁹².

Cambodia, Indonesia, the Philippines and **Thailand** have specific provisions relating to the return of refugees (although Thailand does not use this term), with Cambodia expressly prohibiting refoulement in the context of asylum. Article 23 of **Cambodia’s** Sub-decree on Refugee Status 2009 provides that a refugee ‘shall not be expelled or returned in any manner whatsoever to the frontiers of territories where his or her life, freedom or rights would be threatened on account of his or her race, religion, nationality, membership of a social group or particular political opinion’, which accords with the Refugee Convention. No other provisions were found in the Cambodian legislation reviewed, however, that would respect international standards on return of migrant children in other contexts.

Indonesia’s Law on Child Protection provides that *pengungsi* (as one of the categories of children in ‘emergency situations’) must be afforded special protection in accordance with humanitarian law,⁴⁹³ although, as mentioned previously, contrary to its ordinary meaning, this term is sometimes interpreted in practice by officials to refer solely to internally displaced children. Further, Article 3 of Presidential Regulation 125/2016 provides that Indonesia’s handling of refugees must ‘observe generally applied’ international law and be in accordance with laws and regulations. However, there is no express prohibition on refoulement in any of the laws reviewed and only two durable solutions are presented in the Regulation: voluntary repatriation/return or resettlement in a third country. Permanent local settlement is thus not envisaged. Voluntary repatriation is referred to in Articles 29 and 38 as ‘voluntary return... in accordance with the prevailing laws and regulations’ and a clear procedure for voluntary return (including receipt of request from the refugee to be voluntarily returned) is provided in Article 38.⁴⁹⁴ However, Article 43 suggests that return can be involuntary for refugees whose applications receive a final rejection from UNHCR as it refers to the ‘return of refugees whose applications are rejected at first instance and are finally rejected’.

⁴⁹⁰ UNHCR, Advisory Opinion on the Extraterritorial Application of *Non-Refoulement* Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, UNHCR, Geneva, 26 January 2007, para. 15, <<https://www.unhcr.org/4d9486929.pdf>>, accessed 12 July 2022.

⁴⁹¹ Allain, Jean., ‘The jus cogens Nature of non-refoulement’, *International Journal of Refugee Law*, Volume 13, Issue 4, October 2001, pp. 533–558.

⁴⁹² See: <https://www.hrw.org/news/2023/02/15/thailand-law-torture-disappearance-delayed>

⁴⁹³ Indonesia, Law on Child Protection (amended in 2017), Articles 59 to 61.

⁴⁹⁴ A similar process is outlined in Article 37 for resettlement in a third country except that the resettlement is made following receipt of notice from the UNHCR rather than request from the refugee.

The **Philippines'** Department of Justice Circular 024 of 2022 provides that the refugee and stateless status determination procedure shall be governed by the principle of non-refoulement.⁴⁹⁵ From the time of filing an application for refugee or stateless status, until the final decision, an applicant 'has protection from any forcible return in any manner whatsoever, to a country where he or she may face persecution on account of his race, religion, nationality, membership of a particular social group of political opinion'.⁴⁹⁶

Thailand's MOU on Alternatives to Detention addresses the return of children, but does not contain any express prohibition on refoulement. Rather, it provides that children will be returned to their country of origin or a third country 'in a safe and dignified manner and under the relevant international criteria'.⁴⁹⁷ The standard operating procedures under the MOU set out more detail on the return of children. The Immigration Bureau is required to coordinate with the embassy of the country of origin, international organisations and private or civil society organizations for the 'safe and voluntary repatriation to the country of origin, resettlement to a third country, and identifying any durable solution for children and their family based on their situation'.⁴⁹⁸ As indicated in **Part 4.3**, the UNHCR (and ICRC where children are unaccompanied or separated) must be involved in the process where children or their family are 'persons of concern', and it is stipulated that the best interests of the child must be a primary consideration in any decision taken.

Anti-trafficking legislation in **Indonesia, Malaysia, Myanmar, Thailand** and **Viet Nam** address the return of trafficking victims, the focus generally being on facilitating the return, without delay, of the victim to their country of origin. None of the laws contain an explicit prohibition on refoulement, but all stress consideration of the safety of the victim.

- In **Viet Nam**, Article 55 of the Law on Prevention and Suppression of Human Trafficking provides that the Vietnamese government shall take the necessary measures to facilitate the repatriation of foreign victims and protect the life, health, honour and dignity of victims.
- In **Indonesia**, the Law on the Eradication of the Criminal Act of Human Trafficking provides that, where a trafficking victim is a foreign national, the Indonesian government must 'make efforts' to provide protection and facilitate return to the country of origin through coordination with the country's representative in Indonesia in accordance with international law.⁴⁹⁹ It further provides for 'return assistance' but clarifies that this must be provided only where the victim is willing to return home and that there is no greater risk awaiting the victim.⁵⁰⁰
- Under **Malaysia's** Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act, a foreign national who had been trafficked but who has valid documents and is employed must be released. In any other case, all necessary steps must be taken to return a trafficked person to his/her country of origin 'without unnecessary delay, with due regard for his safety'.⁵⁰¹ This may include a court order to place the trafficked person in a place of refuge for his/her care and protection or to manage his/her repatriation.⁵⁰² The National Action Plan on Anti-Trafficking in Persons lists as one its objectives the safe repatriation of trafficking victims to their home country and to also ensure the best interests of the child when making decisions on repatriation of child victims.⁵⁰³
- Whilst **Myanmar's** Prevention and Suppression of Trafficking in Persons Law contains obligations for 'placing high regard for [the]... security' of trafficking victims during repatriation, it only does so with

⁴⁹⁵ The Philippines, Department of Justice Circular 024 of 2022, Section 3.

⁴⁹⁶ The Philippines, Department of Justice Circular 024 of 2022, 2022, Section 4.

⁴⁹⁷ Thailand, MOU on Alternatives to Detention 2019, para. 5.

⁴⁹⁸ Thailand, SOP under the MOU on Alternatives to Detention 2019, para. 6.7.1.

⁴⁹⁹ Indonesia, Law on the Eradication of the Criminal Act of Human Trafficking 2007, Article 54. Note that Indonesia, Law on Immigration 2011, Article 88, provides for the immediate return of victims of trafficking.

⁵⁰⁰ Indonesia, Law on the Eradication of the Criminal Act of Human Trafficking (and elucidation) 2007, Article 51.

⁵⁰¹ Malaysia, Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2015, Section 54(2).

⁵⁰² Malaysia, Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2015, Section 54(3).

⁵⁰³ Malaysia National Action Plan on Anti-Trafficking in Persons, p. 69.

reference to repatriation to Myanmar and not to cases where Myanmar is repatriating an individual from Myanmar to another country.⁵⁰⁴

- **Thailand's** Anti-Trafficking in Persons Act provides that a trafficked person must be returned to their country of residence/domicile 'without delay' unless the person has been permitted to remain in Thailand, but that the security and welfare of the person will be taken into account in this process.⁵⁰⁵ It also contains provisions confirming coordination with government or private agencies to ensure 'safety protection' for the trafficked person and family members, where the person has been returned to the country of residence/domicile, although this appears to be applicable where proceedings are being taken against an offender.⁵⁰⁶ There are further protections for trafficked persons in operational guidelines. An MOU on Operations between State Agencies and Non-Governmental Organizations Engaged in Addressing Trafficking in Children and Women 2003 stipulates that, where children and women are to be repatriated, embassies and consulates of the country of return will be contacted to confirm the repatriation and inform relevant agencies in that country to take over responsibility for the protection, care, rehabilitation and accommodation of children and women. It further provides that, where repatriation of children (and women) to their country of origin/residence will 'threaten their lives', the UNHCR must be contacted to provide assistance.

Recommendations:

- Consider removing the reservation to Article 22 of the CRC [Thailand].
- Extend the application of the Child Law to all persons up to the age of 18 [Viet Nam].
- Amend the Child Protection Law to clarify that 'children in emergency situations' who are entitled to special protection include children who seeking asylum and refugee children [Indonesia].
- Consider including specific provisions in child protection laws prohibiting discrimination on the basis of the child's or his/her parent's migration status.
- Include provisions specifically in immigration laws/regulations requiring child protection referrals for children in need of care and protection [Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Singapore and Viet Nam].
- Incorporate into law provisions for screening by immigration officials to identify children as separated or unaccompanied and to refer them to the child protection system.
- Include provisions prioritising family tracing and reunification (where this is in the best interests of the child) for unaccompanied or separated children in all contexts [Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines and Singapore].
- Include express prohibition on refoulement and prohibition on return where there is risk of irreparable harm or that the return will result in the violation of the rights of the child, in respect of all children, including children affected by migration.

⁵⁰⁴ Myanmar, Prevention and Suppression of Trafficking in Persons Law 2022, Chapter 7.

⁵⁰⁵ Thailand, Anti-Trafficking in Persons Act 2008, Section 38.

⁵⁰⁶ Thailand, Anti-Trafficking in Persons Act 2008, Section 36.

5 Asylum

	Party to Refugee Convention	Party to Refugee Status Protocol	Recognition of child asylum-seekers and refugees	Definition of refugee/asylum-seeker in line with international standards	Recognition of non-refoulement principle
Brunei					
Cambodia					
Indonesia					
Lao PDR					
Malaysia					
Myanmar					
Philippines					
Thailand					
Singapore					
Viet Nam					

Is the ASEAN State a party to the Refugee Convention 1951 and Refugee Status Protocol 1967?

Only **Cambodia** and the **Philippines** have acceded to the Refugee Convention 1951 and Refugee Status Protocol 1967. However, all of the ASEAN Member States have ratified the CRC and are therefore bound by the obligations under Article 22 concerning the right of children seeking refugee status to receive appropriate humanitarian protection, although **Brunei Darussalam, Malaysia, Singapore** and **Thailand** have issued reservations and declarations to its CRC obligations. In particular, Singapore has reserved ‘the right to apply such legislation and conditions concerning the entry into, stay in and departure from the Republic of Singapore of those who do not or who no longer have the right under the laws of the Republic of Singapore, to enter and remain in the Republic of Singapore, and to the acquisition and possession of citizenship, as it may deem necessary from time to time and in accordance with the laws of the Republic of Singapore.’ Similarly, **Thailand** has entered a specific reservation that Article 22 shall be subject to its ‘national laws, regulations and prevailing practices’, although processes are reportedly underway within Thailand to consider withdrawing this reservation.⁵⁰⁷ See [Annex 3: Status of Ratification of Key International Treaties by ASEAN Member States](#) for details.

Does the national law recognise child asylum-seekers and refugees and, if so, to what extent are the definitions in line with international standards?

Article 1A(2) of the Refugee Convention defines a refugee as someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion. This includes children who meet the definition of refugee. The Refugee Convention also establishes criteria by which persons may be excluded from international protection or cease to have refugee status.⁵⁰⁸ An asylum-seeker is an individual who is seeking international protection.⁵⁰⁹

Only **Cambodia, Indonesia** and the **Philippines** recognise asylum-seekers and refugees as a distinct category of migrants under their national legal frameworks. In Cambodia and Indonesia, there is no specific legislation dealing with the rights of ‘child’ asylum-seekers and refugees. Rather, the State’s obligations are found in

⁵⁰⁷ UNICEF EAPRO, written communication to Coram International received 11 July 2022.

⁵⁰⁸ Refugee Convention 1951, Articles 1C and 1F.

⁵⁰⁹ UNHCR, *Master Glossary of Terms*, <www.unhcr.org/glossary/#a>, accessed 21 January 2022.

legislation addressing refugees in general and in the legislation relating to the protection of children. In the **Philippines**, however, the Department of Justice Circular O24 of 2022 provides specifically for unaccompanied children seeking refugee or stateless status,⁵¹⁰ requires that such children should be provided with the right to be heard⁵¹¹ and provides that the best interests of the child are to be the primary consideration.⁵¹² In line with international standards, ‘persons of concern,’ who include but are not limited to asylum seekers, refugees, stateless applicants and stateless persons, are granted rights⁵¹³ and, if granted refugee or statelessness status, the applicant and family members will have “the rights and privileges accorded by the Conventions⁵¹⁴ subject to Philippine laws, rules and regulations”.⁵¹⁵

The Constitutions of both **Lao PDR**⁵¹⁶ and **Viet Nam**⁵¹⁷ refer to asylum. However, the Vietnamese Constitution provides only that Viet Nam ‘may consider’ granting asylum in certain circumstances, and the provisions in neither constitution adopt the same definition of refugees as the Refugee Convention. No further provisions for granting asylum or refugee status and any associated protection were found in other legislation reviewed for these jurisdictions. In **Brunei Darussalam, Malaysia, Myanmar, Singapore and Thailand**, no distinction is made between asylum-seekers and refugees and other groups of migrants. As noted above, Thailand has a reservation in respect of Article 22 of the CRC and there are no provisions of national law that provide for the express protection of refugee children. In Brunei Darussalam, Malaysia and Thailand, asylum-seekers and refugees (including children) are treated as undocumented migrants (and thus liable to the sanctions set out in **Part 3.1** above), and no legal route exists in these countries for asylum-seekers to be granted refugee status. However, whilst there is no formal legal framework in Thailand allowing for the determination and granting of refugee status, in December 2019, the Thai cabinet is reported to have approved in principle the establishment of a screening mechanism to distinguish persons in need of protection from economic migrants.⁵¹⁸ Further, as set out in **Part 4** above, there are specific provisions addressing ‘persons of concern’ in the MOU on Alternatives to Detention.

Cambodia provides for the granting of refugee status, and the definition of refugee in the Sub-decree on Refugee Status of 2009 is in line with international standards. Pursuant to the Sub-decree, children (and other family members) who are dependents of an applicant for refugee status are entitled to the same rights and subject to the same obligations as the applicant.⁵¹⁹ If granted refugee status, the refugee has the same rights and obligations as a legal immigrant.

⁵¹⁰ The Philippines, Department of Justice Circular O24 2022, Rule IX, Section 3

⁵¹¹ The Philippines, Department of Justice Circular O24 2022, Rule IX, Section 6.

⁵¹² The Philippines, Department of Justice Circular O24 2022, Rule IX Section 2.

⁵¹³ Rule 1, Section 5.

⁵¹⁴ The UN Convention Relating to the Status of Refugees 1951, its 1967 Protocol Relating to the Status of Refugees; the UN Convention Relating to the Status of Stateless Persons and the 1961 UN Convention on the Reduction of Statelessness and other relevant international instruments to which the Philippines is a party.

⁵¹⁵ Rule IV, Section 5.

⁵¹⁶ Article 51 provides that asylum will be granted to foreigners ‘who are persecuted for their struggle for freedom, justice, peace and scientific causes’.

⁵¹⁷ Article 49 provides that Viet Nam may consider granting asylum to ‘[f]oreign nationals who are persecuted for taking part in the struggle for freedom and national independence, for socialism, democracy and peace, or for engaging in scientific pursuits’

⁵¹⁸ UNHCR, *UNHCR welcomes Thai Cabinet approval of national screening mechanism*, 16 December 2019, <www.unhcr.org/th/en/16791-unhcr-welcomes-thai-cabinet-approval-of-national-screening-mechanism.html>, accessed 21 January 2022.

⁵¹⁹ Cambodia, Sub-decree on Procedure for Recognition as a Refugee or Providing Asylum Rights to Foreigners in the Kingdom of Cambodia 2009, Article 9.

In **Indonesia**, Article 28G of the 1945 Constitution of the Republic of Indonesia acknowledges the right to seek and be granted asylum⁵²⁰ and, under the Law on Child Protection, *pengungsi* are included within the definition of children in emergency situations and are to be afforded special protection in accordance with humanitarian law.⁵²¹ However, as noted in **Part 4.1**, interpretations of the term, *pengungsi*, vary among officials, with some interpreting it to refer solely to ‘internally displaced persons’ and not also to ‘refugees’.⁵²² Despite this, the main legislation that defines and regulates the status of refugees is Presidential Regulation 125/2016. Although Indonesia has not ratified the Refugee Convention, Article 1.1 of Regulation 125/2016 adopts the definition of refugees from the Refugee Convention. Under the Presidential Regulation, child refugees are expressly recognised as ‘*refugees with special needs*’⁵²³ and are accorded special treatment as outlined in **Parts 3.3** and **4.1** above. Indonesian’s law acknowledges UNHCR’s role in processing all refugee status determinations in the country. Regulations contain details of the refugee management process from the arrival of a person declaring him or herself as an asylum-seeker and final determination of status.⁵²⁴ Note, however, that Indonesian law does not provide for permanent local settlement of refugees (see **Part 4.4** above).

Recommendations:

- Consider acceding to the Refugee Convention 1951 and Refugee Protocol 1967 [all States except Cambodia and the Philippines].
- Consider removing the reservation to Article 22 of the CRC [Thailand].
- Creation of legal routes to grant legal status to asylum-seeking and refugee children and families, in line with international standards [Brunei Darussalam, Lao PDR, Malaysia, Myanmar, Singapore, Thailand and Viet Nam].

⁵²⁰ Indonesia, Law Concerning Human Rights 1999, Article 28, also references the right to seek asylum but the Law on Immigration does not contain any reference to asylum-seekers or refugees and anyone without valid travel documents can be refused entry.

⁵²¹ Indonesia, Law on Child Protection 2002, Articles 59 to 61.

⁵²² UNICEF Indonesia Country Office, written comments emailed to Coram International sent on 11 July 2022.

⁵²³ Indonesia, Presidential Regulation no. 125/2016 Concerning the Handling of Foreign Refugees 2016, Articles 27(3).

⁵²⁴ Indonesia, Regulation of the Director General of Immigration No. IMI-0352.GR.02.07 (2016) on the Handling of Illegal Migrant Claiming to be Asylum-Seeker or Refugee 2016.

6 Child trafficking

	All children (up to age 18; boys and girls) covered by child trafficking provisions	All acts (recruiting, transporting, transferring, harbouring, receiving) criminalized	Offence committed regardless of means used	All types of exploitation covered	Extra-territorial application of trafficking provisions	Law covers attempt & secondary liability	Appropriate penalties for child trafficking
Brunei Darussalam	Green	Green	Green	Yellow	Green	Yellow	Yellow
Cambodia	Green	Green	Red	Green	Green	Green	Green
Indonesia	Green	Green	Yellow	Green	Red	Green	Green
Lao PDR	Green	Green	Green	Green	Green	Green	Green
Malaysia	Green	Green	Green	Green	Green	Yellow	Yellow
Myanmar	Green	Green	Green	Yellow	Green	Green	Green
Philippines	Green	Green	Green	Green	Green	Green	Green
Singapore	Green	Green	Green	Green	Yellow	Green	Yellow
Thailand	Green	Green	Green	Green	Green	Green	Green
Viet Nam	Red	Green	Yellow	Green	Green	Green	Green

6.1 Prohibition and criminalisation of trafficking

To what extent is the trafficking of children prohibited/criminalised under the law?

6.1.1 Overview

Article 35 of the CRC requires States to ‘take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form’. It does not, however, specify the meaning or scope of trafficking. The Palermo Protocol provides the most comprehensive definition of trafficking under international law. All of the ASEAN Member States have acceded to or ratified the Palermo Protocol, although, with the exception of Brunei Darussalam, Cambodia and Philippines, they have all issued reservations or declarations in respect of its provisions (see [Annex 3: Status of Ratification of Key International Treaties by ASEAN Member States](#)). However, all of the ASEAN Member States are also party to the ASEAN Convention Against Trafficking in Persons Especially Women and Children (see Annex 4: Key Regional Instruments). The definition of ‘trafficking in persons’ in the ASEAN Convention mirrors that in the Palermo Protocol and, in both instruments, a child is any person under the age of 18.

Under Article 3 of the Palermo Protocol, child trafficking is the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation. Exploitation includes, at a minimum, (i) the exploitation of the prostitution of others or (ii) other forms of sexual exploitation, (iii) forced labour or services, (iv) slavery or practices similar to slavery, (v) servitude or (vi) the removal of organs.⁵²⁵ There is no requirement to prove the means by which the trafficking of the child occurred.⁵²⁶ In other words, it is not necessary to

⁵²⁵ United Nations, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime (Palermo Protocol), United Nations, 15th November 2000, Article 3(a).

⁵²⁶ Palermo Protocol, Article 3(c).

demonstrate any form of threat/use of force or other forms of coercion, abduction, fraud, deception, abuse of power or position of vulnerability, or inducements to obtain consent, where the victim is a child.

Both the Palermo Protocol (Article 5) and the ASEAN Convention Against Trafficking in Persons Especially Women and Children (Articles 5(1)-(2)) oblige States parties to criminalise all acts falling within this definition, as well as attempts to commit these acts, acting as an accomplice to such acts and organising or directing others to commit such acts. The ASEAN Convention Against Trafficking in Persons Especially Women and Children also requires States to provide for higher penalties in the event of specific aggravating factors (including the trafficking of children, the death of the victim and multiple victims). States must also ensure that domestic laws apply to offences which are transnational in nature.

The **Lao PDR-Thailand Trafficking MOU** on trafficking does not contain provisions regarding the prohibition or criminalisation of trafficking but rather focuses on efforts to combat trafficking. As such, it will not be discussed further in this section, other than to confirm that the definition of trafficking in its Article 2 mirrors that of the Palermo Protocol. There is thus no requirement to prove any form of coercion where the victim is a person under the age of 18 years.

All ASEAN Member States have enacted specific legislation that prohibits and criminalises human trafficking.⁵²⁷ The trafficking of children falls within these laws, although in some jurisdictions (including **Lao PDR, Myanmar** and **Viet Nam**), the penal code also contains relevant provisions. In all of the countries **except Viet Nam**, a child is defined as being a person under the age of 18. **Viet Nam's** anti-trafficking law (Law on Prevention and Suppression of Human Trafficking 2011) contains no reference to age but cross-references the Criminal Code when referring to prohibited acts in Article 3. The relevant provision on child trafficking in the Criminal Code (Article 151) applies only to persons under the age of 16 years. The offence of trafficking a child over the age of 16 but under 18 would therefore fall within the generic crime of trafficking in Article 150 of the Criminal Code. These provisions are analysed in more detail below.

6.1.2 Act of trafficking

The anti-trafficking laws in all ASEAN Member States prohibit all acts that may constitute child trafficking as set out in international law and in the ASEAN Convention, namely, recruitment, transportation, transfer, harbouring or receipt. The relevant provisions are set out in the table below.

Table 2: Criminalisation of child trafficking under the national laws

Brunei Darussalam: Article 5 (1), Anti-Trafficking in Persons Order, 2019⁵²⁸
<ul style="list-style-type: none">• Recruitment• Transportation• Transfer• Harbour

⁵²⁷ This review focuses on specific anti-trafficking legislation and does not generally address other laws that contain provisions relevant to trafficking in persons, except where such provisions must be read together with the anti-trafficking legislation. Note, however, that the laws of some jurisdictions (for example, Brunei Darussalam, Women and Girls Protection Act 1984, Sections 3 to 5, the Penal Code 2001, Section 371 and the Children and Young Persons Act 2012, Sections 35 to 36 ; Malaysia, Penal Code 1976, Sections 359-375 and the Child Act 2001, Sections 43 to 44 and 48 to 49; and Thailand, Criminal Code 1956/2003, Sections 319 and 320) contain provisions that may be invoked to prosecute trafficking-related offences.

⁵²⁸ It is noted that the Brunei Darussalam, Women and Girls Protection Act 1984, contains a crime of trafficking in women and girls in section 4, which is defined undefined and is subject to an exemption from prosecution where the women and girl in question was trafficked for the purposes of marriage and adoption. A similar defence is available for persons suspected of the offence of unlawful transfer or possession, custody or control of a child under Section 35 of the Children and Young Persons Act. These exemptions/defences are not in line with international and regional law; see 'Element of exploitation (purpose) further below for details.

<ul style="list-style-type: none"> ● Receipt
<p>Cambodia: Law on Suppression of Human Trafficking and Sexual Exploitation 2008</p> <ul style="list-style-type: none"> ● Recruitment: Article 12 ● Transportation: Article 17 ● Transfer: Article 10 (unlawful removal) ● Harbouring: Article 19 ● Receipt: Article 19
<p>Indonesia: Law on the Eradication of the Criminal Act of Human Trafficking 2007</p> <ul style="list-style-type: none"> ● Recruitment: Article 2 ● Transportation: Article 2 ● Transfer: Article 2 (trafficking in persons), Article 6 (transfer or receipt of child) ● Harbouring: Article 2 ● Receipt: Article 2 (trafficking in persons), Article 6 (transfer or receipt of child)
<p>Lao PDR: Articles 2 and 10, Law on Anti-Trafficking in Persons 2016</p> <ul style="list-style-type: none"> ● Recruitment ● Transportation ● Transfer ● Harbouring ● Receipt
<p>Malaysia: Sections 2 and 14, Anti-Trafficking in Persons and Anti-Smuggling Act 2007, as amended</p> <ul style="list-style-type: none"> ● Recruitment ● Transportation ● Transfer ● Harbouring ● Receipt
<p>Myanmar: Section 3(b), Prevention and Suppression of Trafficking in Persons Law 2022</p> <ul style="list-style-type: none"> ● Recruitment ● Transportation ● Transfer ● Harbour ● Receipt
<p>Philippines: Section 4, Anti-Trafficking in Persons Act of 2003 (as amended)</p> <ul style="list-style-type: none"> ● Recruitment ● Transportation ● Transfer ● Harbour ● Receipt
<p>Singapore: Article 3(2), Law on Prevention of Human Trafficking 2014</p> <ul style="list-style-type: none"> ● Recruitment ● Transportation ● Transfer ● Harbour ● Receipt
<p>Thailand: Section 6, Anti-Trafficking in Persons Act 2008</p> <ul style="list-style-type: none"> ● Recruitment: likely encompassed by 'procuring, buying, selling and vending' ● Transportation: likely encompassed by 'bringing from or sending to' ● Transfer ● Harbouring ● Receipt

Viet Nam: Article 3(2), Law on Prevention and Suppression of Human Trafficking 2011; Article 151, Criminal Code

- Recruitment
- Transportation
- Transfer
- Harbouring
- Receipt

6.1.3 Means of trafficking

The laws in **Brunei Darussalam, Lao PDR, Malaysia, Myanmar, Philippines, Singapore** and **Thailand** are compliant with international law by not requiring proof that any particular means (such as force or coercion) were used in the course of trafficking a child.⁵²⁹ In **Viet Nam**, for children under 16, there is no requirement to prove the means by which trafficking occurred for an offence to be made out.⁵³⁰ However, as the trafficking of children aged 16 or above comes within Article 150 of the Criminal Code, it is necessary to demonstrate some form of coercive means where the victim is a child aged 16 or 17, contrary to the Palermo Protocol and ASEAN Convention.⁵³¹ Proof of force or coercion as means of obtaining a child's consent is required by laws in **Cambodia** and **Indonesia**. In **Cambodia**, the use of force, threat, deception, abuse of power or enticement is required for a trafficking offence.⁵³² In **Indonesia**, the threat of force, use of force, abduction, incarceration, fraud, deception, abuse of authority or position of vulnerability, debt bondage or the giving of payment or benefit is required.⁵³³ However, for the more limited offence under Article 6 of sending a child within Indonesia or to another country that *causes* exploitation of the child, 'any means' is sufficient. For this offence, exploitation must have occurred, whereas trafficking requires the conduct to be for the 'purpose of exploitation'.

6.1.4 Element of exploitation (purpose)

The act of child trafficking under international law must be for the purpose of exploitation which, pursuant to Article 3(a) of the Palermo Protocol, should include 'at a minimum, prostitution and other forms of sexual exploitation; forced labour or services; slavery or practices similar to slavery; servitude; or the removal of organs'. With the exception of **Myanmar**, the laws in all ASEAN Member States expressly encompass all of these types of exploitation, with the laws in **Cambodia, Indonesia, Lao PDR, Philippines, Singapore, Thailand** and **Viet Nam** listing additional kinds of exploitation, and thus offering greater protection than required under the Palermo Protocol in this respect. In **Singapore**, specific reference is made within the definition of sexual exploitation to the use of person in audio or visual recordings of obscene or indecent acts, broadening the scope to include online forms of exploitation too.⁵³⁴ In the **Philippines**, the law also includes, sex tourism, debt bondage, and pornography, including in online forms.⁵³⁵ Further, the use of non-restrictive language such as 'includes' (**Indonesia; Malaysia**), 'unlawful conduct contradicting to the laws and national culture and

⁵²⁹ The relevant provisions are as follows: Lao PDR, Law on Anti-Trafficking in Persons 2016, Article 9 (the Law on Development and Protection of Women 2004, Article 24 contains similar provisions); Malaysia, Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2015, Section 14; The Philippines, Republic Act 9208 Anti-Trafficking Act 2003, as amended and Thailand, Anti-Trafficking in Persons Act 2008, Section 6(2); Brunei Darussalam, Anti-Trafficking in Persons Order 2019, Sections 2 (definition of child) and 5(1)-(2); Singapore, Prevention of Human Trafficking Act 2014, Article 3(2) and (3)(a).

⁵³⁰ Viet Nam, Criminal Code 2015, Article 151.

⁵³¹ Viet Nam, Criminal Code 2015, Article 150.

⁵³² Cambodia, Law on Suppression of Human Trafficking and Sexual Exploitation 2008, Articles, 10, 12, 17 and 19.

⁵³³ Indonesia, Law on the Eradication of the Criminal Act of Human Trafficking 2007, Article 2.

⁵³⁴ Singapore, Law on Prevention of Human Trafficking 2014, Article 2.

⁵³⁵ The Philippines, Republic Law 9802, Anti-Trafficking in Persons Act of 2003, as amended, Section 3.

traditions’ (**Lao PDR**), ‘any illegal activity’ (**Malaysia**) and ‘for other inhuman purposes’ (**Viet Nam**) broadens protection further.

In **Brunei Darussalam**, the Women and Girls Protection Act, which is understood to still be in force, also contains an offence of trafficking, which is undefined but subject to an exemption from prosecution where the accused satisfies the Commissioner that the trafficking was for the purpose of the girl’s (or woman’s) marriage or adoption and that the marriage or adoption has been or can be solemnised or made under the laws and customs for the time being in force in Brunei.⁵³⁶ Similar exemptions are integrated into the definitions of related crimes⁵³⁷ as well as a similar defence for the crime of unlawful transfer of possession, custody or control of a child under section 35 of the Children and Young Persons Act. These exemptions and defences are not in line with international standards. However, they only apply to persons charged with those specific offences and therefore do not appear to apply to persons charged with child trafficking under section 2 of the Anti-Trafficking in Persons Order 2019. A similar situation arises in **Singapore** by virtue of the Women’s Charter 1961, which provides that no person shall be charged of the offence of trafficking in women and girls under section 141(1) of that law where the person satisfies the Director-General that the woman or girl brought into or taken out of Singapore by the person (or intended to be brought into or taken out of Singapore by the person) was so brought into or taken out of Singapore (or is intended to be so brought into or taken out of Singapore) for the purpose of her marriage or adoption and that such marriage or adoption can be solemnised or made and has been or will be solemnised or made under the laws and customs for the time being in force in Singapore.⁵³⁸

In **Myanmar**, although prostitution and sexual conduct are included within the definition of ‘exploitation’, these acts must have been ‘forced’,⁵³⁹ suggesting that prostitution or sexual conduct without ‘force’ would not amount to exploitation and appears to introduce a ‘means’ requirements to the definition of child trafficking, contrary to the Palermo Protocol. However, the definition of ‘prostitution by force’ does not incorporate any reference to force,⁵⁴⁰ which creates ambiguity over this interpretation. Further, the term ‘forced’ is not defined in Myanmar’s national laws though its natural meaning in the original Burmese version of the legislation is understood to mean ‘unlawful’ or ‘unjust.’⁵⁴¹ The definition of ‘other forms of forced sexual conduct’ similarly does not include any reference to force, but is limited to *representations* of sexual conduct, thereby curtailing its scope.⁵⁴² Further, ‘exploitation’ includes ‘forced marriage’ suggesting that child marriage without ‘force’ would not be sufficient to prove the offence of trafficking, which is also contrary to international standards. Finally, ‘servitude’ is not explicitly included within the definition of ‘exploitation’, contrary to the Palermo Protocol, though it may be interpreted to fall under ‘slave-like practices’ which is included in the definition.

Table 3: Exploitative purposes under the national laws

<p>Brunei Darussalam: Section 2 of the Anti-Trafficking in Persons Order 2019</p> <p>“‘exploitation” includes all forms a sexual exploitation (including sexual servitude and exploitation of another person’s prostitution), forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs’.</p>
<p>Cambodia: Article 10, Law on Suppression of Human Trafficking and Sexual Exploitation 2008</p> <p>‘profit making, sexual aggression, production of pornography, marriage against will of the victim, adoption or any form of exploitation’.</p>

⁵³⁶ Brunei Darussalam, Women and Girls Protection Act, Revised Edition 1984, Chapter 120, Section 4(2).

⁵³⁷ Brunei Darussalam, Women and Girls Protection Act, Revised Edition 1984, Chapter 120, Section 3(b), (c), (e)-(f).

⁵³⁸ Singapore, Women’s Charter 1961, Revised Edition 2020, section 141(2).

⁵³⁹ Myanmar, Prevention and Suppression of Trafficking in Persons Law 2022, Article 3(c).

⁵⁴⁰ Myanmar, Prevention and Suppression of Trafficking in Persons Law 2022, Article 3(c), Explanation (1).

⁵⁴¹ UNICEF Myanmar, comments from national experts submitted to Coram International on 27 January 2023.

⁵⁴² Myanmar, Prevention and Suppression of Trafficking in Persons Law 2022, Article 3(c), Explanation (2).

‘any form of exploitation’ in Articles 10, 12, 15, 17 and 19 includes ‘the exploitation of the prostitution of others, pornography, commercial sex act, forced labour or services, slavery or practices similar to slavery, debt bondage, involuntary servitude, child labour or the removal of organs’.

Indonesia: Articles 1(7) and 1(8), Law on the Eradication of the Criminal Act of Human Trafficking 2007
‘exploitation’ - ‘an act committed with or without the consent of victim which includes but is not limited to prostitution, forced labour or service, slavery or practices similar to slavery, repression, extortion, physical abuse, sexual abuse, abuse of the reproductive organs, or the illegal transfer or transplantation of body organs or the use of another persons’ labor or ability for one’s own material or immaterial profit.’ (Art. 1(7))
‘sexual exploitation’ - ‘any form of the use of sexual organs or other organs of the victim for the purpose of obtaining profit, including but not limited to all acts of prostitution and sexually indecent acts’. (Art. 1(8))

Lao PDR: Articles 2 and 12, Law on Anti-Trafficking in Persons 2016
‘labour and sexual exploitations, slavery, prostitution, involuntary prostitution, removal of organs for the purpose of trade and other form of unlawful conduct contradicting to the laws and national culture and traditions’
‘sexual exploitation’ encompasses forcing a person into ‘sexual slavery, prostitution, pornography activities or to provide other forms of sexual services’

Malaysia: Section 2, Anti-Trafficking in Persons and Anti-Smuggling Act 2007, as amended
‘includes all forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, any illegal activity or the removal of human organs’

Myanmar: Section 3(c), Prevention and Suppression of Trafficking in Persons Law 2022
‘includes prostitution of one person by another person by force or other forms of forced sexual conduct, forced labor or forced service, slavery or slave-like practices, debt bondage, forced marriage, forced to beg, surrogate pregnancy, adoption of children by deception for the purpose of getting any benefit, or removal and sale or otherwise misuse of organs from the body, and in addition to the above-mentioned acts, receipt or agreement for receipt of money, property or any other benefits, either directly or indirectly, arising out of committing such acts’.

‘Prostitution of one person by another person by force means any act, use, consummation or scheme involving the use of a person by another person, for sexual intercourse or lascivious conduct in exchange for money, property, or any other benefits or any other consideration.’

‘Other forms of forced sexual conduct means representation through getting hold of, exhibition, indecent show of gestures, publication, cinematography or by use of any modern information technology of a sexual activity or of the sexual parts of a person in order to arouse sexual desire.’

Philippines: Section 3(a), Anti-Trafficking in Persons Act of 2003, as amended in 2012
Exploitation includes at a minimum ‘the exploitation or the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery, servitude, or removal or sale of organs’
Other forms of exploitation: sex tourism, debt bondage, pornography (both offline and online) and online sexual offences. Illegal adoption of children and child laundering is also considered exploitation and trafficking in persons.⁵⁴³

Singapore: Article 2, Law on Prevention of Human Trafficking 2014
‘sexual exploitation, forced labour, slavery or any practice similar to slavery, servitude or the removal of an organ.’

‘sexual exploitation, in relation to an individual, means the involving of the individual in prostitution, sexual servitude or the provision of any other form of sexual service, including the commission of any obscene or indecent act by the individual or the use of the individual in any audio or visual recording or representation of such act.’

Thailand: Section 6, Anti-Trafficking in Persons Act 2008

⁵⁴³ The Philippines, Republic Act No 9208 (2003) Section 17, as amended by Republic Act 10364, the Expanded Anti-Trafficking in Persons Act of 2012.

‘exploitation of the prostitution of others, the production or distribution of pornographic materials, the exploitation of other forms of sexual acts, slavery or practices similar to slavery, exploitation of begging, removal of organ for commercial purposes, forced labour or services under Section 6/1, or any other similar forcible extortion’

Viet Nam: Articles 2, 3(2) and 3(3), Law on Prevention and Suppression of Human Trafficking 2011

‘sexual exploitation, forced labour, the removal of organs or other inhuman purposes’.

‘sexual exploitation means the coercion of persons for prostitution, for being subject matters for the production of pornographic materials, for erotic performance, or for sexual slavery.’

6.1.5 Extraterritorial application

The transnational nature of trafficking offences, in which elements of the offence may occur in origin, transit and/or destination countries, makes it highly important for States to ensure that criminal provisions relating to child trafficking apply extraterritorially. The anti-trafficking provisions of all countries, except **Indonesia**, have extraterritorial application although the scope varies. **Thailand’s** Anti-Trafficking in Persons Act has the most expansive extraterritorial application, with Section 11 providing that ‘whoever’ commits a trafficking offence outside Thailand shall be liable for punishment in Thailand (unless already prosecuted in another country). In **Brunei Darussalam**, the Anti-Trafficking in Persons Order applies extraterritorially if Brunei Darussalam is the receiving or transit country, or if the offender or victim is a citizen or permanent resident.⁵⁴⁴ The **Cambodian** law provides for extraterritoriality over offences committed outside Cambodia by a Khmer citizen or involving a Khmer victim.⁵⁴⁵ In **Lao PDR** and **Viet Nam**, provision for extraterritorial application are found in the penal codes (which contain the penalties for trafficking). Pursuant to Article 9 of Lao PDR’s Penal Code and Article 6 of Viet Nam’s Criminal Code, extraterritorial jurisdiction can be exercised over offences committed outside the relevant territory by citizens or residents.⁵⁴⁶ Both laws also allow for the punishment of foreigners who commit offences outside the territory which infringe the rights and interests of citizens. **Malaysia** has jurisdiction over trafficking offences committed outside Malaysia by a Malaysian citizen or permanent resident, but also over conduct that occurs where Malaysia is the source, transit or receiving country or place where the exploitation occurs, irrespective of the nationality or citizenship of the offender.⁵⁴⁷ In the **Philippines**, the Anti-Trafficking Act gives the State extra-territorial jurisdiction over any offence under the Act which is committed outside the Philippines and whether or not such act is a crime in the country of commission, if the crime has been commenced in the Philippines and been continued in another country, and the suspect is a Filipino citizen, a permanent resident of the Philippines, or has committed the act against a citizen of the Philippines.⁵⁴⁸ **Myanmar’s** anti-trafficking law applies extraterritorially where the offence is committed by or against a Myanmar citizen or foreigner holding a foreign registration card residing permanently in Myanmar, the offence is committed by a person on board a vessel or aircraft registered under Myanmar law, or the offence is committed by a person who is in Myanmar and is accused of human trafficking and the request to extradite that person to the respective foreign country is not permitted.⁵⁴⁹ In **Singapore**, the law applies extraterritoriality so long as the conduct occurred ‘partly’ within Singapore’s borders, regardless of whether Singapore is the origin, transit or destination country.⁵⁵⁰ Conduct occurring ‘partly’ in Singapore is not defined, leaving it open to interpretation. The law is silent on the question of liability for persons resident in Singapore who have committed trafficking overseas. In **Indonesia**, there is no provision

⁵⁴⁴ Brunei Darussalam, Anti-Trafficking in Persons Order 2019, Section 3.

⁵⁴⁵ Cambodia, Law on Suppression of Human Trafficking and Sexual Exploitation 2008, Article 3.

⁵⁴⁶ Note that Viet Nam’s Criminal Code stipulates that this applies to stateless residents whereas that of Lao PDR applies to aliens and stateless residents.

⁵⁴⁷ Malaysia, Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2015, Sections 3 and 4(c). Note also the provisions in Section 4(a)-(b) for offences committed on the high seas, ships or aircrafts.

⁵⁴⁸ The Philippines, Anti-Trafficking in Persons Act of 2003 (2003) as amended by Republic Act 10364, the Expanded Anti-Trafficking in Persons Act of 2012, Section 26-A.

⁵⁴⁹ Myanmar, Prevention and Suppression of Trafficking in Persons Law 2022, Section 2.

⁵⁵⁰ Singapore, Law on Prevention of Human Trafficking 2014, Article 3(4).

regarding extraterritorial application although other criminal offences set out in the law cover cross-border cases. These include bringing a person into Indonesia with intention to exploit (Article 3), removal of an Indonesian citizen with intention to exploit (Article 4) and sending a child to another country, leading to exploitation (Article 6). These offences are not referred to as trafficking, however.

6.1.6 Attempts and secondary liability

The anti-trafficking provisions of **Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Myanmar, the Philippines** and **Thailand** criminalise attempts to commit trafficking as well as acting as a facilitator, accomplice or instigator.⁵⁵¹ In **Singapore**, abetment of trafficking in persons is criminalised in accordance with the definition of abetment set out in Chapter 5 of the Penal Code 1871. Abetment encompasses a broad spectrum of conduct akin to assisting trafficking, including instructing another to commit the offence; providing financial or other support (such as shelter) to facilitate the commission of the offence or otherwise participating in or assisting with any element of the crime of trafficking (i.e. with the act or exploitative purpose) with intention to facilitate the commission of the offence.⁵⁵² Though the Singapore anti-trafficking law does not expressly refer to “attempts” within the definition of the offence of trafficking (Article 3), the law bestows enforcement officers with the power to arrest without a warrant persons suspected of attempting trafficking, and district courts with the power to impose the full penalty for trafficking on those who attempt the offence.⁵⁵³ **Indonesia** also criminalises ‘placing’, ‘allowing’, ordering of or ‘participating in’ the trafficking of children.⁵⁵⁴ **Brunei Darussalam** similarly criminalises related acts such as ‘profiting’ from trafficking, making, giving or possessing forged travel or identity documents for facilitating the commission of trafficking.⁵⁵⁵ **Malaysia’s** anti-trafficking law does not contain any express provision covering attempts to commit trafficking or covering secondary liability, although it does criminalise a number of activities that would constitute assisting trafficking.⁵⁵⁶ Further, Section 29 of the Act provides that an enforcement officer may arrest without warrant anyone found (or whom the officer suspects is engaging in) attempting to commit or abetting the commission of an offence.⁵⁵⁷ In **Viet Nam**, attempts to commit acts of trafficking, acting as an accomplice to such acts and organising or directing others are not expressly criminalised under the Law on Prevention and Suppression of Human Trafficking. However, attempts and complicity (including acting as an organiser, perpetrator, instigator or abettor) are covered by Articles 15 and 17 of the Criminal Code.

6.1.7 Penalties for child trafficking

In trafficking cases, States are required to enact effective criminal sanctions that are proportionate to the offence. Higher penalties should be imposed where there are aggravating factors, which include the trafficking of children.

Table 4: Penalties for child trafficking under the national laws

⁵⁵¹ Cambodia, Law on Suppression of Human Trafficking and Sexual Exploitation 2008, Article 4; Indonesia, Law on the Eradication of the Criminal Act of Trafficking in Persons Act 2007, Articles 9 to 11; Lao PDR, Law on Anti-Trafficking in Persons 2016, Article 73; Penal Code 2017, Article 215, and the Law on Development and Protection of Women 2004, Article 24; Thailand, Anti-Trafficking in Persons Act 2008, Sections 7 to 10; Brunei Darussalam, Anti-Trafficking in Persons Order 2019, Sections 7 and 13 to 16; Myanmar, Prevention and Suppression of Trafficking in Persons Law 2022, Section 44; The Philippines, Anti-Trafficking in Persons Act 2003 as amended by Republic Act 10364, the Expanded Anti-Trafficking in Persons Act of 2012, Sections 4-B, 4-C and 10(c).

⁵⁵² Singapore, Prevention of Human Trafficking Act 2014, Article 5.

⁵⁵³ Singapore, Prevention of Human Trafficking Act 2014, Articles 8, 9 and 23.

⁵⁵⁴ Indonesia, Law of Child Protection (as amended in 2017), Articles 76F and 83.

⁵⁵⁵ Brunei Darussalam, Anti-Trafficking in Persons Order 2019, Sections 7 and 10.

⁵⁵⁶ Malaysia, Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2015, Sections 18-23.

⁵⁵⁷ There are also provisions in the Penal Code covering abetment, conspiracy and attempt.

<p>Brunei Darussalam: Article 5, Anti-Trafficking in Persons Act 2019⁵⁵⁸</p> <p>Trafficking of adults: 4-30 years' imprisonment, a fine of BND \$10,000 to \$1,000,000 for each trafficked person, and whipping.</p> <p>Trafficking of victims: 4-30 years' imprisonment, a fine of BND \$10,000 to \$1,000,000 for each trafficked child, and whipping of at least five strokes.</p> <p>The use of child as an accomplice or participant in the offence is an aggravating circumstance, punishable with the same penalties as the offence of child trafficking.</p>
<p>Cambodia: Articles 10, 12, 15, 17 and 19, Law on Suppression of Human Trafficking and Sexual Exploitation 2008</p> <p>Trafficking of adults: 7-15 years' imprisonment</p> <p>Child trafficking: 15-20 years' imprisonment</p>
<p>Indonesia: Articles 2 and 17, Law on the Eradication of the Criminal Act of Human Trafficking 2007; Articles 76F and 83 of Law on Child Protection (as amended in 2017)</p> <p>Trafficking of adults: 3-15 years' imprisonment and fine of Rp 120 million to 600 million</p> <p>Child trafficking: penalty increased by one third (Law on the Eradication of the Criminal Act of Human Trafficking 2007); the Law on Child Protection provides that child trafficking (as well as 'placing', 'allowing', ordering of or 'participating in' child trafficking) is punishable with 3-15 years' imprisonment and a fine of Rp 60 million to 300 million</p>
<p>Lao PDR: Article 215, Penal Code 2017⁵⁵⁹</p> <p>Trafficking of adults: 5-15 years' imprisonment and a fine of 10 million to 100 million Kip</p> <p>Child trafficking 15-20 years' imprisonment and a fine of 100 million – 500 million Kip</p>
<p>Malaysia: Sections 12-14, Anti-Trafficking in Persons and Anti-Smuggling Act 2007</p> <p>Trafficking of adults: up to 20 years' imprisonment and fine (Section 12) or, for trafficking with aggravating features, imprisonment from 5 years to life and the possibility of being subject to whipping (Section 13)</p> <p>Child trafficking: imprisonment from 5 years to life and the possibility of being subject to whipping (Section 14(1)).</p>
<p>Myanmar: Sections 35 and 36 Prevention and Suppression of Trafficking in Persons Law 2022</p> <p>Trafficking of women and children: imprisonment for a minimum of 10 years to a maximum of term of life and may also be liable to a fine.</p> <p>Trafficking of anyone else: imprisonment for a minimum term of 5 years to a maximum of 10 years and may also be liable to a fine.</p>
<p>Philippines: Sections 10 and 11, Anti-Trafficking in Persons Act of 2003</p> <p>The penalty is the same whether the offence is committed against an adult or child except where trafficking is for the purposes of prostitution.</p> <p>Adult and child victim of trafficking: Penalty of imprisonment of 20 years and a fine of 1 million pesos to 2 million pesos.⁵⁶⁰</p> <p>Where an adult is trafficked for the purposes of prostitution: prison correctional for a maximum period of <i>prision mayor</i> or 6-12 years imprisonment and a fine of P50,000 to P100,000.</p> <p>Where a child is trafficked for the purposes of prostitution: if it involves sexual intercourse or lascivious conduct, <i>reclusion temporal</i> in its medium period to <i>reclusion perpetua</i> or 17-40 years imprisonment and a fine of P500,000 to P1million.</p>

⁵⁵⁸ It is noted that these penalties are stricter than those for trafficking or harbouring Brunei Darussalam, Women and Girls Protection Act 1984, Sections 3 and 4 but broadly commensurate with those for trafficking in slaves under the Penal Code 2001, Section 371.

⁵⁵⁹ Note that Lao PDR, Law on Anti-Trafficking in Persons 2016, Article 89, sets out the penalties for trafficking offences but was repealed by the Penal Code 2017.

⁵⁶⁰ The Philippines, Anti-Trafficking in Persons Act of 2003 as amended by Republic Act 10364, the Expanded Anti-Trafficking in Persons Act of 2012, Section 10(a).

If an offence involves carnal knowledge or sexual intercourse with an adult and also involves the use of force or intimidation of a child victim under the age of 12 years old: Imprisonment of *reclusion perpetua* or 40 years imprisonment and a fine of 1 million to 5 million pesos.⁵⁶¹

Singapore: Article 4, Prevention of Human Trafficking Act 2014

For the first offence: fine of up to SGD\$100,000, imprisonment for a term of up to 10 years and caning not exceeding six strokes;

For the second offence: fine of up to SGD\$150,000, imprisonment for a term of up to 15 years and caning not exceeding nine strokes.

Child trafficking is an aggravating factor to be taken into account when sentencing.

Thailand: Section 52 and 52/1, Anti-Trafficking in Persons Act 2008

Trafficking of adults: 4-12 years' imprisonment and a fine of THB 400,000 to 1.2 million

Child trafficking:

- If aged between 15 and 18, 6-15 years' imprisonment and a fine of THB 600,000 to 1.5 million
- If aged under 15: 8-20 years' imprisonment and a fine of THB 800,000 to 2 million.

NB: Amendments in 2019 lowered the penalties for labour trafficking offences to 6 months' to 4 years' imprisonment and/or a fine of THB 50,000 – 400,000 per victim.⁵⁶²

Viet Nam: Articles 150 and 151, Criminal Code 2015

Adult victims and children aged 16 or over: 5-10 years' imprisonment. Additional punishments: fine of VND 20 million to 100 million, mandatory supervision, residence ban, confiscation of property.

Child victims under 16: 7-12 years' imprisonment. Additional punishments: fine of VND 50 million to 200 million, mandatory supervision, prohibition of holding certain posts, confiscation of property.

As set out in **Table 4: Penalties for child trafficking under the national laws** above, the penalties are higher where the victims of trafficking are children, except for in **Brunei Darussalam, Malaysia, Philippines** and **Singapore**, where the same sentencing scale is applicable for child trafficking offences and adult trafficking offences (Brunei Darussalam and Singapore) or adult cases involving aggravating features (Malaysia). However, in **Singapore**, it is an aggravating factor if the victim is a child. The penalties for child trafficking offences are sufficiently stringent and commensurate with penalties prescribed for other serious offences, except that the penalties of whipping in **Brunei Darussalam, Malaysia** and **Singapore** are not regarded as in line with international human rights standards.

⁵⁶¹ The Philippines, Anti-Trafficking in Persons Act of 2003, as amended by Republic Act 10364, the Expanded Anti-Trafficking in Persons Act of 2012, Section 11(a) and 11(1).

⁵⁶² A separate provision under Section 6/1 was added following the 2019 amendments which specifically addresses forced labour or services and a provision was added as Section 52/1 prescribing these lower penalties.

Recommendations:

- Amend the law so that the offence of child trafficking applies to all persons under 18 years of age [Viet Nam].
- Amend legislation to remove the requirement for a particular means (such as a demonstration of force, fraud, or coercion) to be used for child trafficking offences [Cambodia and Indonesia].
- Amend the definition of exploitation to cover prostitution and all other forms of sexual exploitation, regardless of whether or not they involved the use of force, and to include servitude explicitly [Myanmar].
- Remove the exemptions from prosecution for cases where girls and women are trafficked for the purposes of adoption or marriage [Brunei Darussalam and Singapore].
- Ensure that specific human/child trafficking laws have extraterritorial application [Indonesia and Singapore].
- Ensure that human/child trafficking laws expressly criminalise attempt and secondary liability [Malaysia and Viet Nam].
- Consider amending the legislation to include aggravating penalties for offences involving children [Malaysia and (partially) the Philippines].
- Ensure that the penalties of whipping for trafficking of both adults and children are removed. [Brunei Darussalam, Malaysia and Singapore].

7 Nationality and Statelessness

	Express legal provision on the right of the child to acquire a nationality	No automatic loss of citizenship where parents are deprived of citizenship	Assistance and protection to re-establish identity
Brunei Darussalam			
Cambodia			
Indonesia			
Lao PDR			
Malaysia			
Myanmar			
Philippines			
Singapore			
Thailand			
Viet Nam			

To what extent does the national law respect and protect the right of the child to a nationality?

Pursuant to Article 7 of the CRC, every child has the right from birth to acquire a nationality and States Parties must ensure the implementation of this right in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless. Under Article 8 of the CRC, States Parties undertake to respect the right of the child to preserve his or her identity (including nationality) without unlawful interference and to provide appropriate assistance and protection to restore identity where a child has been illegally deprived of some or all of the elements of his or her identity. All ASEAN Member States are party to the CRC and are therefore bound by its provisions, though **Malaysia** has issued a reservation that Article 7 is applicable only if it is in conformity with its Constitution, national laws and policies (see [Annex 3: Status of Ratification of Key International Treaties by ASEAN Member States](#) for details). Article 29 of the CMW also provides that each child of a migrant worker shall have the right to a nationality, although only **Indonesia** and the **Philippines** are party to this convention.

The **final draft Thailand-Myanmar MOU** on children affected by migration (which is yet to be adopted) contains provisions that aim to facilitate a child's acquisition of their parents' nationality when born outside their parents' country of origin. Pursuant to Article 9, the parties agree to share information on birth registrations that can be used when registering/claiming nationality.

The laws of **Indonesia**,⁵⁶³ **Lao PDR**⁵⁶⁴ and **Viet Nam**⁵⁶⁵ expressly provide that every child has the right to acquire a nationality. In **Myanmar**, the Child Rights Law contains a more qualified right; only children *registered for birth* have the right to citizenship and in accordance with the provisions of existing laws.⁵⁶⁶

All of the ASEAN Member States provide for the acquisition of nationality by operation of law. The primary route in all ASEAN Member States, except for **Brunei Darussalam**, **Malaysia** and **Myanmar**, is acquisition by birth as a child of a national. With the exception of **Brunei Darussalam**, **Myanmar**, **Malaysia** (in relation to children born out of wedlock) and **Viet Nam**, nationality is automatically conferred on children born in the relevant territory where at least one parent is a citizen. In **Brunei Darussalam**, it is the nationality of the father that is relevant, in that children born in the country are granted citizenship by operation of the law if the *father*

⁵⁶³ Indonesia, Law on Child Protection 2002, Article 5; Law Concerning Human Rights 1999, Articles 26 and 53.

⁵⁶⁴ Lao PDR, Law on the Protection of the Rights and Interests of Children 2006, Article 3.

⁵⁶⁵ Viet Nam, Child Law 2016, Article 13, Civil Code 2015, Article 31, and Law on Nationality 2008, Article 2.

⁵⁶⁶ Myanmar, Child Rights Law 2019, Section 22.

was, at the time of birth, a national of Brunei, although alternative grounds may also be available if the child cannot acquire nationality on these grounds (see further below).⁵⁶⁷ One of these alternative routes is for the parent (including the adoptive parent) or guardian to make an application for citizenship for the child, provided that the parent or guardian is also a citizen. However, the granting of citizenship via this route is at the discretion of the Sultan.⁵⁶⁸ In **Malaysia**, children born within the Federation are Malaysian citizens if they have at least one parent who is a Malaysian citizen or permanent resident at the time of their birth.⁵⁶⁹ However, if the child is born out of wedlock, the term ‘parent’ must be interpreted as the child’s ‘mother’, such that children born in Malaysia out of wedlock to a Malaysian father and non-Malaysian mother are not granted citizenship by operation of the law.⁵⁷⁰ **Myanmar’s** system is more complex in that it contains a three-tiered hierarchy of citizenship: full citizenship; associated citizenship; and naturalised citizenship. A child’s level of citizenship (and thus entitlements) varies according to their parents’ citizenship level, but the law requires that both parents must have either full, associate or naturalised status before the child is entitled to citizenship.⁵⁷¹ In **Viet Nam**, nationality must be selected upon birth registration where one parent is a foreign national.⁵⁷² In **Cambodia** and **Indonesia**, specific rules apply regarding recognition of illegitimate children.

Where children are born outside the country, the situation is the same as birth within the country in respect of **Cambodia, Myanmar,**⁵⁷³ **Philippines, Thailand** and **Viet Nam**. For **Indonesia**, children born to married Indonesian parents automatically acquire citizenship. Further, children born out of wedlock from an Indonesian mother also automatically acquire nationality.⁵⁷⁴ Although the law does not explicitly state that the birth must be in the territory of Indonesia in order for this provision to apply, the law uses the term ‘born in the territory of Indonesia’ to refer to births in the State, suggesting that references to the term ‘birth’ should be interpreted as including births outside of Indonesia. For **Lao PDR**, children born outside the country automatically acquire Lao nationality where both parents are citizens, one is a citizen and the other stateless or at least one parent is a citizen and has a permanent address in Lao PDR. For **Malaysia**, citizenship is broadly dependent on which parent is a national, the State in which the child was born and whether the child was born out of wedlock. Children born outside of Malaysia whose father (i) was a Malaysian citizen at the time of the birth and was either born in Malaysia or was at the time of birth in the service of the Malaysian Federation or of one of its states, or (ii) was at the time of birth a Malaysian citizen and the birth is registered within a certain period with the Federation of Malaysia, are Malaysian citizens by operation of the law.⁵⁷⁵ Where the child is ‘illegitimate’, references to ‘father’ or ‘parent’ must be interpreted as references to the child’s ‘mother’,⁵⁷⁶ which means that children born abroad out of wedlock to a foreign mother and Malaysian father are not regarded as Malaysian citizens by operation of the law (which is the same outcome as for children born in Malaysia out of wedlock to non-Malaysian mothers and Malaysian fathers).⁵⁷⁷ This legal situation was challenged unsuccessfully in the Malaysian courts in a case where a child was born in the Philippines out of wedlock to a Malaysian father and Filipino mother and who wed after the child’s birth. Despite the majority of the Federal Court finding against the appellants on the basis that the provisions of the Constitution are unambiguous and can only be amended by Parliament, it acknowledged the gender bias in the law and

⁵⁶⁷ Brunei Darussalam, Brunei Nationality Act, S 55/02, Revised Edition 2011, Chapter 15, Section 4.

⁵⁶⁸ Brunei Darussalam, Brunei Nationality Act, S 55/02, Revised Edition 2011, Chapter 15, Section 6.

⁵⁶⁹ Malaysia, Federal Constitution 2010, Article 14(1)(b) and Schedule II, Part II, para. 1(a).

⁵⁷⁰ Malaysia, Federal Constitution 2010, Article 14(1)(b) and Schedule II, Part II, paras. 1(a) and 17.

⁵⁷¹ Myanmar, Citizenship Law 1982, Section 7.

⁵⁷² Viet Nam, Law on Vietnamese Nationality 2008, Article 16(2). This Section further provides that, where the child is born in Viet Nam and the parents fail to reach an agreement on the selection of nationality, the child automatically has Vietnamese nationality.

⁵⁷³ Myanmar, Citizenship Law 1982, Section 7.

⁵⁷⁴ Indonesia, Decree No. 12 on Citizenship of the Republic of Indonesia 2006, Article 4(g).

⁵⁷⁵ Malaysia, Federal Constitution 2010, Article 14(1)(b) and Schedule II, Part II paras. 1(b)-(c). Note the variations to these conditions if the child is born after his/her father’s death; Federal Constitution, Schedule II, Part III paras. 19 and 22.

⁵⁷⁶ Malaysia, Federal Constitution 2010, Article 14(1)(b) and Schedule II, Part II, para. 17.

⁵⁷⁷ Malaysia, Federal Constitution 2010, Article 14(1)(b) and Schedule II, Part II, paras. 1 and 17.

expressed support for its abolition.⁵⁷⁸ Further, a child born in Singapore with at least one parent who is a Malaysian citizen at the time of birth and is not born a citizen by virtue of another law, is also a Malaysian citizen by operation of the law, subject to exceptions based on the status of the father.⁵⁷⁹ For **Brunei Darussalam**, children born outside the country acquire citizenship by law if, broadly, the father is also, at the time of birth, a national or was born in Brunei and ‘commonly accepted’ as belonging to one of the indigenous groups of the Malay race stipulated in the law, or the father and mother were both born in Brunei and were members of the groups stipulated in the law.⁵⁸⁰ However, additional conditions may apply if the father was born outside of Brunei or the father is a national other than by virtue of the law (i.e. through registration or naturalisation).⁵⁸¹ For **Singapore**, citizenship may be acquired if one or both parents is a citizen of Singapore by birth, registration or descent⁵⁸² and has lawfully resided in Singapore for the prescribed number of years,⁵⁸³ the birth is registered within one year at a Singaporean consulate,⁵⁸⁴ and the child would not otherwise become a citizen of his or her country of birth.⁵⁸⁵

Acquisition of nationality through birth within the country is also provided for in certain circumstances, although this is frequently not automatic and/or is conditional. **Cambodia, Malaysia and Thailand** confer nationality automatically on children born within their territories to legal residents (in **Malaysia**, where one parent is a permanent resident) although, in **Cambodia**, both parents must have also been born in the country. In **Brunei Darussalam**, these provisions are still linked to the child’s decent, namely, children born in the country are granted citizenship by operation of the law if the child is ‘commonly accepted’ as belonging to one of the indigenous groups of the Malay race stipulated in the law, or both the father and mother were born in Brunei Darussalam and are members of one of the groups of people stipulated in the law.⁵⁸⁶ In the **Philippines**, foreigner children born and residing their whole childhood in the country can request citizenship through an administrative process at the age of 18, provided they fulfilled multiple conditions.⁵⁸⁷ Citizenship can also be acquired through a judicial process if a person has lived in the country for at least 10 years or 5 years if born in the Philippines. However, the Court will not hear an application until the person reaches the age of 21.

In **Indonesia, Lao PDR, Malaysia and Viet Nam**, children born to parents who are stateless (and, **Indonesia**, whose citizenship is undetermined) can acquire nationality. In **Indonesia**,⁵⁸⁸ **Viet Nam** and **Lao PDR** (on application by the parents), nationality is conferred automatically, although in **Lao PDR** and **Viet Nam**, both parents must be permanent residents in that State. In **Malaysia**, as a general rule, the Federal Constitution confers citizenship on every child born within Malaysia who is not otherwise born a citizen of any country and does not acquire citizenship of any country within the period of 1 year of birth.⁵⁸⁹ This provision is reportedly not applied in practice,⁵⁹⁰ though recent news reports highlight a case in which this provision appears to have

⁵⁷⁸ Halim, Hong, Quek, ‘Citizenship to Illegitimate Child-denied’, 24 August 2021, <<https://hhq.com.my/publications/citizenship-to-illegitimate-child-denied/>>, accessed 22 March 2023.

⁵⁷⁹ Malaysia, Federal Constitution 2010, Article 14(1)(b) and Schedule II, Part II, para. 1(d) and Part II, paras 17 and 22.

⁵⁸⁰ Brunei Darussalam, Brunei Nationality Act, S 55/02, Revised Edition 2011, Chapter 15, Section 4.

⁵⁸¹ Brunei Darussalam, Brunei Nationality Act, S 55/02, Revised Edition 2011, Chapter 15, Section 4.

⁵⁸² Singapore, Constitution of the Republic of Singapore 2001, as amended, Section 122(1)(b) (note the rules are different for those who were born before the date of commencement of section 7 of the Constitution of the Republic of Singapore (Amendment) Act 2004 – see section 122(1)(b))

⁵⁸³ Either 5 years in total before the child was born, or 2 years in the aggregate in the 5 years preceding the child’s birth – see Singapore, Constitution of the Republic of Singapore 2001, as amended, Section 122(3).

⁵⁸⁴ Singapore, Constitution of the Republic of Singapore 2001, as amended, Section 122(2)(a).

⁵⁸⁵ Singapore, Constitution of the Republic of Singapore 2001, as amended, Section 122(2)(b).

⁵⁸⁶ Brunei Darussalam, Brunei Nationality Act, S 55/02, Revised Edition 2011, Chapter 15, Section 4(1)(a), (b) and (d).

⁵⁸⁷ The Philippines, The Administrative Naturalization Law of 2000, Section 3.

⁵⁸⁸ Indonesia, Decree No. 12 on Citizenship of the Republic of Indonesia 2006, Articles 4(9) and 4(11).

⁵⁸⁹ Malaysia, Federal Constitution 2010, Article 14(1)(b) and Schedule II, Part II, paras. 1(e) and 2(3).

⁵⁹⁰ UNICEF Malaysia Country Office, written communication to Coram International, received 11 July 2011.

been applied.⁵⁹¹ In **Myanmar**, birth within the territory does not automatically confer citizenship. The child will only be granted citizenship if the child's birth is registered, and only when the child falls within the criteria for citizenship set out in the Burma Citizenship Law.⁵⁹²

In all ASEAN Member States except **Brunei Darussalam**, **Myanmar** and **Thailand**, nationality is automatically conferred on children who are foundlings. However, in 2019, changes were made to Article 19(2) of the Civil Registration Act of **Thailand** to permit the granting of Thai nationality to a neglected newborn or baby or foundling who is in the care of the authorities, whose birth had been registered and who has continued to reside in Thailand for at least 10 years and meets other qualifications prescribed by the Ministry of Interior.⁵⁹³ In **Malaysia**, section 19B, Part III of Schedule II of the Federal Constitution provides that any newborn child 'found exposed' in any place is presumed, 'until the contrary is shown', to have been born there of a mother permanently resident in that location.⁵⁹⁴ By interpreting the fundamental rights in the Constitution 'as broadly as possible' and limitations to those rights 'as narrowly as possible',⁵⁹⁵ the Federal Court has held that any person who claims that the child was not 'found exposed' or otherwise abandoned by the mother, bears the burden of showing the identity of the mother and that the mother is not permanently resident at the place at which the child was found.⁵⁹⁶ Therefore, when confronted with an application for registration of such newborn children, the burden is on the Registrar General of Births and Deaths 'to undertake proper investigations to determine the status of such child's biological parents or mother'.⁵⁹⁷ If, after investigation, it is found that the fact of abandonment is true, the Registrar General of Births and Deaths is obligated under section 19B, Part III of Schedule II to recognise that new born child's citizenship by operation of law, 'except where there is evidence to the contrary'.⁵⁹⁸ **Table 5: National laws on citizenship by birth** sets out the provisions in each country relating to the acquisition of citizenship by birth.

Nationality in many of the ASEAN Member States may also be conferred automatically on children of parents who acquire citizenship through naturalisation or on children who are adopted by citizens. The domestic laws of certain States also permit 'aliens' (i.e. those who are not nationals of the particular ASEAN State), to apply for naturalisation, regardless of their birth or status or that of their parents. Grounds on which such applications may be made include good behaviour (**Thailand**)⁵⁹⁹ and having a 'regular occupation' (**Thailand**).⁶⁰⁰ In **Brunei Darussalam**, the Sultan has the power to, 'in such special circumstances as he thinks fit', cause any child to be registered as a citizen,⁶⁰¹ though this requires an application to be made and such decisions are discretionary. Similarly, in **Singapore**, the government may confer citizenship under section 121(3) of the Constitution where it is considered 'just and fair and having regard to all the circumstances prevailing at the time of the application.'

Table 5: National laws on citizenship by birth

⁵⁹¹ Lim, Ida., 'Malaysian govt fails final bid to stop recognition of Sabah-born stateless man as a citizen', Malaymail, 26 October 2022, <<https://www.malaymail.com/news/malaysia/2022/10/26/malaysian-govt-fails-final-bid-to-stop-recognition-of-sabah-born-stateless-man-as-a-citizen/35652>>, accessed 22 March 2023.

⁵⁹² Myanmar, Child Rights Law 2019, Section 22; Myanmar, Citizenship Law 1982, Section 7.

⁵⁹³ Thailand, Civil Registration Act 2019, Articles 19 to 19/2.

⁵⁹⁴ Malaysia, Federal Constitution 2010, Article 14(1)(b) and Schedule II, Part III, para. 19B.

⁵⁹⁵ CCH and ADY v Registrar General of Births and Deaths, Federal Court of Malaysia (Appellate Jurisdiction), [2022] 1 CLJ 1, para. 49.

⁵⁹⁶ CCH and ADY v Registrar General of Births and Deaths, Federal Court of Malaysia (Appellate Jurisdiction), [2022] 1 CLJ 1, para. 56.

⁵⁹⁷ CCH and ADY v Registrar General of Births and Deaths, Federal Court of Malaysia (Appellate Jurisdiction), [2022] 1 CLJ 1, para. 67.

⁵⁹⁸ CCH and ADY v Registrar General of Births and Deaths, Federal Court of Malaysia (Appellate Jurisdiction), [2022] 1 CLJ 1, para. 67.

⁵⁹⁹ Thailand, Nationality Act B.E. 2508 of 1965, Section 10(2).

⁶⁰⁰ Thailand, Nationality Act B.E. 2508 of 1965, Section 10(3).

⁶⁰¹ Brunei Darussalam, Brunei Nationality Act, S 55/02, Revised Edition 2011, Chapter 15, Section 6(2).

<p>Brunei Darussalam: Sections 4 to 8, Brunei Nationality Act</p> <p>By descent: automatic conferral on children if they are born in the country to a father who, at the time of birth, is a citizen of Brunei, or if the person is 'commonly accepted as belonging to an indigenous group of the Malay race as stipulated in the law, or whose father and mother were both born in Brunei and are members of a group stipulated in the law. For children born outside of the country, additional conditions may apply if the father was born outside of the country or the father is a citizen other than by virtue of the law (i.e. by registration or naturalisation).</p> <p>By birth in territory to foreign citizens: no provisions concerning automatic conferral of citizenship to foreign citizens, unless they meet the conditions concerning decent outlined above.</p> <p>Stateless: no provision.</p> <p>Foundling children: no provision.</p>
<p>Cambodia: Article 4, Law on Nationality</p> <p>By descent: automatic conferral if at least one parent (mother or father) has Khmer citizenship, irrespective of place of birth. An illegitimate child must either have been recognised by the parent with Khmer citizenship, or be the subject of a court judgment that states that the child was born to a Khmer national.</p> <p>By birth in territory to foreign citizens: automatic conferral on child born to foreign parents both of whom were born and 'living legally' in Cambodia.</p> <p>Stateless: no provision.</p> <p>Foundling children: automatic conferral on child (whether new-born or otherwise) found in Cambodia.</p>
<p>Indonesia: Article 4, Law on Citizenship</p> <p>By descent: automatic conferral where parents have Indonesian citizenship irrespective of place of birth (provided parents are married). Automatic conferral where child is born in Indonesia to at least one Indonesian parent (although an illegitimate child of a foreign mother must have been formally recognised by Indonesian father).</p> <p>By birth in territory to foreign citizens: no provision.</p> <p>Stateless: automatic conferral on child born in Indonesia to stateless parents or whose citizenship is undetermined.</p> <p>Foundling children: automatic conferral on new-borns found in Indonesia.</p>
<p>Lao PDR: Articles 14-17, Law on Nationality 2017</p> <p>By descent: automatic conferral where both parents have Lao citizenship, or where one parent has Lao citizenship and the other is stateless, irrespective of place of birth. Automatic conferral where one parent is a Lao citizen and child is born in Lao PDR, or if born outside Lao PDR, at least one parent has permanent address in Lao PDR. If both parents have permanent addresses outside Lao PDR, nationality will be decided by the parents.</p> <p>By birth in territory to foreign citizens: no provision.</p> <p>Stateless: acquisition on parents' request where child is born in Lao PDR to stateless parents who are permanent residents.</p> <p>Foundling children: automatic conferral on child found in Lao PDR.</p>
<p>Malaysia: Articles 14 and 15 and Second Schedule, Federal Constitution</p> <p>By descent: automatic conferral if born in Malaysia where at least one parent has Malaysian citizenship or permanent residence and child is born in wedlock. Automatic conferral/registration where child is born outside Malaysia depending on whether mother or father is citizen and whether child is born in wedlock (see below).</p> <p>By birth in territory to foreign citizens: automatic conferral where at least one parent is permanent resident and child is born in wedlock.</p>

<p>Stateless: automatic conferral on child born in Malaysia who is not born a citizen of any other country and who does not acquire any other citizenship within a year of birth; this is reportedly not applied in practice though recent news reports indicate a recent case where this appears to have been applied.⁶⁰²</p> <p>Foundling children: automatic conferral on new-borns found in Malaysia (presumption that child was born to mother permanently resident in Malaysia) (Section 19B, Part III, Second Schedule).</p>
<p>Myanmar: Chapters, 2, 3 and 4, Myanmar Citizenship Law 1982 and Sections 21 and 22, Child Rights Law 2019</p>
<p>By descent: Three-tiered system, given status is dependent on the citizenship level of the parents.</p> <p>By birth in territory to foreign citizens: The child does not have a right to citizenship. Both parents must have one of the three forms of citizenship. If one parent has one of the three forms of citizenship and the other does not, the child may still be entitled to citizenship if the grandparents of the child (i.e. parents of the non-citizen parent of the child) is an associate or naturalized citizen.</p> <p>Stateless: There are no provisions. A child born of parents, neither of whom has citizenship in Myanmar, does not have the right to acquire nationality in Myanmar.</p> <p>Foundlings: no provision.</p>
<p>Philippines: Article IV, Section 1 – 3, Constitution of the Philippines; Section 3, Administrative Naturalization Law 2000; Law on Registry of Civil Status</p>
<p>By descent: automatic if at least one parent is citizen of the Philippines.</p> <p>By birth in territory to foreign citizens: By petition, if the application meets certain conditions (Administrative Naturalization Law of 2000, Section 3).</p> <p>Stateless: An application for citizenship may be made by a stateless person, including an unaccompanied child (assisted by the Local Social Welfare and Development Office or the child care agency having care of the child) under the Rules on Facilitated Naturalization of Refugees and Stateless Person. The best interests of the child shall be the paramount consideration.⁶⁰³ An unaccompanied child applying for citizenship is not required to fulfil the requirements for citizenship imposed on adults.⁶⁰⁴</p> <p>Foundlings: Automatic conferral (Law on Registry of Civil Status).</p>
<p>Singapore: Part 10, Article 140 (Third Schedule) Constitution of Singapore</p>
<p>By descent: automatic conferral where at least one parent is a citizen of Singapore, irrespective of place of birth but if the child is born outside of Singapore there are conditions that must be met (see above)</p> <p>By birth in territory to foreign citizens: no automatic conferral although the government may confer citizenship under section 121(3) of the Constitution where it is considered ‘just and fair and having regard to all the circumstances prevailing at the time of the application’</p> <p>Stateless: No provision.</p> <p>Foundlings: automatic conferral on newborn children with no known parentage, until the contrary is proved.</p>
<p>Thailand: Sections 7, 7bis, 9/6 and 12/1 Nationality Act 1965; Sections 19 to 19/2 Civil Registration Act 2534</p>
<p>By descent: automatic conferral where at least one parent has Thai nationality irrespective of place of birth.</p> <p>By birth in territory to persons without Thai nationality: Automatic conferral unless the parents are temporary residents or entered illegally (Section 7 and 7bis).</p>

⁶⁰² UNICEF Malaysia Country Office, written communication with Coram International received on 11 July 2022; Lim, Ida., ‘Malaysian govt fails final bid to stop recognition of Sabah-born stateless man as a citizen’, Malaymail, 26 October 2022, <<https://www.malaymail.com/news/malaysia/2022/10/26/malaysian-govt-fails-final-bid-to-stop-recognition-of-sabah-born-stateless-man-as-a-citizen/35652>>, accessed 22 March 2023.

⁶⁰³ In the absence of comprehensive legislation on refugee and stateless persons, the Supreme Court, on 15th February 2022, by virtue of its rule-making power under the 1987 Constitution, promulgated A.M. No. 21-07-22-SC, or the Rule on Facilitated Naturalization of Refugees and Stateless Persons. The relevant provision is contained in Section 6.

⁶⁰⁴ The Philippines, Rules on Facilitated Naturalization of Refugees and Stateless Persons 2022, Section 8(b).

Stateless no provision although special rules for ‘displaced Thais’⁶⁰⁵ and children of ‘displaced Thais’ who have right to nationality from birth if they do not possess another nationality (Section 9/6).

Foundling children: no automatic conferral, but there are special provisions in the Nationality Act on applying for Thai nationality for children resident in Thailand who have stayed in a public foster home for at least 10 years and for children born in Thailand who have been adopted by a Thai national for at least five years (Section 12/1), as well as provisions in the Civil Registration Act (as amended by Civil Registration Act (No. 3) B.E. 2019) to permit the granting of Thai citizenship to a neglected newborn or baby or foundling who is in the care of the authorities, whose birth had been registered and who has continued to reside in Thailand for at least 10 years and meets other qualifications prescribed by the Ministry of Interior.

Viet Nam: Articles 15-18, Law on Nationality 2008

By descent: automatic conferral where both parents have Vietnamese citizenship, irrespective of place of birth. Automatic conferral where one parent is a Vietnamese citizen and other parent is stateless or father is unknown, irrespective of place of birth; if other parent is foreign national, parents can select Vietnamese citizenship for the child, irrespective of place of birth.

By birth in territory to foreign citizens: no provision.

Stateless: automatic conferral on child born in Viet Nam to stateless parents who are permanent residents (or to stateless mother with permanent residency and unknown father).

Foundling children: automatic conferral on new-borns and abandoned children found in Viet Nam.

The risk of statelessness arises in a number of situations. In **Cambodia**, there is no right for a child born to stateless or undocumented migrants to acquire nationality. Further, the Law on Nationality does not define ‘living legally’ in respect of children born to foreign parents (who must prove they were born in Cambodia) or specify what status or documents would be required to prove legal residence. **Thailand** similarly does not confer nationality on the children of ‘illegal’ residents and prescribes very limited circumstances for the grant of nationality to children who are born stateless and to foundlings. In **Myanmar**, a child born of parents neither of which has citizenship (at any level), does not have the right to acquire nationality. In some countries (such as **Indonesia**, **Lao PDR** and **Viet Nam**), children risk statelessness if both parents are foreign nationals and cannot pass on their citizenship to the child owing to the law of their country. **Viet Nam**, however, has an express provision intended to avoid statelessness. Article 8 of the Law on Nationality provides that the State will ‘create conditions’ for children born in Viet Nam to have a nationality and for stateless persons who reside permanently in Viet Nam to acquire Vietnamese nationality. **Brunei Darussalam** provides some protection from statelessness for its citizens who have acquired nationality by virtue of the law; section 9 of the Brunei Nationality Act on ‘loss of status’ does not apply if the person would otherwise have no national status. A similar but watered-down provision is made for persons who acquired their nationality through registration or naturalisation but are deprived of their status under section 11(3) of the Brunei Nationality Act, unless the Sultan, in the exercise of his discretion, is satisfied that such a person is in a position effectively to enjoy the protection of some other State and to proceed thereto if he so wishes without thereby endangering his personal safety.⁶⁰⁶

Gendered provisions in **Malaysian** legislation could also lead to statelessness depending on the nationality of their father and whether or not the child is born out of wedlock.⁶⁰⁷ Under the Federal Constitution, as a general rule, children born to a Malaysian father are automatically regarded as Malaysian citizens.⁶⁰⁸ However, where the child is ‘illegitimate’, under the terms of the Federal Constitution, references to the child’s ‘father’ or

⁶⁰⁵ These are ethnic Thais who had become subjects of other states following territorial succession of the Thai Kingdom and are, as a result, stateless, but have immigrated into and resided in Thailand for a consecutive period (proved by civil registration documents) and observed the Thai way of life.

⁶⁰⁶ Brunei Darussalam, Brunei Nationality Act, S 55/02, Revised Edition 2011, Chapter 15, Section 11(3).

⁶⁰⁷ Note that Malaysia has entered a reservation on Article 7 (name and nationality) of the CRC and Article 9(2) (nationality of children) of CEDAW.

⁶⁰⁸ Malaysia, Federal Constitution 2010, Article 14(1)(b) and Part II, Second Schedule.

'parent' are construed as references to the child's mother.⁶⁰⁹ Consequently, children of unmarried parents could be stateless if they are unable to acquire their mother's nationality, despite having a Malaysian father. Indeed, according to news reports, the Court of Appeal has confirmed that children born overseas to Malaysian fathers are only entitled to citizenship by operation of the law if the father is married to the non-Malaysian mother.⁶¹⁰ Such situations could arise where, for example, the mother is stateless or is from a country that does not allow her nationality to be conferred. Additionally, a child born abroad to a Malaysian mother and foreign father will not automatically assume citizenship; an application for citizenship must be made under Article 15 of the Federal Constitution. This can make children, if born overseas to a Malaysian mother and foreign father, vulnerable to statelessness if unable to acquire their father's nationality. News reports indicate that this interpretation (i.e. that children born abroad out of wedlock to Malaysian mothers and non-Malaysian fathers are precluded from passing on their citizenship status to their children by operation of the law) has been upheld by the Court of Appeal.⁶¹¹ As noted above, there is a general rule in the Federal Constitution to confer citizenship on children born within Malaysia who are not otherwise born a citizen of any country and do not acquire citizenship of any country within the period of 1 year of birth.⁶¹² Although traditionally not applied in practice,⁶¹³ news reports highlight a case in which this provision appears to have been applied.⁶¹⁴

The legislation of all ASEAN Member States outlines the circumstances in which citizens can renounce or be deprived of their nationality. The grounds for loss of nationality include (amongst others) residence abroad, voluntary acquisition of another citizenship, service in foreign military or other services reserved for citizens, disloyalty to the country and involvement in war with an enemy of the country. **Myanmar's** Citizenship Law provides for revocation of associate or naturalised citizenship on a wide range of grounds, including where a person leaves the State permanently or acquires citizenship of another country and, in the case of a naturalised citizen, has committed an offence involving moral turpitude for which he or she has received a fine of 1000 K. or have been sentenced to imprisonment for a minimum of one year.⁶¹⁵ In contrast to the other focus countries, **Cambodian** legislation provides that Khmer citizens cannot be deprived of nationality. They can apply to renounce nationality voluntarily if they are over the age of 18 and have acquired another nationality (to prevent statelessness).⁶¹⁶ Only **Cambodia** and **Viet Nam** permit dual nationality, although **Indonesia** allows children born from an international marriage to retain dual citizenship until they reach 18 (or marry), when they must select one of the nationalities.⁶¹⁷

Where citizenship is relinquished or lost by a parent, some countries' laws contain express provisions governing the effect on any child's citizenship. In **Indonesia** and the **Philippines**, loss of citizenship by the parent does not automatically lead to the loss of citizenship by any child.⁶¹⁸ In **Lao PDR**, where citizenship is relinquished or withdrawn, the nationality of the concerned individual's spouse or children is not altered, except where both parents relinquish Lao nationality, in which case the nationality of their children (under the

⁶⁰⁹ Malaysia, Federal Constitution 2010, Schedule II, Part III, para 17.

⁶¹⁰ Malay Mail, 'Court: Children born overseas can get citizenship by operation of law if father is Malaysian', 11 August 2022, <<https://www.malaymail.com/news/malaysia/2022/08/11/court-children-born-overseas-can-get-citizenship-by-operation-of-law-if-father-is-malaysian/22350>>, accessed 22 March 2023.

⁶¹¹ Malay Mail, 'Court: Children born overseas can get citizenship by operation of law if father is Malaysian', 11 August 2022, <<https://www.malaymail.com/news/malaysia/2022/08/11/court-children-born-overseas-can-get-citizenship-by-operation-of-law-if-father-is-malaysian/22350>>, accessed 22 March 2023.

⁶¹² Malaysia, Federal Constitution 2010, Article 14(1)(b) and Schedule II, Part II, paras. 1(e) and 2(3).

⁶¹³ UNICEF Malaysia Country Office, written communication with Coram International received on 11 July 2022.

⁶¹⁴ Lim, Ida., 'Malaysian govt fails final bid to stop recognition of Sabah-born stateless man as a citizen', Malay Mail, 26 October 2022, <<https://www.malaymail.com/news/malaysia/2022/10/26/malaysian-govt-fails-final-bid-to-stop-recognition-of-sabah-born-stateless-man-as-a-citizen/35652>>, accessed 22 March 2023.

⁶¹⁵ Myanmar, Citizenship Law 1982, Section 58 (f).

⁶¹⁶ Cambodia, Law on Nationality 1996, Article 18.

⁶¹⁷ Indonesia, Law 12 on Citizenship of the Republic of Indonesia 2006, Article 6. The choice of citizenship must be made within 3 years of the child reaching 18 or getting married.

⁶¹⁸ Indonesia, Law 12 on Citizenship of the Republic of Indonesia 2006, Article 25; The Philippines, Revised Rules Governing Philippine Citizenship under Republic Act 9255, 2008, Section 2.

age of 18) changes in parallel unless the child is married.⁶¹⁹ In **Malaysia**, where a parent has renounced or been deprived of citizenship as a consequence of acquiring citizenship of another country or having obtained citizenship fraudulently, the government can order that the child of that parent be deprived of citizenship, except where deprivation of citizenship would result in statelessness.⁶²⁰ Minors of parents who renounce their **Vietnamese** nationality (e.g. to acquire a foreign nationality) will also lose their nationality, although where a parent is deprived of Vietnamese nationality, the nationality of the minor child will not change.⁶²¹ In **Singapore**, where a parent has renounced Singaporean citizenship or has been deprived of citizenship due to acquiring another citizenship, the child's citizenship can be revoked too.⁶²² In **Myanmar**, if *both* parents of a child lose their associate/naturalised citizenship, then the child ceases to be an associate/naturalised citizen.⁶²³ A similar cessation happens if the child has one parent who is a foreign national, and the other has associate/naturalised citizenship that is lost.⁶²⁴ It is noted that, more generally, in **Thailand**, the Constitution prohibits the revocation of Thai nationality acquired by birth.⁶²⁵

The laws of **Indonesia**,⁶²⁶ **Lao PDR**,⁶²⁷ the **Philippines**,⁶²⁸ **Thailand**,⁶²⁹ **Viet Nam**⁶³⁰ and, in limited circumstances, **Brunei Darussalam**,⁶³¹ contain provisions governing the recovery of nationality, where nationality has been lost or renounced. **Viet Nam** also undertakes to adopt policies to 'create favourable conditions' to restore Vietnamese nationality in respect of persons residing abroad.⁶³² However, no express provisions were found in the legislation that would fulfil the requirements of Article 8 of the CRC.

Recommendations:

- Consider removing the reservation to Article 7 of the CRC on the right of the child to acquire a nationality [Malaysia].
- Include an express provision in the law affirming the right of all children to acquire nationality from birth without discrimination [Brunei Darussalam, Cambodia, Malaysia, Myanmar, Singapore and Thailand].
- Consider automatic conferral of nationality on children born in the relevant territory (irrespective of parents' migrant status) and ensure automatic conferral where the child would otherwise be stateless.
- Amend legislation to enable either parent to pass on citizenship to their child irrespective of the place of birth of the child or marital status of the parents at the time of the child's birth [Brunei Darussalam; Malaysia].
- Amend laws/introduce provisions to ensure that deprivation of parents' citizenship does not automatically lead to loss of child's citizenship (particularly if this would render the child stateless).

⁶¹⁹ Lao PDR, Law on Nationality 2017, Article 27.

⁶²⁰ Malaysia, Federal Constitution 2010, Articles 26A and 26B(2).

⁶²¹ Viet Nam, Law on Nationality 2008, Article 35-36,

⁶²² Singapore, Constitution of the Republic of Singapore 2001, as amended, Section 130.

⁶²³ Myanmar, Citizenship Law 1982, Article 29 and Article 51.

⁶²⁴ Myanmar, Citizenship Law 1982, Article 29 and Article 51.

⁶²⁵ Thailand, Constitution of the Kingdom of Thailand 2017, Section 39.

⁶²⁶ Indonesia, Law 12 on Citizenship of the Republic of Indonesia 2006, Article 32.

⁶²⁷ Lao PDR, Law on Nationality 2017, Article 26 (although this does not permit the recovery of nationality where nationality had been withdrawn).

⁶²⁸ The Philippines, Revised Rules Governing Philippine Citizenship under Republic Act 9255 2008, Sections 2-3.

⁶²⁹ Thailand, Nationality Act 2008, Section 24.

⁶³⁰ Viet Nam, Law on Nationality 2008, Article 23.

⁶³¹ Brunei Darussalam, Brunei Nationality Act, S 55/02, Revised Edition 2011, Chapter 15, Section 9(4).

⁶³² Viet Nam, Law on Nationality 2008, Article 7(2).

8 Birth registration

Does the law provide for all children, regardless of their migration status or lack thereof, to be registered immediately after birth? Are there any legal barriers to birth registration?

	Requirement to register all children immediately after birth	Legal provision for issuance of birth certificate
Brunei Darussalam		
Cambodia		
Indonesia		
Lao PDR		
Malaysia (Peninsular)		
Myanmar		
Philippines		
Singapore		
Thailand		
Viet Nam		

Under Article 7 of the CRC, children must be registered immediately after birth. All ASEAN Member States are party to the CRC and are therefore bound by its provisions, although Malaysia has issued a reservation in respect of Article 7 stating that the provision ‘shall be applicable only if they are in conformity with the Constitution, national laws and national policies of the Government of Malaysia’ (see Annex 3: Status of Ratification of Key International Treaties by ASEAN Member States). Article 29 of the CMW also requires each child of a migrant worker to have the right to birth registration. States Parties are urged to ‘take all necessary measures’ to ensure immediate birth registration and issue birth certificates for a child, irrespective of the child’s migration status or that of their parents.⁶³³ Legal barriers to accessing birth registration services should therefore be removed such as requiring parents to produce documentation regarding their migration status and ‘avoiding financial penalties for late registration.’⁶³⁴ Further, under paragraph 8 of the ASEAN Declaration on the Rights of Children in the Context of Migration, the ASEAN Member States agree to coordinate with their respective consular offices/embassies/legal authorities to facilitate the registration of all births on their territories and the issuance of birth certificates, ‘allowing for all children born in the territory to be registered in accordance to the respective prevailing laws and regulations.’

Provisions on the registration of births and related documentation are contained in the **final draft Thailand-Myanmar MOU** (which has not yet been adopted). Pursuant to Article 9, the parties agree to ‘provide the registration of all births and the issuance of birth registrations in their territories, allowing for all children born in the territory of either country to be registered and for the registration document to be used as a basis for acquiring nationality of their parents in accordance with the relevant law and regulation of their respective countries’. The aim of this provision appears to be to enable migrant children born outside their parents’ country of origin to have their birth registered in both countries and to obtain the nationality of their parents.

Every ASEAN State provides for all children to be registered after birth, although in **Vietnam**, children are defined as persons below the age of 16.⁶³⁵ The legislation reviewed specified the following time limits for birth registration: 14 days in **Brunei Darussalam**;⁶³⁶ 15 days (except where the birth takes place outside the house

⁶³³ CRC GC No. 23 (2017), para 21.

⁶³⁴ CRC GC No. 23 (2017), para 21.

⁶³⁵ Viet Nam, Children Law No. 102 of 2016.

⁶³⁶ Brunei Darussalam, Births and Deaths Registration Act, Revised Edition 2013, Chapter 79, Section 12(1).

and cannot be reported in this time period, in which case 30 days) in **Thailand**⁶³⁷ and the **Philippines**;⁶³⁸ 30 days in **Cambodia**⁶³⁹ and **Lao PDR**;⁶⁴⁰ 42 days in **Singapore**;⁶⁴¹ and 60 days in **Indonesia**,⁶⁴² **Malaysia** (Peninsular Malaysia; Sabah and Sarawak have separate legislation which is not covered in the legal review)⁶⁴³ and **Viet Nam**.⁶⁴⁴ In **Myanmar**, although the Child Rights Law provides for birth registration, it does not specify a period of time in which the child's birth must be registered.⁶⁴⁵ However, the Citizenship Law requires that the child's birth must be registered within one year from the date the child completes the age of 10 years or if the child is born outside Myanmar, within one year from the date of birth.⁶⁴⁶

Failure to register within the prescribed time limits can result in a fine in **Brunei Darussalam**,⁶⁴⁷ **Cambodia**, **Indonesia**⁶⁴⁸ and the **Philippines**,⁶⁴⁹ the payment of a fee in **Malaysia**⁶⁵⁰ and **Viet Nam**,⁶⁵¹ and a fine (increasing each day) and/or imprisonment in **Singapore**.⁶⁵² However, in **Brunei Darussalam**, upon payment of a prescribed fee, the Deputy Registrar may permit the necessary information to be provided for the registration at a later date (within 42 days after birth).⁶⁵³ Postal charges may apply in **Viet Nam**.⁶⁵⁴ Approval of the relevant authorities must also be obtained in the event of late registration in **Indonesia**⁶⁵⁵ and **Malaysia**.⁶⁵⁶ In **Malaysia**, legislation requires that, where the parents are unmarried, the details of the father will only be entered into the register at the joint request of the mother and the person acknowledging the child as his.⁶⁵⁷ However, in November 2021, the Federal Court of Putrajaya in Malaysia upheld an appeal to affirm that the National Registration Department was under a statutory duty to record the particulars of the natural father of an 'illegitimate' child and/or to correct, amend or update such records, when evidence and undisputed facts were available (in this particular case, DNA records and a court declaration that the individual was the child's biological father).⁶⁵⁸ The court regarded this to be in the best interests and welfare of the child and consonant with Malaysia's obligations under the UN Convention on the Rights of the Child.⁶⁵⁹ In **Myanmar**, despite not having rules on late registration, section 21(D) of the Child Rights Law states that when a child's birth has not been registered, a parent, guardian or any relevant person should 'inform the birth of the child to the

⁶³⁷ Thailand, Civil Registration Act 1991, Section 18.

⁶³⁸ The Philippines, Republic Act 3753, Law on Registry of Civil Status 1930, Section 5.

⁶³⁹ Cambodia, Civil Code 2006, Article 985.

⁶⁴⁰ Lao PDR, Law on the Protection of the Rights and Interests of Children 2006, Article 19. Note that this law refers to Family Registration Law which has not been reviewed.

⁶⁴¹ Singapore, Registration of Births and Deaths Act 2021, Section 12(2)(a).

⁶⁴² Indonesia, Law on Population Administration 2006, Article 27.

⁶⁴³ Malaysia, Births and Deaths Registration Act 1957, Section 8. Note that Section 9 requires the information to be provided to the registrar within 14 days where a new-born is 'found exposed'.

⁶⁴⁴ Viet Nam, Law on Civil Status 2014, Article 15.

⁶⁴⁵ Myanmar, Child Rights Law 2019, Section 21.

⁶⁴⁶ Myanmar, Citizenship Law 1982, Section 9 proviso. The Vital Birth Registration Manual makes it possible to register births of all children up to 10 years of age in the place where they were born or where they live.

⁶⁴⁷ Brunei Darussalam, Births and Deaths Registration Act, Revised Edition 2013, Chapter 79, Section 13.

⁶⁴⁸ Indonesia, Law on Population Administration 2006, Article 90.

⁶⁴⁹ The Philippines, Republic Act 3753, Law on Registry of Civil Status 1930, Section 17.

⁶⁵⁰ Malaysia, Births and Deaths Registration Act 2018, as amended, Section 12. Note that the fee can be waived in part or in whole by the Registrar-General.

⁶⁵¹ Viet Nam, Law on Civil Status 2014, Article 11.

⁶⁵² Singapore, Section 8(4), Registration of Births and Deaths Act 2021, Section 8(4).

⁶⁵³ Brunei Darussalam, Births and Deaths Registration Act, Revised Edition 2013, Chapter 79, Section 14.

⁶⁵⁴ Viet Nam, Decree on Guidelines for the Law on Civil Status 2015, Article 3.3.

⁶⁵⁵ Indonesia, Law on Population Administration 2006, Article 32.

⁶⁵⁶ Malaysia, Births and Deaths Registration Act 2018, as amended, Section 12

⁶⁵⁷ Malaysia, Births and Deaths Registration Act, 2018, as amended, Section 13.

⁶⁵⁸ *Leow Fook Keong (L) v. Pendaftar Besar Bagi Kelahiran Dan Kematian Malaysia, Jabatan Pendaftaran Negara, Malaysia & Anor* [2022] 2 MLRA 29.

⁶⁵⁹ *Leow Fook Keong (L) v. Pendaftar Besar Bagi Kelahiran Dan Kematian Malaysia, Jabatan Pendaftaran Negara, Malaysia & Anor* [2022] 2 MLRA 29, para 68.

concerned governmental department for registration by submitting the recommendation of the child's birth from relevant ward or village tract administrator or a proof certificate of delivery issued by the officer-in-charge of the hospital or Delivery Room concerned.'

None of the ASEAN Member States' laws restrict the requirement or right to register a birth to their citizens or children of their citizens. In some jurisdictions it is clear that birth registration applies to all births occurring in the territory. In **Singapore**, this is stated explicitly,⁶⁶⁰ with the law also providing for birth registration of children born on a plane, vessel or train bound for Singapore.⁶⁶¹ The Law on Population Administration in **Indonesia** provides that 'each resident' (meaning Indonesian citizens and foreigners domiciled in Indonesia) must report 'vital events', which include births, to the relevant authority.⁶⁶² It also stipulates that every resident in Indonesia is entitled to 'equal service' in civil registration matters.⁶⁶³ In **Thailand**, Section 18 of the Civil Registration Act requires the birth registration of every child and applies to all children irrespective of legal status, with subsequent provisions referring to children who have not acquired Thai nationality.⁶⁶⁴ Legislation in other countries simply refer to the right of 'a' or 'every' child, or 'each individual' to birth registration, with the relevant laws not being restricted in application to citizens. **Myanmar's** Child Rights Law provides that 'all children born within the country shall have the right to birth registration,' and the 2017 Manual on Birth and Death Registration states that all children 'born in all parts of the country, will be registered - regardless of their parents' nationality, ethnicity and citizenship status.' The **Indonesian** and **Lao** laws also contain provisions requiring the registration of births of citizens born abroad.⁶⁶⁵

There is also specific reference in the legislation of **Indonesia, Malaysia, Philippines, Thailand** and **Viet Nam** to the registration of foundlings. In **Indonesia**, where a child's descent and parents' location are unknown, birth registration and the issuance of the birth certificate is based on a report from the person who found the child together with a police record.⁶⁶⁶ In **Malaysia**, the person who finds a new-born, and any person in whose charge the child is placed, are under a duty to provide particulars concerning the birth of the child (to the extent known) to the registrar within 14 days from which the child was found.⁶⁶⁷ In the **Philippines**, the person who found the child shall report to the local civil registrar the place, date, hour of finding and other attendant circumstances.⁶⁶⁸ In **Thailand**, the birth of a foundling or abandoned child must be reported, noting details of (amongst others) the person who found the child, circumstances in which the child was found and, where the nationality is unknown, recording that fact.⁶⁶⁹ There is also an obligation on an agency providing official care for a homeless or abandoned child or a child whose parents are unknown and whose birth has not been registered to record the birth.⁶⁷⁰ Failure to comply with these provisions (in Articles 19 and 19/1) is liable to an administrative fine of up to 1,000 baht under Section 47 of the Civil Registration Act. Section 19/2 (as amended in 2019) provides that a registrar must issue a foundling with the relevant identity documents. In **Viet Nam**, there must be a written record by a 'competent agency' certifying the child's abandonment in order to register the birth, following a procedure outlined by law.⁶⁷¹ The individual or organisation charged with the

⁶⁶⁰ Singapore, Registration of Births and Deaths Act 2021, Section 7.

⁶⁶¹ Singapore, Registration of Births and Deaths Act 2021, Section 10.

⁶⁶² Indonesia, Law on Population Administration 2006, Article 3.

⁶⁶³ Article 8(1)(b) places a corresponding duty on the relevant agency to provide 'equal and professional services' to every resident with respect to the reporting of 'vital events'.

⁶⁶⁴ Note that Section 5 of the same Act refers to the power of the relevant Minister to undertake various measures (including prescribing or exempting birth registration related to non-Thai persons pursuant to the laws on nationality).

⁶⁶⁵ Indonesia, Law on Population Administration 2006, Article 4, and Lao PDR, Law on Protection of Rights and Interests of Children 2006, Article 19.

⁶⁶⁶ Indonesia, Law on Population Administration 2007, Article 28 and Law on Child Protection (as amended in 2017), Article 27.

⁶⁶⁷ Malaysia, Births and Deaths Registration Act 2018, as amended, Article 9.

⁶⁶⁸ The Philippines, Law on Registry of Civil Status 1930, Section 5.

⁶⁶⁹ Thailand, Civil Registration Act 1991, Section 19.

⁶⁷⁰ Thailand, Civil Registration Act 1991, Section 19/1.

⁶⁷¹ Viet Nam, Law on Civil Status 2014, Article 16(1); Decree on Guidelines for the Law on Civil Status 2015, Article 14.

temporary care of the child is responsible for applying to register the child's birth.⁶⁷² If there are insubstantial grounds for determining the child's place of birth, the place where the child was found is regarded as the place of birth and native place.⁶⁷³

Following the registration of the birth, **Cambodia** (via secondary legislation), **Indonesia**, **Malaysia**, **Myanmar**, and **Thailand** expressly provide for the issuance of a birth certificate by the registry⁶⁷⁴ or, in **Brunei Darussalam**, a copy of the entry in the register signed by the Deputy Registrar, free of charge.⁶⁷⁵ However, in **Brunei Darussalam**, a certified copy of the entry is only available on payment of a prescribed fee.⁶⁷⁶ Indeed, it is the certified copy (as opposed to a copy of the original) which is taken as prima facie evidence in courts and tribunals of the registration (subject to limited exceptions in cases of post registration information).⁶⁷⁷ Article 20 of the Civil Registration Act of **Thailand** stipulates that every child whose birth has been registered must be issued with a birth certificate, regardless of legal status. Similarly, Article 14 of the Births and Registration Act requires the registrar to give the applicant a birth certificate at the time of registering the birth. **Lao PDR's** Child Law refers to a birth certificate, but this is issued by the hospital where the child is born, which is then taken to the parent's village for registration in their family book.⁶⁷⁸ In **Cambodia**, Article 24 of the Sub-Decree on Civil Status (Civil Registration) provides that the registrar must issue one copy of the original birth certificate to the applicant once the birth has been registered. In **Viet Nam**, the law expressly provides for the issuance of a birth certificate following registration of the birth;⁶⁷⁹ although births registered on time are exempt from the civil status registration fee, fees and charges may apply to applicants who request the results or certificate to be sent to them by post.⁶⁸⁰

Despite the requirement or right to register a birth, birth registration procedures may require documentation proving migration status (and thus legality of residence), full details of the circumstances of the birth of children or proof of marriage for the inclusion of both parents' names on the birth register and resulting birth certificate. These can create legal barriers to the registration of children affected by migration. In the legislation reviewed, there was no information on the supporting documentation required to register a birth except in the case of **Viet Nam**. Under **Viet Nam's** laws, documentation required for registering a birth include: the original certificate of live birth or, in its absence a document of a witness certifying the birth, or written pledge of birth or written record of abandonment made by a competent agency;⁶⁸¹ for registering a birth with District-level People's Committees where both parents are 'foreigners',⁶⁸² a document on the agreement of the parents on the selection of the child's citizenship which contains the certification of a competent foreign State agency of which they are citizens; for all applications, an original version of the applicant's valid passport, identity card or other document containing a photo and personal information which has been issued by a competent authority for identity and verification purposes; and notarised translations of any foreign documents into Vietnamese which have also been signed by the translator (subject to certain exceptions).⁶⁸³ For children born in Viet Nam in a border area to a Vietnamese citizen and person who is a citizen of the

⁶⁷² Viet Nam, Decree on Guidelines for the Law on Civil Status 2015, Article 14.3.

⁶⁷³ Viet Nam, Decree on Guidelines for the Law on Civil Status 2015, Article 14.3.

⁶⁷⁴ Cambodia, Sub-Decree on Civil Status (Civil Registration) No. 103 of 2000, Article 24; Indonesia, Law on Child Protection 2002, Articles 27(2) and 28(1) and Law on Population Administration, Articles 27 and 69; Malaysia, Births and Deaths Registration Act 2018, as amended, Section 14; and Thailand, Civil Registration Act B.E. 2534 1991 (as amended), Article 20; Myanmar, Child Rights Law 2019, Section 21(c).

⁶⁷⁵ Brunei Darussalam, Births and Deaths Registration Act, Revised Edition 2013, Chapter 79, Section 5(3).

⁶⁷⁶ Brunei Darussalam, Births and Deaths Registration Act, Revised Edition 2013, Chapter 79, Section 10(1).

⁶⁷⁷ Brunei Darussalam, Births and Deaths Registration Act, Revised Edition 2013, Chapter 79, Section 10(2).

⁶⁷⁸ Lao PDR, Law on the Protection of the Rights and Interests of Children 2006, Article 19.

⁶⁷⁹ Viet Nam, Law on Civil Status 2014, Articles 4.6, 16.2 and 36.2.

⁶⁸⁰ Viet Nam, Decree on Guidelines for the Law on Civil Status 2015, Article 3.3.

⁶⁸¹ Viet Nam, Law on Civil Status 2014, Article 16(1).

⁶⁸² Viet Nam, Law on Civil Status 2014, particularly Articles 4.1, 7 and 35, lists the categories of birth registration which fall within the competences of the 'Commune-level People's Committees' and 'District-Level People's Committees'.

⁶⁸³ Viet Nam, Decree on Guidelines for the Law on Civil Status 2015, Articles 2 and 9.

neighbouring country, copies of documents proving the identity and permanent residence in the border area of the non-Vietnamese parent must be submitted.⁶⁸⁴ For children born abroad to Vietnamese parent(s) and taken to reside in Viet Nam, the following documents must be submitted: documents providing the child's residence in Viet Nam; as a general rule, a certificate of live birth or equivalent document issued by the foreign competent authority certifying that the child was born abroad and mother-child relationship (if any); and agreement on selection of the child's nationality.⁶⁸⁵ Applications for re-registration also require the submission of certain documentation.⁶⁸⁶ 'Overseas Vietnamese persons' or 'foreigners' whose births were registered by the competent Vietnamese authorities before 1 January 2016 but who have lost the 'vital records or original copies of the vital records' (e.g. birth certificate) are eligible for re-registration.⁶⁸⁷ For those States in which no such requirements were found, but it is possible that such requirements are contained in secondary legislation. An additional potential barrier are birth registration fees and associated administration costs. Whilst the **Indonesian** legislation expressly stipulates that the *birth certificate* is provided free of charge, as does the **Myanmar** and **Vietnamese** legislation with regard to birth registration (in **Viet Nam**, as long as the birth is registered on time),⁶⁸⁸ it can be assumed that in the other countries which charge a fee or penalty for late registration (as outlined above), registration within the relevant time limits is free of charge.

Recommendations:

- Consider removing the reservation to Article 7 of the CRC [Malaysia].
- Include a provision in primary legislation to require birth registration *immediately after birth* [Myanmar].
- Consider including express provision requiring the registration of births of all children born in the territory, *irrespective of migration status or that of their parents*.
- Extend the definition of 'child' in the Children Law, and hence the right of the child to birth registration, to all persons under the age of 18 [Viet Nam].
- Include express provision regarding the issuance of official birth certificates for all registered births free of charge [Brunei Darussalam, Philippines, Singapore and Viet Nam].
- Consider incorporating the provision requiring the issuance of a birth certificate for registered births, in primary legislation [Cambodia].
- Include express provision confirming that birth registration is free of charge [all ASEAN Member States apart from Myanmar and Viet Nam].
- Consider removing fines or fees for late registration by parents [Brunei Darussalam, Cambodia, Indonesia, Malaysia, Singapore and Viet Nam].
- Remove the penalty of imprisonment for parents or carers who fail to register the birth of their child within the prescribed time limited [Singapore].

⁶⁸⁴ Viet Nam, Decree on Guidelines for the Law on Civil Status 2015, Article 17.

⁶⁸⁵ Viet Nam, Decree on Guidelines for the Law on Civil Status 2015, Article 29.

⁶⁸⁶ Viet Nam, Decree on Guidelines for the Law on Civil Status 2015, Article 26.

⁶⁸⁷ Viet Nam, Decree on Guidelines for the Law on Civil Status 2015, Article 40

⁶⁸⁸ Indonesia, Law on Child Protection (as amended in 2017), Article 28(4); Myanmar, Child Rights Law 2019, Section 21(a); Viet Nam, Law on Civil Status 2014, Article 11.1(b).

Annex 1: Conceptual Framework

Questions	Description of Relevant International or Regional Standard	Reference
Immigration processes and decision-making		
(a) Does the law require the best interests of the child to be a primary consideration in immigration processes and decision-making?	In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.	CRC, Art 3(1)
	States parties shall ensure that the best interests of the child are taken fully into consideration in immigration law, planning, implementation and assessment of migration policies and decision-making on individual cases, including in granting or refusing applications on entry to or residence in a country, decisions regarding migration enforcement..... where the best interests of the child shall be a primary consideration and thus have high priority. In particular, the best interests of the child should be ensured explicitly through individual procedures as an integral part of any administrative or judicial decision concerning the entry, residence or return of a child, placement or care of a child, or the detention or expulsion of a parent associated with his or her own migration status.... The Committees stress that States parties should give high priority to the child’s best interests in their legislation, policy and practice.	CMW GC No. (2017) / CRC GC No. 22 (2017), paras 29-30 and 32(a)
	The best interests of the child are a primary consideration in all relevant policies and practices in the context of migration.	ASEAN Declaration, para 1
1.1. (b) Does the law require a ‘best interests assessment’ and ‘best interests determination’ to be undertaken as part of, or to inform, decisions affecting migrant children?	In order to implement the best interests principle in migration-related procedures or decisions that could affect children, best-interests assessments and determination procedures should be undertaken systematically as part of, or to inform, migration- related and other decisions that affect migrant children.	CMW GC No. 3 (2017) / CRC GC No. 22 (2017), para 31

Questions	Description of Relevant International or Regional Standard	Reference
2. Migration control and immigration detention		
2.1. To what extent does the law subject children to criminal or administrative liability for migration-related activities or due to the child or their parent's migration status (or lack thereof)?	International standards prohibit the criminalisation of a child or imposition of punitive measures based on the child or parent's migration status. Irregular entry and stay do not constitute crimes per se against persons, property or national security. Criminalizing irregular entry and stay exceeds the legitimate interest of States parties to control and regulate migration, and leads to arbitrary detention.	CRC GC No. 23 (2017), para 7
2.2. Does the law permit immigration detention of children? Does the law prohibit it?	No child shall be deprived of his or her liberty unlawfully or arbitrarily and that arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.	CRC, Art 37(b)
	Detention cannot be justified solely on the basis of the child being a UASC, or on their migratory or residence status, or lack thereof. In the application of Article 37 of the CRC and the best interests principle, 'unaccompanied or separated children should not, as a general rule, be detained.'	CRC GC No. 6 (2005), paras 61-62
	Every child, at all times, has a fundamental right to liberty and freedom from immigration detention. The Committee on the Rights of the Child has asserted that the detention of any child because of their or their parents' migration status constitutes a child rights violation and contravenes the principle of the best interests of the child. In this light, both Committees have repeatedly affirmed that children should never be detained for reasons related to their or their parents' migration status and States should expeditiously and completely cease or eradicate the immigration detention of children. Any kind of child immigration detention should be forbidden by law and such prohibition should be fully implemented in practice.	CMW GC No. 4 (2017) / CRC GC No. 23 (2017), para 5

Questions	Description of Relevant International or Regional Standard	Reference
	UNHCR also clearly opposes the detention of children for immigration-related purposes, irrespective of the child’s legal or migratory status or that of their parents and considers that detention in such circumstances is never in the child’s best interests.	UNHCR, UNHCR’s position regarding the detention of refugee and migrant children in the migration context, 2017
2.3. Are there any alternatives to immigration detention of children under the law and, if so, what are they?	Develop alternatives to immigration detention. Ensure that, where possible children are kept together with their families in non-custodial and clean and safe environment.	ASEAN Declaration, para 9
<p>3. Child Protection</p> <p>Under international standards, ‘child protection’ is understood as a system for protecting the children who are most at risk of harm – namely where the violence has already taken place or is at high risk of occurring. This is based on Art 19.1 of the CRC. Case management is an essential part of an effective child protection system. Case management can be defined as ‘a process practiced by social service workers that supports or guides the delivery of social service support to vulnerable children and families and other populations in need.’⁶⁸⁹ Children affected by migration should be mainstreamed within national child protection systems.</p>		
<p>3.1. Integration of children affected by migration in the child protection system</p>		
3.1.1. To what extent are children affected by migration integrated into the national child protection system? (e.g. do child protection laws apply only to nationals?)	<p>ASEAN Member States acknowledge the need to further strengthen national child protection systems and to enhance their accessibility for children affected by migration, including those who are unaccompanied or separated from their families, those requiring protection and assistance..., and resolve to ensure that national child protection systems address the rights and needs of children in the context of migration.</p> <p>Child protection systems at the national and local levels should mainstream child migrants into their programmes, regardless of whether the State is a country of origin, transit, destination or return.</p>	<p>ASEAN Declaration, paras 2 and 4</p> <p>CMW GC No. (2017) / CRC GC No. 22 (2017), para 14</p>
<p>3.2. Identification and referrals of children affected by migration who are suffering or are at risk of suffering serious harm (i.e. ‘in need of care and protection’)</p>		

⁶⁸⁹ Global Social Service Workforce Alliance, Core Concepts and Principles of Effective Case Management: Approaches for the Social Service Workforce, 2018, p 7.

Questions	Description of Relevant International or Regional Standard	Reference
<p>3.2.1. (a) Is there a legal obligation for professionals and practitioners (particularly border and migration control officials) to make a child protection referral for children affected by migration who are in need of care and protection?</p>	<p>Case management (see further above) includes the identification and referral of children to the responsible child protection authority where there is cause to believe that the child is suffering or at risk of suffering significant harm.</p> <p>The prompt identification of children in migration and border-control procedures is essential for ensuring that anyone claiming to be a child is treated as such and promptly referred to child protection and other relevant services where needed.</p>	<p>-</p> <p>CRC General Comment No. 22, para 32(h)</p>
3.3. Special considerations for unaccompanied or separated children affected by migration		
<p>3.3.1. Do border and migration control officials have a legal obligation to make a child protection referral if they suspect that the child is unaccompanied or separated (UASC)?</p>	<p>States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference. This requires the prioritized identification of a child as separated or unaccompanied immediately upon arrival at ports of entry or as soon as their presence in the country becomes known to the authorities. The CRC Committee regards this as the necessary first step in the initial assessment of the child in order to determine the priority of the child's protection needs.</p>	<ul style="list-style-type: none"> • CRC, Art 8 CRC GC No. 6 (2005), para 31(i)
<p>3.3.2. To what extent are the provisions on family tracing and reunification (if any) in line with</p>	<p>In accordance with the obligation under Art 9.1 of the CRC (above), States Parties are required to deal with applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification 'in a positive, humane and expeditious manner.'</p> <p>To implement these obligations with respect to UASC in cross-border migration contexts, the CRC Committee recommends that States Parties should identify a 'durable solution' that addresses the</p>	<p>CRC, Art 10.1</p> <p>CRC GC No. 6, para 79</p>

Questions	Description of Relevant International or Regional Standard	Reference
international standards?	child's protection needs, takes into account the child's views and 'wherever possible, leads to overcoming the situation of a child being unaccompanied or separated.'	
	Family tracing is an important part of identifying a durable solution for the child and considering the possibility of family reunification. The CRC Committee recommends that family tracing 'should be prioritized except where the act of tracing, or the way in which tracing is conducted, would be contrary to the best interests of the child or jeopardize fundamental rights of those being traced.'	CRC GC No. 6, para 80
	This means that 'all efforts should be made to return [the child]...to his or her parents except where further separation is necessary for the best interests of the child, taking full account of the right of the child to express his or her views.'	CRC GC No. 6, para 81
3.4. Non-refoulement and return to country of origin		
3.4.1. Are the provisions on return of a child affected by migration in line with international standards?	Return of a separated or unaccompanied child to the country of origin is not an option if the principle of refoulement applies.	CRC GC No. 6 (2005), para 84
	In asylum contexts, States are prohibited expelling or returning a refugee in any manner whatsoever to the frontiers of territories where his/her life or freedom would be threatened on account of the person's race, religion, nationality, membership of a particular social group or political opinion. The only exception to this principle is where there are reasonable grounds for regarding the refugee as a danger to the security of the country in which he/she is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.	Refugee Convention 1951, Art 33(1)-(2); also jus cogens
	However, UNHCR recommends that, '[i]n view of the serious consequences to a refugee of being returned to a country where he is in danger of persecution, the exception.... should be applied with the greatest caution.' ⁶⁹⁰ UNHCR adds that it is therefore 'necessary to take fully into account all the circumstances of the case and, where the refugee has been convicted of a serious criminal offence, to any mitigating factors and the possibilities of rehabilitation and reintegration within society.'	UNHCR, Note on Non-Refoulement, EC/SCP/2, 23 August 1977, para 14
	State parties are prohibited from returning or extraditing a person (not just refugees) to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture. For determining such grounds, the competent authorities must take into account 'all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.'	CAT, Art 3
	In fulfilling the obligations under the CRC, States Parties must not return a child to a country 'where there are substantial grounds for believing that there is a real risk of irreparable harm to the child,'	CRC GC No. 6 (2005), para 27

⁶⁹⁰ UNHCR, Note on Non-Refoulement, EC/SCP/2, 23 August 1977, para 14.

Questions	Description of Relevant International or Regional Standard	Reference
	<p>either in the country to which the child will be removed or in any other country to which the child may subsequently be removed. Irreparable harm includes, but is not limited to, violations of the child's right to life, survival and development, or violations of the rights and prohibitions in Article 37 of the CRC.</p> <p>Return to the country of origin is also not an option if it would lead to a "reasonable risk" that such return would result in the violation of fundamental human rights of the child. Return to the country of origin shall in principle only be arranged if such return is in the best interests of the child.' (The factors that should be taken into account in making this determination are listed in paragraph 84 of CRC GC No. 6 (2005)).</p> <p>In the absence of the availability of care provided by parents or members of the extended family, return to the country of origin should, in principle, not take place without advance secure and concrete arrangements of care and custodial responsibilities upon return to the country of origin.</p>	<p>CRC GC No. 6 (2005), para 84</p> <p>CRC GC No. 6 (2005), para 84</p>
4. Asylum		
<p>4.1. Is the ASEAN State a party to the Refugee Convention 1951 and Refugee Status Protocol 1967?</p>	<p>See Error! Reference source not found.</p>	<p>-</p>
<p>4.2. Does the national law recognise child asylum-seekers and refugees and, if so, to what extent are the definitions in line with international standards?</p>	<p>'Refugee' is a person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion:</p> <ul style="list-style-type: none"> • Is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or • Who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. <p>This includes children who meet the definition of refugee.</p> <p>This definition excludes persons in respect to whom there are <i>serious reasons</i> for considering that:</p> <ul style="list-style-type: none"> • He/she has committed a crime against peace, a war crime, or a crime against humanity, as defined under relevant international laws; • He/she has committed a serious non-political crime outside the country of refuge prior to his/her admission to that country as a refugee; or 	<p>Refugee Convention 1951, Art 1A(2)</p> <p>Refugee Convention 1951, Art 1F</p>

Questions	Description of Relevant International or Regional Standard	Reference
	<ul style="list-style-type: none"> • He/she has been guilty of acts contrary to the purposes and principles of the United Nations. <p>Persons who at the time being are receiving protection or assistance from UN organs or agencies other than the UNHCR, as well as persons who are recognised by a competent authority of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country, do not fall under the asylum regime.</p> <p>A person ceases to have refugee status if the person:</p> <ul style="list-style-type: none"> • Has voluntarily re-availed himself or herself of the protection of the country of his nationality; • Having lost his/her nationality, has voluntarily reacquired it; • Has acquired a new nationality, and enjoys the protection of the country of his/her new nationality; • Has voluntarily re-established himself or herself in the country which he/she left or outside which he/she remained owing to fear of persecution; • Can no longer, because the circumstances in connection with which he/she has been recognized as a refugee have ceased to exist, continue to refuse to avail himself/herself of the protection of the country of his nationality; or • Being a person who has no nationality, is, because the circumstances in connection with which he/she has been recognized as a refugee have ceased to exist, able to return to the country of his/her former habitual residence. 	<p>Refugee Convention 1951, Arts 1D and E</p> <p>Refugee Convention 1951, Art 1C.</p>
4.4 Does the law enshrine the principle of non-refoulement?	Cross refer to question above on return.	See further above.
<p>5. Child trafficking</p> <p>Article 35 of the CRC requires States to ‘take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.’</p>		
5.1 To what extent is the trafficking of children prohibited under the law?	<p>Child trafficking is the recruitment, transportation, transfer, harbouring or receipt of a child (i.e. person under 18) for the purpose of exploitation. It applies to all children, regardless of migration status.</p> <p>Exploitation includes (i) the exploitation of the prostitution of others or (ii) other forms of sexual exploitation, (iii) forced labour or services, (iv) slavery or practices similar to slavery, (v) servitude or (vi) the removal of organs.</p>	<ul style="list-style-type: none"> • Palermo Protocol, Arts 3(a)-(b) • ASEAN Convention against Trafficking, Arts 1 and 2

Questions	Description of Relevant International or Regional Standard	Reference
	For definitions of forced labour, slavery or practices similar to slavery and servitude, see question 6 below.	
5.2. To what extent is the trafficking of CABM criminalised under the law?	<p>Child trafficking, as defined above, is criminalised and subject to penal sanctions, under the law.</p> <p>See US Department of State, Trafficking in Persons Report June 2020, for analysis on the stringency of criminal laws on (child) trafficking (https://www.state.gov/wp-content/uploads/2020/06/2020-TIP-Report-Complete-062420-FINAL.pdf).</p>	Palermo Protocol, Art 5.
Nationality and Statelessness		
To what extent does the national law respect and protect the right of the child to a nationality?	<p>The child shall have the right from birth to acquire a nationality; each child of a migrant worker shall have the right to a nationality.</p> <p>States Parties shall ensure the implementation of this right in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.</p>	CRC, Art 7; CMW, Art 29
	States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, without unlawful interference. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.	CRC, Art 8
Birth registration		
Does the law provide for all children, regardless of their migration status or lack thereof, to be registered immediately after birth?	Children must be registered immediately after birth; each child of a migrant worker shall have the right to registration of birth.	CRC, Art 7; CMW, Art 29
7.2 Are there any legal barriers to registering the birth of CABM?	The CRC Committee urges States parties to ‘take all necessary measures to ensure that all children are immediately registered at birth and issued birth certificates, irrespective of migration status or that of their parents.’ Legal barriers to accessing birth registration services should therefore be removed such as requiring parents to produce documentation regarding their migration status.	CRC GC No. 23 (2017), para 20-21

Annex 2: Documents Reviewed

State	Law	Year
Brunei	Children and Young Persons Act, chapter 219, revised edition 2012	2006
	Immigration Act, chapter 17, revised edition 2014	1956
	Criminal Procedure Code, chapter 7, revised edition 2016	1951
	Penal Code, chapter 22, revised edition 2001	1951
	Anti-Trafficking in Persons Order	2019
	Women and Girls Protection Act, chapter 120, revised edition 1984	1984
	Brunei Nationality Act, chapter 15, revised edition 2011	1961
	Births and Deaths Registration Act, chapter 79, revised edition 2013	1922
Cambodia	Sub-decree on Procedure for Recognition as a Refugee or Providing Asylum Rights to Foreigners in the Kingdom of Cambodia	2009
	Law on Immigration	1994
	Law on Suppression of Human Trafficking and Sexual Exploitation	2008
	Law on Juvenile Justice	2016
	Civil Code of Cambodia	2008
	Civil Procedure Code	2006
	Code of Criminal Procedure	2008
	Constitution of Cambodia	1993
	Law on Marriage and Family	1989
	Law on Prevention of Domestic Violence and The Protection of Victims	2005
	Law on Tourism	2009
	Law on Nationality	1996
	Penal Code	2011
	Agreement on Guidelines for Practices and Cooperation between the Relevant Government Institutions and Victim Support Agencies In Cases of Human Trafficking	2007
	Policy on Alternative Care for Children	2006
	Guidelines on Implementation of Article 42 & 43 of Trafficking, Minister of Ministry of Justice	2009
	Guidelines for Legal Protection of Women and Children's Rights in Cambodia	2014
Law on Prison	2011	
Law on Administration and Management of the Capital, Provinces, Municipalities, Districts and Khans	2008	

	Sub-Decree on Civil Status (Civil Registration) No. 103	2000
Indonesia	Penal Code	1982
	Law 6/2011 on Immigration (with elucidation)	2011
	Government Regulation no. 31 year 2013 on Implementing Regulation of Law on Immigration	2013
	Government Regulation no. 26/2016 on 1 nd Amendment of Government Regulation no. 31 year 2013	2016
	Government Regulation no. 51/2020 on 2 nd Amendment of Government Regulation no. 31 year 2013	2020
	Government Regulation no. 48/2021 on 3 rd amendment of Government Regulation no. 31 year 2013	2021
	Regulation of the Director General of Immigration No. IMI-0352.GR.02.07 (2016) on the Handling of Illegal Migrant Claiming to be Asylum-Seeker or Refugee	2016
	Regulation of DG Immigration year 2013 on SOP in Immigration Detention Center/Facility	2013
	Regulation of Minister of Law and Human Rights no. 4 year 2017 in Mechanism for Immigration Surveillance [some provisions incomplete but do not believe relevant to review]	2017
	Presidential Regulation no. 65/2020 on the Mandate and Structure of Ministry of Women Empowerment and Child Protection	2020
	Presidential Regulation no. 69/2008 on Anti-Trafficking Task Force	2008
	Presidential Regulation no. 22/2021 About Amendment to Presidential Regulation no 69/2008 Concerning the Task for the Prevention and Handling of the Crime of Trafficking in Persons	2021
	Law no. 7 / 2012 about Handling of Social Conflict	2012
	Government Regulation no. 2/2018 on Minimum Standards of Services	2018
	Government Regulation no. 29/2019 on Requirement and Mechanism for Designation of Guardian	2019
	Government regulation no. 44 year 2017 Concerning Implementation of Child Care	2017
	Government Regulation no. 59/2019 on Coordination of Implementation of Special Protection for Children	2019
	Presidential Regulation no. 125/2016 Concerning the Handling of Foreign Refugees	2016
	Law No. 11 of 2009 on Social Welfare	2009
	Law 11/2012 on Juvenile Justice System	2012
	Law 12/2006 on Citizenship of the Republic of Indonesia	2006
	Law 21/2007 on the Eradication of Criminal Act of Trafficking in Persons	2007
	Law 23/2002 on Child Protection	2002
	Law 35/2014 Concerning Amendment to Law 23/2002 Concerning the Protection of Children	2014
	Law No. 17 on the Adoption of Government Regulations to Substitute Law No. 1 of 2016 regarding the Second Amendment of Law No. 23 of 2002 on Child Protection	2016
	Law 23/2004 on Elimination of Domestic Violence	2004
Law 23/2006 on Population Administration	2006	

	Law 24/2013 on Amendment to Law 23/2006 on Population Administration	2013
	Law 14/2009 Concerning Ratification of Palermo Protocol	2009
	Criminal Procedure Law, Law 8/1981	1981
	Law no. 40 of 2004 Concerning National Social Security System	2004
	Law No 39 Concerning Human Rights	1999
	National Standard of Care for Child Welfare Institutions	2011
Lao PDR	Lao People's Democratic Republic Constitution 1991 (as amended to 2015)	1991
	Law on Anti-Trafficking in Persons	2016
	Decree on Adoption of Children	2014
	Law on Family	2008
	Penal Code	2017
	Law on Immigration and Foreigner Management	2015
	Law on Juvenile Criminal Procedures	2013
	Law on Preventing and Combatting Violence against Women and Children	2014
	Law on Development and Protection of Women	2004
	Law on the Protection of the Rights and Interests of Children	2006
	Decree on the Implementation of the Law on the Protection of the Rights and Interests of Children	2012
	Local Government Administration Law	2015
	Guidelines on the protection and referral of trafficking victims (translation)	2020
	Law on Lao Nationality (Amendment)	2017
Malaysia	Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful activities Act	2001
	Anti-Trafficking in Persons Act	2007
	Anti-Trafficking in Persons (Amendment) Act	2010
	Anti-Trafficking in Persons and Anti-Smuggling of Migrants (Amendment) Act	2015
	Anti-Trafficking in Persons and Anti-Smuggling of Migrants (Amendment) Act	2021
	National Action Plan on Anti Trafficking in Persons (2021-2025)	
	Birth and Deaths Registration Act amended as at March 2018	1957
	Care Centres Act	1993
	Care Centres (Amendment) Act	2017
	Child Act 2001	2001
	Child (Amendment) Act	2016
	Criminal Procedure Code	2006
	Criminal Justice Act 1953 (as at 1 June 2013)	1953
	Children and Young Persons (Employment) Act 1966 (as at 1 October 2019)	

	Domestic Violence Act 1994	1994
	Domestic Violence (Amendment) Act	2012
	Domestic Violence (Amendment) Act	2017
	Employment Act 1955 (as at 20 April 2012)	1955
	Federal Constitution (as at 1 November 2010)	
	Guardianship of Infants Act 1961 (incorporating all amendments up to 1 January 2006)	1961
	Islamic Family Law (Federal Territories) Act 1984 (incorporating all amendments up to 1 January 2006)	1984
	Immigration Act	1959/63
	Passport Act (incorporating all amendments up to 1 January 2006)	1966
	Penal Code (as at 1 February 2018)	1976
	Prison Act	1995
	Prison (Amendment) Act	2014
	Prison (Amendment) Act	2015
	Private Employment Agencies Act (as at 1 October 2018)	1981
	Shariah Courts (Criminal Jurisdiction) Act (incorporating all amendments up to 1 January 2006)	1965
	Workers' Minimum Standards of Housing and Amenities Act (incorporating all amendments up to 1 January 2006)	1990
	Workers' Minimum Standards of Housing and Amenities (Amendment) Act	2019
Myanmar	Child Rights Law No. 22	2019
	Myanmar Immigration (Emergency Provisions) Act	1947
	Law Amending the Myanmar Immigration (Emergency Provisions) Act 1947	1990
	Prevention and Suppression of Trafficking in Persons Law	2022
	Citizenship Law	1982
	Law Amending the Myanmar Citizenship Law	1997
	Constitution of the Republic of Myanmar	2008
	Manual on Birth and Death Registration	2017
Philippines	Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act	1992
	Immigration Act	1940
	Juvenile Justice and Welfare Act	2006
	Anti-Trafficking in Persons Act	2003
	Expanded Anti-Trafficking in Persons Act	2012
	Rules and Regulations Implementing the Anti-Trafficking in Persons Act	2003
	Child and Youth Welfare Code, Presidential Decree No. 603	1974
	Special Protection of Children in Situations of Armed Conflict Act	2019

	Law on Registry of Civil Status	1930
	Administrative Naturalization Law	2000
	Revised Rules Governing Philippines Citizenship under Republic Act No. 9225	2008
	Department of Justice Circular 024 on Strengthening the Refugees and Stateless Persons Protection Unit, Enhancing the Rules for Refugee and Stateless Status Determination	2022
	Rules on Facilitated Naturalization of Refugees and Stateless Persons A.M. No. 21-07-22, approved by the Supreme Court	2022
Singapore	Children and Young Persons Act	1993
	Immigration Act	1959
	Maritime and Port Authority of Singapore Act	1996
	Penal Code	1871
	Criminal Procedure Code	2010
	Constitution of the Republic of Singapore, amended up to 1 December 2021	1965
	Constitution of the Republic of Singapore (Amendment) Act	2004
	Prevention of Human Trafficking Act	2014
	Women's Charter	1961
	Registration of Births and Deaths Act 2021	2021
Thailand	Standard Operating Procedure (SOP) under MOU on the Determination of Measures and Approaches Alternative to Detention of Children in Immigration Detention Centres	2019
	Memorandum of Understanding on The Determination of Measures and Approaches Alternative to Detention of Children in Immigration Detention Centers	2019
	Child Protection Act	2003
	The Anti-Trafficking in Persons Act B.E. 2551	2008
	The Anti-Trafficking in Persons Act (No. 2) BE 2558	2015
	The Anti-Trafficking in Persons Act (No. 3) BE 2560	2017
	Royal Decree Amending the Act on the Prevention and the Suppression of Trafficking in Persons 2008	2019
	Civil Registration Act B.E. 2354	1991
	Civil Registration Act (No 2) B.E. 2551	2008
	Civil Registration Act (No 3) B.E. 2562	2019
	Memorandum of Understanding on Operations between State Agencies and Non-Governmental Organizations (NGOs) Engaged in Addressing. Trafficking in Children and Women	2003
	Operational Guidelines for NGOs Engaged in Addressing Trafficking in Children and Women	undated
	Child Adoption Act	1979
	Child Adoption Act (No 3) [reviewed translation by google translate]	2010
	Act on Protection of Domestic Violence Victims	2007

	Social Welfare Promotion Act	2003
	National Child and Youth Development Promotion Act	2007
	Procedures for Human Trafficking Cases Act	2016
	Criminal Code B.E. 2499 As Amended until the Criminal Code (No. 17), B.E. 2547 (2003)	1956 / 2003
	Act Amending the Criminal Code (No. 28) B.E. 2554	2021
	Act to Amend the Penal Code (No. 29) B.E. 2522	2022
	Nationality Act B.E. 2508	1965
	Nationality Act (No. 4) B.E. 2551	2008
	Nationality Act (No. 5) B.E. 2555	2012
	Civil and Commercial Code	1925
	Thailand Ministerial Regulations and Regulations published in the Government Gazette in accordance with the Child Protection Act 2003, The Ministry of Social Development and Human Security	2005/2006
	Immigration Act B.E. 2522 (1979)	1979
	Criminal Procedure Code 2005 (as amended to 2008)	2005
	Act Amending the Code of Criminal Procedure (No. 29)	2008
	Amendment of the Criminal Procedure Code (No. 32)	2016
	Amendment of the Criminal Procedure Code (No. 34)	2019
	Constitution of the Kingdom of Thailand	2017
	Act to Prevent and Suppress Torture and Enforced Disappearance	2022
Viet Nam	Constitution of 2013	2013
	Child Law	2016
	Law on Prevention and Suppression of Human Trafficking	2011
	Civil Code	2015
	Civil Procedure Code	2015
	Decree on Electronic Civil Status Database and Online Civil Registration	2020
	Domestic Violence Prevention and Control Law	2007
	Law on Vietnamese Nationality	2008
	Law on Handling of Administrative Violations	2012
	Law on Amendments and Supplements to Certain Articles on Handling of Administrative Violations	2020
	Criminal Code	2015
	Law on Amendments to the Criminal Code	2017
	Youth Law	2020
	Law on Entry and Exit of Vietnamese Citizens	2019

Law on Entry, Exit, Transit, and Residence of Foreigners in Viet Nam	2014
Amendments to Law on Entry, Exit, Transit and Residence of Foreigners in Viet Nam	2019
Decree on Administrative Penalties for Violations against Regulations on Social Safety, Security, Order; Social Evils, Fire Prevention and Firefighting; Rescue; Domestic Violence Prevention and Control	2021
Law on Civil Status	2014
Decree on Guidelines for Law on Civil Status	2015

Annex 3: Status of Ratification of Key International Treaties by ASEAN Member States

Instrument	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Viet Nam
CRC ⁶⁹¹	27 Dec 1995 (a) with reservations ⁱ	15 Oct 1992 (a) no reservation	5 Sep 1990. Reservation upon ratification withdrawn	8 May 1991 (a) no reservation	17 Feb 1995 (a) with reservations ⁱⁱ and declarations ⁱⁱⁱ	15 Jul 1991 (a). Reservations made upon accession withdrawn	21 Aug 1990 no reservation	5 Oct 1995 (a) with declarations ^{iv} and reservations ^v	27 Mar 1992 (a) with reservations ^{vi}	28 Feb 1990 no reservations
OPSC ⁶⁹²	21 Nov 2006 (a) no reservation	30 May 2002 no reservation	24 Sep 2012 no reservation	20 Sep 2006 (a) with reservation ^{vii}	12 Apr 2012 (a) with reservations ^{viii}	16 Jan 2012 (a) no reservations	28 May 2002 no reservations	Not signed	11 Jan 2006 (a) no reservations	20 Dec 2001. Reservation upon ratification withdrawn
OPAC ⁶⁹³	17 May 2016 (a) with declaration	16 Jul 2004 with declaration	24 Sep 2012 with declaration	20 Sep 2006 (a) with declaration	12 Apr 2012 (a) with declaration	27 Sep 2019 with declarations ^{ix}	26 Aug 2003 with declaration	11 Dec 2008 with declaration	27 Feb 2006 (a) with declaration	20 Dec 2001 with declaration
CMW ⁶⁹⁴	Not signed	Signed on 27 Sep 2004 but not ratified	31 May 2012 no reservation	Not signed	Not signed	Not signed	5 Jul 1995 no reservation	Not signed	Not signed	Not signed

⁶⁹¹ UN Treaty Collection, 'Chapter IV Human Rights, Convention on the Rights of the Child', www.treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-11&chapter=4&clang=en, accessed 17 February 2021.

⁶⁹² UN Treaty Collection, 'Chapter IV Human Rights, Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography', www.treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-11-c&chapter=4&clang=en, accessed 17 February 2021.

⁶⁹³ UN Treaty Collection, 'Chapter IV Human Rights, Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict', <[www.https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-11-b&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-11-b&chapter=4&clang=en)>, accessed 17 February 2021.

⁶⁹⁴ UN Treaty Collection, Chapter IV Human Rights, CMW, www.treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-13&chapter=4&clang=en, accessed 17 February 2021.

Instrument	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Viet Nam
CEDAW ⁶⁹⁵	24 May 2006 (a) with reservations ^x	15 Oct 1992 (a) with no reservations	13 Sep 1984 with reservations ^{xi}	14 Aug 1981 with no reservations	5 Jul 1995 (a) with reservations ^{xii}	22 Jul 1997 (a) with reservations ^{xiii}	5 Aug 1981 with no reservation	5 Oct 1995 (a) with reservations ^{xiv}	9 Aug 1985 (a) with declarations ^{xv} and reservations ^{xvi}	17 Feb 1982 with reservations ^{xvii}
ICCPR ⁶⁹⁶	Not signed	26 May 1992 (a) no reservation	23 Feb 2006 (a) with declaration relating to self-determination	25 Sep 2009 with declarations ^{xviii} and reservations ^{xix}	Not signed	Not signed	23 Oct 1986 with declaration accepting inter-state complaints	Not signed	29 Oct 1996 (a) with interpretative declarations on “self-determination” (Art 1) and “war” (Art 20)	24 Sep 1982 (a) with declaration ^{xx}
ICESCR ⁶⁹⁷	Not signed	26 May 1992 (a) no reservation	23 Feb 2006 (a) with declaration relating to self-determination	13 Feb 2007 no reservations	Not signed	6 Oct 2017 with declaration ^{xxi}	7 Jun 1974 no reservations	Not signed	5 Sep 1999 (a) with declaration ^{xxii}	24 Sep 1982 (a) with declaration ^{xxiii}
ICERD ⁶⁹⁸	Not signed	28 Nov 1983 no reservation	25 Jun 1999 (a) with reservation ^{xxiv}	22 Feb 1974 (a) no reservation	Not signed	Not signed	15 Sep 1967 no reservation	27 Nov 2017 with reservations and declarations ^{xxv}	28 Jan 2003 (a) with interpretative declaration and reservation ^{xxvi}	9 Jun 1982 (a) with declaration ^{xxvii} and reservation ^{xxviii}
CAT	Signed 22 Sep 2015 but not ratified	15 Oct 1992 (a) no reservation	28 Oct 1998 with declaration ^{xxix}	26 Sep 2012 with reservations	Not signed	Not signed	18 Jun 1986 (a) no reservation	Not signed	2 Oct 2007 (a) with interpretative	5 Feb 2015 with

⁶⁹⁵ UN Treaty Collection, ‘Chapter IV Human Rights, CEDAW’, www.treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=en, accessed 17 February 2021.

⁶⁹⁶ UN Treaty Collection, ‘Chapter IV Human Rights, ICCPR’, <www.treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=en>, accessed 17 February 2021.

⁶⁹⁷ UN Treaty Collection, ‘Chapter IV Human Rights, ICESCR’, <www.treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=en>, accessed 17 February 2021.

⁶⁹⁸ UN Treaty Collection, ‘Chapter IV Human Rights, ICERD’, www.treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&clang=en, accessed 17 February 2021.

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Instrument	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Viet Nam
		reservations	and reservations ^{xxx}	regarding jurisdiction of CAT and referral of disputes to ICJ and declarations ^{xxxi}					declarations ^{xxxii} and reservations ^{xxxiii}	declarations ^{xxxiv}
ICRPD ⁶⁹⁹	11 Apr 2016 with reservation ^{xxxv}	20 Dec 2012 no reservation	30 Nov 2011 no reservation	25 Sep 2009 no reservation	19 Jul 2010 with declarations ^{xxxvi} and reservations ^{xxxvii}	7 Dec 2011 (a) no reservation	15 Apr 2008 no reservation	18 Jul 2013 with reservations ^{xxxviii}	29 Jul 2008 reservation made upon ratification withdrawn	5 Feb 2015 no reservation
Palermo Protocol	30 Mar 2020 (a) no reservations	2 Jul 2007 no reservations	28 Sep 2009 with declarations ^{xxxix} and reservations ^{xl}	26 Sep 2003 (a) with reservation ^{xli}	26 Feb 2009 (a) with reservation ^{xlii}	30 Mar 2004 (a) with reservation ^{xliii}	28 May 2002 no reservation	28 Sep 2015 (a) with declaration ^{xliv} and reservation ^{xlv}	17 Oct 2013 with reservation ^{xlvi}	8 Jun 2012 (a) with reservation ^{xlvii}
ILO Worst Forms of Child Labour Convention (No. 182)	9 Jun 2008	14 Mar 2006	28 Mar 2000	13 Jun 2005	10 Nov 2000	18 Dec 2013	28 Nov 2000	14 Jun 2001	16 Feb 2001	19 Dec 2000
ILO Minimum Age Convention (No. 138)	17 Jun 2011 Minimum age specified: 16 yrs	23 Aug 1999 Minimum age specified: 14 yrs	07 Jun 1999 Minimum age specified: 15 yrs	13 Jun 2005 Minimum age specified: 14 yrs	09 Sep 1997 Minimum age specified: 15 yrs	Enters into force on 8 Jun 2021. Scope of Convention is limited to industry or to economic activities in	04 Jun 1998 Minimum age specified: 15 yrs	07 Nov 2005 Minimum age specified: 15 yrs	11 May 2004 Minimum age specified: 15 yrs Convention only applicable to activities in Article 5(3)	24 Jun 2003 Minimum age specified: 15 yrs. Per Article 3, minimum age for admission to underground work is 18 yrs

⁶⁹⁹ UN Treaty Collection, 'Chapter IV Human Rights, ICRPD', <www.treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=en>, accessed 17 February 2021.

Instrument	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Viet Nam
						Article 5(3) ⁷⁰⁰ Minimum age specified: 14 yrs				
Slavery Convention 1926 amended by Protocol 1953 ⁷⁰¹	Not signed	Not signed	Not signed	Not signed	Not signed	Signed on 29 Apr 1957 but not ratified	12 Jul 1955 (a) no reservation	Not signed	Not signed	14 Aug 1956 a no reservation
Supplementary Convention on Abolition of Slavery ⁷⁰²	Not signed	12 Jun 1957 (a) no reservation	Not signed	9 Sep 1957 (a) no reservation	18 Nov 1957 (a) no reservation	Not signed	17 Nov 1964 (a) no reservation	28 Mar 1972 (succession) no reservation	Not signed	Had been signed on behalf of Viet Nam on 7 Sept 1956 but Viet Nam is not party to this
Refugee Convention 1951	Not signed	15 Oct 1992 (a) no reservations	Not signed	Not signed	Not signed	Not signed	22 Jul 1981 (a) no reservations	Not signed	Not signed	Not signed
Refugee Status Protocol 1967	Not signed	15 Oct 1992 (a) no reservations	Not signed	Not signed	Not signed	Not signed	22 Jul 1981 (a) no reservations	Not signed	Not signed	Not signed

⁷⁰⁰ i.e. mining and quarrying; manufacturing; construction; electricity, gas and water; sanitary services; transport, storage and communication; and plantations and other agricultural undertakings mainly producing for commercial purposes, but excluding family and small-scale holdings producing for local consumption and not regularly employing hired workers. For more details, see ILO, 'Ratifications for Myanmar', <www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103159>, accessed 17 February 2021.

⁷⁰¹ UN Treaty Collection, 'Chapter XVIII Penal Matters, Slavery Convention, signed at Geneva on 25 September 1926 and amended by the Protocol', <www.treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=XVIII-2&chapter=18&clang=en>, accessed 21 February 2021.

⁷⁰² UN Treaty Collection, 'Chapter XVIII Penal Matters, Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery', <www.treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtmsg_no=XVIII-4&chapter=18&Temp=mtmsg3&clang=en>, accessed 21 February 2021.

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Instrument	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Viet Nam
Statelessness Convention 1954	Not signed	Not signed	Not signed	Not signed	Not signed	Not signed	22 Sep 2011 with reservations ^{xlviii} upon signature	Not signed	Not signed	Not signed
Convention on Reduction of Statelessness 1961	Not signed	Not signed	Not signed	Not signed	Not signed	Not signed	Not signed	Not signed	Not signed	Not signed

Annex 4: Key Regional Instruments

ASEAN Declaration ⁷⁰³	Adopted by the heads of the ASEAN Member States on 2 November 2019.
AHRD ⁷⁰³	Adopted by the heads of the ASEAN Member States via the Phnom Penh Statement on the Adoption of the ASEAN Human Rights Declaration on 18 November 2012.
ASEAN Consensus on Migrant Workers ⁷⁰⁴	Adopted by the Governments of the ASEAN Member States on 14 November 2017.
ASEAN Declaration on Elimination of VAW and VAC ⁷⁰⁵	Adopted by heads of ASEAN Member States on 9 October 2013.
ASEAN Convention against Trafficking ⁷⁰⁶	Adopted by heads of ASEAN Member States on 21 November 2015.

⁷⁰³ ASEAN, 'ASEAN Human Rights Declaration', 18th November 2012, < www.asean.org/storage/images/ASEAN_RTK_2014/6_AHRD_Booklet.pdf >, accessed 17 February 2021.

⁷⁰⁴ ASEAN, 'ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers' 14th November 2017, < www.asean.org/wp-content/uploads/2017/11/ASEAN-Consensus-on-the-Protection-and-Promotion-of-the-Rights-of-Migrant-Workers1.pdf >, accessed 17 February 2021.

⁷⁰⁵ ASEAN, 'The Declaration on the Elimination of Violence against Women and Elimination of Violence against Children in ASEAN', 9th October 2012 < www.ohchr.org/Documents/Issues/Women/WG/ASEANdeclarationVaW_violenceagainstchildren.pdf >, accessed 17 February 2021.

⁷⁰⁶ ASEAN, 'ASEAN Convention against Trafficking in Persons, Especially Women and Children' 21st November 2015, < www.asean.org/wp-content/uploads/2015/12/ACTIP.pdf >, accessed 17 February 2021.

ⁱ “The Government of Brunei Darussalam expresses its reservations on the provisions of the said Convention which may be contrary to the Constitution of Brunei Darussalam and to the beliefs and principles of Islam, the State religion, and without prejudice to the generality of the said reservations, in particular expresses its reservations on Article 14, Article 20 paragraph 3, and Article 21 subparagraphs b, c, d and e of the Convention.”

ⁱⁱ “The Government of Malaysia accepts the provisions of the Convention on the Rights of the Child but expresses reservations with respect to articles 2, 7, 14, 28 paragraph 1 (a) and 37, of the Convention and declares that the said provisions shall be applicable only if they are in conformity with the Constitution, national laws and national policies of the Government of Malaysia.”

ⁱⁱⁱ “With respect to article 28 paragraph 1 (a) of the Convention, the Government of Malaysia wishes to declare that with the amendment to the Education Act 1996 in the year 2002, primary education in Malaysia is made compulsory. In addition, the Government of Malaysia provides monetary aids and other forms of assistance to those who are eligible.”

^{iv} “(1) The Republic of Singapore considers that a child's rights as defined in the Convention, in particular the rights defined in article 12 to 17, shall in accordance with articles 3 and 5 be exercised with respect for the authority of parents, schools and other persons who are entrusted with the care of the child and in the best interests of the child and in accordance with the customs, values and religions of Singapore's multi-racial and multi-religious society regarding the place of the child within and outside the family. (2) The Republic of Singapore considers that articles 19 and 37 of the Convention do not prohibit - (a) the application of any prevailing measures prescribed by law for maintaining law and order in the Republic of Singapore; (b) measures and restrictions which are prescribed by law and which are necessary in the interests of national security, public safety, public order, the protection of public health or the protection of the rights and freedoms of others; or (c) the judicious application of corporal punishment in the best interest of the child.

^v “(3) The Constitution and the laws of the Republic of Singapore provide adequate protection and fundamental rights and liberties in the best interests of the child. The accession to the Convention by the Republic of Singapore does not imply the acceptance of obligations going beyond the limits prescribed by the Constitution of the Republic of Singapore nor the acceptance of any obligation to introduce any right beyond those prescribed under the Constitution. (4) Singapore is geographically one of the smallest independent countries in the world and one of the most densely populated. The Republic of Singapore accordingly reserves the right to apply such legislation and conditions concerning the entry into, stay in and departure from the Republic of Singapore of those who do not or who no longer have the right under the laws of the Republic of Singapore, to enter and remain in the Republic of Singapore, and to the acquisition and possession of citizenship, as it may deem necessary from time to time and in accordance with the laws of the Republic of Singapore. (5) The employment legislation of the Republic of Singapore prohibits the employment of children below 12 years old and gives special protection to working children between the ages of 12 years and below the age of 16 years. The Republic of Singapore reserves the right to apply article 32 subject to such employment legislation. (6) With respect to article 28.1(a), the Republic of Singapore- (a) does not consider itself bound by the requirement to make primary education compulsory because such a measure is unnecessary in our social context where in practice virtually all children attend primary school; and (b) reserves the right to provide primary education free only to children who are citizens of Singapore.”

^{vi} “The application of articles 22 of the Convention on the Rights of the Child shall be subject to the national laws, regulations and prevailing practices in Thailand.”

^{vii} “The Lao People's Democratic Republic [...] does not consider itself bound by Article 5 (2) of the said Optional Protocol.”

^{viii} “1. The Government of Malaysia declares that the words ‘any representation’ in article 2 paragraph (c), shall be interpreted to mean ‘any visual representation’. 2. The Government of Malaysia understands that article 3 paragraph (1)(a)(ii) of the said Optional Protocol is applicable only to States Parties to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, done at the Hague on 29 May 1993.”

^{ix} “With reference to Article 3 (2) of the Optional Protocol, the Government of the Republic of the Union of Myanmar declares that citizens may freely present themselves for voluntary military service provided they have attained a minimum age of 18 years, whereas citizens above 16 and under 18 years of age may voluntarily join military

academies and military vocational training courses, if furnished with the proof of their age and the prior written consent of their parents or guardians." *Interpretative declaration*: "With reference to Article 4 of the Optional Protocol, the Government of the Republic of the Union of Myanmar considers that any responsibility deriving from recruitment of children under 18 years of age or their use in hostilities by non-state armed groups lies solely with such groups. In the prevention of underage military recruitment, the Government would collaborate with the ethnic armed groups which have signed the NCA (Nationwide Ceasefire Agreement). The latter shall also have a duty to apply at all times the principles governing international humanitarian law."

^x "The Government of Brunei Darussalam expresses its reservations regarding those provisions of the said Convention that may be contrary to the Constitution of Brunei Darussalam and to the beliefs and principles of Islam, the official religion of Brunei Darussalam and, without prejudice to the generality of the said reservations, expresses its reservations regarding paragraph 2 of Article 9 and paragraph 1 of Article 29 of the Convention."

^{xi} "The Government of the Republic of Indonesia does not consider itself bound by the provisions of article 29, paragraph 1 of this Convention and takes the position that any dispute relating to the interpretation or application of the Convention may only be submitted to arbitration or to the International Court of Justice with the agreement of all the parties to the dispute."

^{xii} "The Government of Malaysia declares that Malaysia's accession is subject to the understanding that the provisions of the Convention do not conflict with the provisions of the Islamic Sharia' law and the Federal Constitution of Malaysia. With regard thereto, further, the Government of Malaysia does not consider itself bound by the provisions of articles 9 (2), 16 (1) (a), 16 (1) (c), 16 (1) (f) and 16 (1) (g) of the aforesaid Convention. In relation to article 11 of the Convention, Malaysia interprets the provisions of this article as a reference to the prohibition of discrimination on the basis of equality between men and women only."

^{xiii} "Article 29: [The Government of Myanmar] does not consider itself bound by the provision set forth in the said article."

^{xiv} "(1) In the context of Singapore's multiracial and multi-religious society and the need to respect the freedom of minorities to practice their religious and personal laws, the Republic of Singapore reserves the right not to apply the provisions of articles 2, paragraphs (a) to (f), and article 16, paragraphs 1(a), 1(c), 1(h), and article 16, paragraph 2, where compliance with these provisions would be contrary to their religious or personal laws. (2) [...] (3) [...] Singapore considers that legislation in respect of article 11 is unnecessary for the minority of women who do not fall within the ambit of Singapore's employment legislation. (4) The Republic of Singapore declares, in pursuance of article 29, paragraph 2 of the Convention that it will not be bound by the provisions of article 29, paragraph 1."

^{xv} "The Royal Thai Government wishes to express its understanding that the purposes of the Convention are to eliminate discrimination against women and to accord to every person, men and women alike, equality before the law, and are in accordance with the principles prescribed by the Constitution of the Kingdom of Thailand."

^{xvi} "The Royal Thai Government does not consider itself bound by the provisions of article 29, paragraph 1, of the Convention."

^{xvii} "In implementing this Convention, the Socialist Republic of Viet Nam will not be bound by the provisions of paragraph 1 article 29."

^{xviii} "The Government of the Lao People's Democratic Republic declares that Article 1 of the Covenant concerning the right to self-determination shall be interpreted as being compatible with the Declaration on Principles of International Law concerning Friendly Relations and Cooperation Among States in accordance with the Charter of the United Nations, adopted by the General Assembly on 24th October 1970, and the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25th June 1993. The Government of the Lao People's Democratic Republic declares that Article 18 of the Covenant shall not be construed as authorizing or encouraging any activities, including economic means, by anyone which directly or indirectly, coerce or compel an individual to believe or not to believe in a religion or to convert his or her religion or belief. The Government of the Lao People's Democratic Republic considers that all acts creating division and discrimination among ethnic groups and among religions are incompatible with Article 18 of the Covenant."

^{xix} "The Government of the Lao People's Democratic Republic accepts Article 22 of the Covenant on the basis that Article 22 shall be interpreted in accordance with the right to self-determination in Article 1, and shall be so applied as to be in conformity with the Constitution and the relevant laws of the Lao People's Democratic Republic."

^{xx} "That the provisions of article 48, paragraph 1, of the International Covenant on Civil and Political Rights, and article 26, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights, under which a number of States are deprived of the opportunity to become parties to the Covenants, are of a discriminatory nature. The Government of the Socialist Republic of Viet Nam considers that the Covenants, in accordance with the principle of sovereign equality of States, should be open for participation by all States without any discrimination or limitation."

^{xxi} “With reference to article 1 of the International Covenant on Economic, Social and Cultural Rights, the Government of the Republic of the Union of Myanmar declares that, in consistence with the Vienna Declaration and Programme of Action of 1993, the term “the right of self-determination” appearing in this article does not apply to any section of people within a sovereign independent state and cannot be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of a sovereign and independent state. In addition, the term shall not be applied to undermine Section 10 of the Constitution of the Republic of the Union of Myanmar, 2008.”

^{xxii} “The Government of the Kingdom of Thailand declares that the term “self-determination” as appears in Article 1 Paragraph 1 of the Covenant shall be interpreted as being compatible with that expressed in the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 June 1993.”

^{xxiii} “That the provisions of article 48, paragraph 1, of the International Covenant on Civil and Political Rights, and article 26, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights, under which a number of States are deprived of the opportunity to become parties to the Covenants, are of a discriminatory nature. The Government of the Socialist Republic of Viet Nam considers that the Covenants, in accordance with the principle of sovereign equality of States, should be open for participation by all States without any discrimination or limitation.”

^{xxiv} “The Government of the Republic of Indonesia does not consider itself bound by the provision of Article 22 and takes the position that disputes relating to the interpretation and application of the [Convention] which cannot be settled through the channel provided for in the said article, may be referred to the International Court of Justice only with the consent of all the parties to the dispute.”

^{xxv} “The Government of the Republic of Singapore makes the following reservations and declarations in relation to articles 2, 6 and 22 of the International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter referred to as the “Convention”) adopted by the General Assembly of the United Nations in New York on the 21st day of December 1965 and signed on behalf of the Republic of Singapore today: (1) The Republic of Singapore reserves the right to apply its policies concerning the admission and regulation of foreign work pass holders, with a view to promoting integration and maintaining cohesion within its racially diverse society. (2) The Republic of Singapore understands that the obligation imposed by Article 2, paragraph 1 (d) of the Convention may be implemented by means other than legislation if such means are appropriate, and if legislation is not required by circumstances. (3) The Republic of Singapore interprets the requirement in Article 6 of the Convention concerning “reparation or satisfaction” as being fulfilled if one or other of these forms of redress is made available and interprets “satisfaction” as including any form of redress effective to bring the discriminatory conduct to an end. (4) With reference to Article 22 of the Convention, the Republic of Singapore states that before any dispute to which the Republic of Singapore is a party may be submitted to the jurisdiction of the International Court of Justice under this Article, the specific consent of the Republic of Singapore is required in each case.”

^{xxvi} “General Interpretative Declaration: The Kingdom of Thailand does not interpret and apply the provisions of this Convention as imposing upon the Kingdom of Thailand any obligation beyond the confines of the Constitution and the laws of the Kingdom of Thailand. In addition, such interpretation and application shall be limited to or consistent with the obligations under other international human rights instruments to which the Kingdom of Thailand is party. Reservations: 1. The Kingdom of Thailand does not consider itself bound by the provisions of Article 22 of the Convention.”

^{xxvii} “(1) The Government of the Socialist Republic of Viet Nam declares that the provisions of article 17 (1) and of article 18 (1) of the Convention whereby a number of States are deprived of the opportunity of becoming Parties to the said Convention are of a discriminatory nature and it considers that, in accordance with the principle of the sovereign equality of States, the Convention should be open to participation by all States without discrimination or restriction of any kind.”

^{xxviii} “(2) The Government of the Socialist Republic of Viet Nam does not consider itself bound by the provisions of article 22 of the Convention and holds that, for any dispute with regard to the interpretation or application of the Convention to be brought before the International Court of Justice, the consent of all parties to the dispute is necessary.”

^{xxix} “The Government of the Republic of Indonesia declares that the provisions of paragraphs 1, 2, and 3 of article 20 of the Convention will have to be implemented in strict compliance with the principles of the sovereignty and territorial integrity of States.”

^{xxx} “The Government of the Republic of Indonesia does not consider itself bound by the provision of article 30, paragraph 1, and takes the position that disputes relating to the interpretation and application of the Convention which cannot be settled through the channel provided for in paragraph 1 of the said article, may be referred to the International Court of Justice only with the consent of all parties to the disputes.”

^{xxxi} “It is the understanding of the Government of the Lao People’s Democratic Republic that the term ‘torture’ in Article 1, paragraph 1, of the Convention means torture as defined in both national law and international law. The Government of the Lao People’s Democratic Republic declares that, pursuant to Article 8, paragraph 2 of the Convention it makes extradition conditional on the existence of a treaty. Therefore, it does not consider the Convention as the legal basis for extradition in respect of the offences set forth therein. It further declares that bilateral agreements will be the basis for extradition as between the Lao People’s Democratic Republic and other States Parties in respect of any offences.”

^{xxxii} “1. With respect to the term "torture" under Article 1 of the Convention, although there is neither a specific definition nor particular offence under the current Thai Penal Code corresponding to the term, there are comparable provisions under the aforesaid Thai Penal Code applicable to acts under Article 1 of the Convention. The term "torture" under Article 1 of the Convention shall accordingly be interpreted in conformity with the current Thai Penal Code. The Kingdom of Thailand shall revise its domestic law to be more consistent with Article 1 of the Convention at the earliest opportunity. 2. For the same reason as stipulated in the preceding paragraph, Article 4 of the Convention which stipulates: ‘Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture,’ shall be interpreted in conformity with the current Thai Penal Code. The Kingdom of Thailand shall revise its domestic law to be more consistent with Article 4 of the Convention at the earliest opportunity. 3. Article 5 of the Convention which provides: ‘Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in Article 4.....’ is interpreted by the Kingdom of Thailand to mean that the jurisdiction referred to in Article 5 shall be established in accordance with the current Thai Penal Code. The Kingdom of Thailand shall revise its domestic law to be more consistent with Article 5 of the Convention at the earliest opportunity.”

^{xxxiii} “The Kingdom of Thailand does not consider itself bound by Article 30, paragraph 1, of the Convention.”

^{xxxiv} “The Socialist Republic of Viet Nam declares, in accordance with article 28 paragraph 1, that it does not recognize the competence of the Committee provided for in article 20, and in accordance with article 30, paragraph 2, that it does not consider itself bound by article 30, paragraph 1. The Socialist Republic of Viet Nam does not consider the Convention as the direct legal basis for extradition in respect of the offences referred to in Article 4 of the Convention. Extradition shall be decided on the basis of extradition treaties to which Viet Nam is a party or the principle of reciprocity, and shall be in accordance with Vietnamese laws and regulations.”

^{xxxv} “The Government of Brunei Darussalam expresses its reservation regarding those provisions of the said Convention that may be contrary to the Constitution of Brunei Darussalam and to the beliefs and principles of Islam, the official religion of Brunei Darussalam.”

^{xxxvi} “Malaysia acknowledges that the principles of non-discrimination and equality of opportunity as provided in articles 3 (b), 3 (e) and 5 (2) of the said Convention are vital in ensuring full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity, which shall be applied and interpreted on the basis of disability and on equal basis with others. Malaysia declares that its application and interpretation of the Federal Constitution of Malaysia pertaining to the principles of non-discrimination and equality of opportunity shall not be treated as contravening articles 3 (b), 3 (e) and 5 (2) of the said Convention. Malaysia recognizes the participation of persons with disabilities in cultural life, recreation and leisure as provided in article 30 of the said Convention and interprets that the recognition is a matter for national legislation.”

^{xxxvii} “The Government of Malaysia ratifies the said Convention subject to the reservation that it does not consider itself bound by articles 15 and 18 of the said Convention.”

^{xxxviii} “1. The Republic of Singapore’s current legislative framework provides, as an appropriate and effective safeguard, oversight and supervision by competent, independent and impartial authorities or judicial bodies of measures relating to the exercise of legal capacity, upon applications made before them or which they initiate themselves in appropriate cases. The Republic of Singapore reserves the right to continue to apply its current legislative framework in lieu of the regular review referred to in Article 12, paragraph 4 of the Convention. 2. The Republic of Singapore recognises that persons with disabilities have the right to enjoyment of the highest attainable standards of health without discrimination on the basis of disability, with a reservation on the provision by private insurers of health insurance, and life insurance, other than national health insurance regulated by the Ministry of Health, Singapore, in Article 25, paragraph (e) of the Convention. 3. The Republic of Singapore is fully

committed to ensuring the effective and full participation of persons with disabilities in political and public life, including through the protection of the exercise of their right to vote by secret ballot in elections and public referendums without intimidation. With respect to Article 29, subparagraph (a) (iii) of the Convention, the Republic of Singapore reserves the right to continue to apply its current electoral legislation which requires that assistance in voting procedures shall only be effected through a presiding officer who is appointed by the Returning Officer and has signed an oath to safeguard voting secrecy.”

^{xxxix} “..., the Government of the Republic of Indonesia declares that the provisions of Article 5 paragraph (2) Sub-paragraph c of the Protocol will have to be implemented in strict compliance with the principle of the sovereignty and territorial integrity of a state.”

^{xi} “...the Government of the Republic of Indonesia conveys her reservation not to be bound by the provision of Article 15 (2) and takes the position that dispute[s] relating to the interpretation and application on the Protocol which have not been settled through the channel provided for in Paragraph (1) of the said Article, may be referred to the International Court of Justice only with the concern of all Parties to the dispute.”

^{xli} “In accordance with paragraph 3, Article 15 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, the Lao People’s Democratic Republic does not consider itself bound by paragraph 2, Article 15 of the present Protocol. The Lao People’s Democratic Republic declares that to refer a dispute relating to interpretation and application of the present Protocol to arbitration or [the] International Court of Justice, the agreement of all parties concerned in the dispute is necessary.”

^{xlii} “1. (a) Pursuant to Article 15, paragraph 3 of the Protocol, the Government of Malaysia declares that it does not consider itself bound by Article 15, paragraph 2 of the Protocol ; and (b) the Government of Malaysia reserves the right specifically to agree in a particular case to follow the arbitration procedure set forth in Article 15, paragraph 2 of the Protocol or any other procedure for arbitration.”

^{xliii} “The Government of the Union of Myanmar wishes to express reservation on Article 15 and does not consider itself bound by obligations to refer disputes relating to the interpretation or application of this Protocol to the International Court of Justice.”

^{xliv} “The Government of the Republic of Singapore declares that nothing in the Protocol shall impose obligations on Singapore to admit or retain within its territory, persons in respect of whom Singapore would not otherwise have an obligation to admit or retain within its territory.”

^{xlv} “Pursuant to Article 15, paragraph 3 of the above-mentioned Protocol, the Government of the Republic of Singapore does not consider itself bound by Article 15, paragraph 2 of the said Protocol.”

^{xlvi} “[I]n accordance with paragraph 3 of Article 15 of the Protocol, the Kingdom of Thailand does not consider itself bound by paragraph 2 of the same Article.”

^{xlvii} ‘The Socialist Republic of Viet Nam does not consider itself bound by paragraph 2 of Article 15 of this Protocol.’

^{xlviii} (a) As regards Article 17, paragraph 1, granting stateless persons the right to engage in wage-earning employment, [the Government of the Philippines] finds that this provision conflicts with the Philippine Immigration Act of 1940, as amended, which classifies as excludable aliens under Section 29 those coming to the Philippines to perform unskilled labour, and permits the admission of pre-arranged employees under Section 9 (g) only when there are no persons in the Philippines willing and competent to perform the labour or service for which the admission of aliens is desired. (b) As regards Article 31, paragraph 1, to the effect that ‘the Contracting States shall not expel a stateless person lawfully in their territory, save on grounds of national security or public order’, this provision would unduly restrict the power of the Philippine Government to deport undesirable aliens under Section 37 of the same Immigration Act which states the various grounds upon which aliens may be deported. Upon signing the Convention [the Philippine Government], therefore hereby [registers] its non-conformity to the provisions of Article 17, paragraph 1, and Article 31, paragraph 1, thereof, for the reasons stated in (a) and (b) above.

^{xlix} ASEAN, ASEAN Declaration on the Rights of Children in the Context of Migration, 2 November 2019, <www.asean.org/storage/2019/11/4-ASEAN-Declaration-on-the-Rights-of-Children-in-the-Context-of-Migration.pdf>, accessed 17 February 2021.

