



Save the Children

PROTECTING CHILDREN ON THE MOVE IN ASIA

*Child rights and the implementation of the
Global Compact for Migration*



A Save the Children policy briefing – February 2021

Acknowledgments

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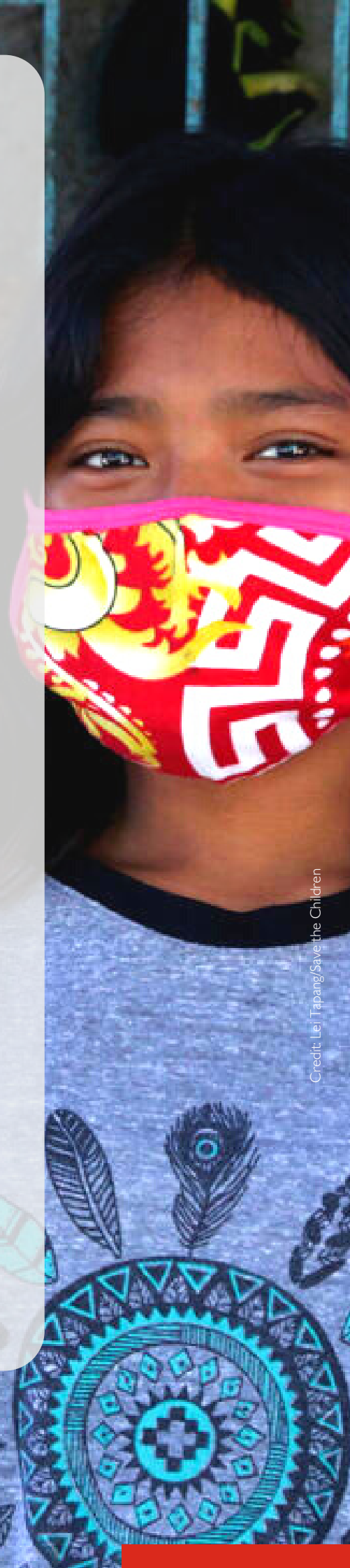
INTRODUCTION

In December 2018, United Nations Member States agreed to the landmark Global Compact for Safe, Orderly and Regular Migration (GCM), the first ever UN-negotiated document that develops a common approach to all aspects of international migration. Rooted in human rights standards, the document aims to foster international cooperation and advance domestic policies to improve the lives and protection of the some 272 million migrants (including 33 million children) globally[1].

During the development of the GCM and the Global Compact on Refugees (GCR), Save the Children and partner organisations formed the Initiative for Child Rights in the Global Compacts to advocate for strong provisions to protect children's rights in both documents. The final text of the GCM that was adopted in 2018 did indeed emphasise the need to take into account the particular protection needs of children on the move, and to put the best interests of the child at the heart of any response to migration. Importantly, the need for responses to be child-sensitive was included as one of the core principles of the Compact.

Now, little more than two years after the Compacts' adoption, the first-ever Regional Review of the GCM's implementation in Asia is taking place in Bangkok, Thailand from 10 to 12 March 2021. Asia is particularly relevant to the GCM, as few countries in the region have been unaffected by migration. The international migrant population in Asia grew from 52 million in 1990 to 65 million in 2019, representing about one-quarter of the global total[2]. The migrant population across Asia is extremely diverse and varies significantly between subregions and countries. Southeast Asia alone is home to source countries (Laos, Myanmar, the Philippines), destination countries (Malaysia and Singapore) or those that are a mix of both (Thailand).

In 2019, Asian countries hosted some 11 million child migrants (including refugees), or about 11 percent of the region's total population of migrants and refugees. Despite significant economic growth across much of Asia in recent years and some governments taking promising steps towards better protection of migrants, children on the move continue to face significant challenges.



Credit: Lei Tapang/Save the Children

Access to services, in particular healthcare and education, remains a hurdle for many migrant children. The reasons for these are many and inter-connected, and include a general lack of well-resourced public healthcare systems in some countries, cost and language barriers, and stigma and discrimination towards migrants. Many countries in Asia have failed to adopt laws to bring migrant populations into national social protection systems, while in countries where such legislation does exist it is often badly enforced. For migrant children, who often live in cramped and overcrowded housing, a lack of access to healthcare can be particularly damaging, and lead to permanent conditions such as stunting.

Across Asia, migrant children continue to face a host of child protection issues, including but not limited to human trafficking, violence, including gender-based-violence, and exploitation. Many migrant children are forced into the labour force or early marriages as a negative coping mechanism to support family finances. This briefing in particular highlights the continued practice of detention of child migrants in several regional countries, and the harmful effect even short periods of detention can have on children's development and well-being.

The COVID-19 pandemic has further exacerbated many of these trends. Migrant populations in Asia are among the most vulnerable to the virus, as they often exist on the margins of society without access to social safety nets. Due to COVID-19, accessing education and healthcare has become even more of a challenge for migrant children. At the same time, many families depending on remittances from migrants have felt the effects of the economic crisis during the pandemic, heightening protection risks for millions of children.

There are, however, also many promising examples of governments in Asia taking steps towards better protecting migrant children. Thailand has, for example, introduced legislation to include children of migrants in the national education system, and committed to ending the practice of child immigration detention. At the subregional level, the Association of Southeast Asian Nations (ASEAN) in 2019 adopted the Declaration on the Rights of Children in the Context of Migration, committing Member States to improving the lives of some of the most vulnerable people on the move.

The following briefing from Save the Children aims to provide an overview of some of the most pressing issues still facing migrant children and their families in Asia, to point to examples of promising practice from states, and to provide practical recommendations for ensuring that the GCM can be implemented in a child-sensitive way.



SUMMARY OF KEY RECOMMENDATIONS

- Governments across Asia should prioritise the implementation of the Global Compact for Migration and work with stakeholders, including children and youth, to ensure that the human rights and well-being of migrant children are at the heart of these efforts.
- Governments should work towards including migrant children and their families in social safety nets and remove barriers to accessing vital services, in particular child protection, healthcare, mental health and psychosocial support (MHPSS) and education. Ultimately, the goal should be to put in place well-resourced universal systems that include migrants and refugees and work for achieving sustainable solutions in children's best interests.
- Governments must end the harmful practice of detaining migrant children and immediately put in place alternatives to detention for children and appropriate reception and care solutions for children and their families. Even short periods of detention can have extremely harmful impacts on children's well-being and development.
- Governments should ensure that COVID-19 responses fully take into account the needs of migrant children and families and include them in national plans, including vaccination. Migrants should be able to access services irrespective of their migration status and without fear of being reported to migration authorities.

ACCESS TO SERVICES

While access to basic services including healthcare and education is critical for children's development and wellbeing, they are often out of reach for children on the move. Child migrants and their families in Asia can face a number of barriers in accessing basic services. A primary obstacle is that resource constraints in many countries mean a lack of quality services that may be either unavailable or overburdened, even for citizens. In several countries, migrants and migrant children are also legally barred from accessing public health services, and even when legislation does exist that permits access this is often badly enforced in practice. The Committee on the Rights of the Child has also stressed how the fear of arrest or deportation can prevent migrants from seeking to access services in countries where they work in the informal sector[3].



Where services exist, they are often not adapted to the specific needs of children and families on the move. Because most service provision is static, there are significant challenges in providing services for children who are part of mobile working communities, both immigrant and returning seasonal workers. Some children lose their right to access education or healthcare services, because they are away for long periods[4]. Often times, linguistic or cultural barriers mean migrant children are unable to access basic services[5]. Prohibitive costs can be another significant barrier, including a lack of access to health insurance and other social protection schemes which increase out of pocket expenses. Holistic access, thus, entails reducing barriers and creating pathways which did not previously exist.

In contexts where resources are scarce, providing education access to migrants may not be viewed as a possibility nor priority. Teachers and schools would need to be trained in how to meet the special needs of migrant communities who have not yet assimilated into the local language and norms, as well as bridged the academic levels that they were previously coming from. Access to education across ages and stages of emotional and social development is especially important for vulnerable students who do not have routine access to such services. Secondary and higher education, in addition to vocational and technical training, would provide essential foundations for the social and economic inclusion of migrant and refugee children and young adults[6].

The GCM stresses the need for all states to “provide access to basic services to migrants” and to ensure that such services are adopted to the particular needs of children. The right is also enshrined in a number of international legal treaties, including the CRC, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families.

General Comment 20 on the ICESCR further stresses that “all children within a State, including those with an undocumented status, have a right to receive education and access to adequate food and affordable health care”[7]. In practice, however, a lack of access to documentation can prove a barrier for migrant children in accessing services, highlighting how it is crucial that such barriers are removed and that all migrants have proof of legal identity and adequate documentation to access services when proof of identity is required (Objective 4).

Children who do not have documentation often have difficulty in accessing basic services. All countries in Asia and the Pacific are party to the CRC, which addresses the right to birth registration and to acquire a nationality.

However, few have consented to conventions that address statelessness, and with it the practice of issuing birth registrations. Access to a birth registration, regardless of their parents' migration status, is critical to ensuring that all children enjoy rights to a nationality and with it the range of other basic rights (education, healthcare, protection etc). Some countries have taken notable steps in this direction, such as Kazakhstan that amended its national procedures in 2019 to instate universal birth registration to ensure that children of undocumented migrants are registered to have access to national health services[8].

Recent research by Save the Children has highlighted how states can collaborate with civil society organisations who work with migrants and displaced communities to better use emerging technologies to ensure service delivery while managing programming and measuring impact of service initiatives. Embedding child safeguarding best practices which protect the privacy of migrants while tracking case management more efficiently would better ensure migrant's access to critical services[9].

Despite the continued challenges of migrant children and their families to access services, there are also a number of positive examples in the region to highlight. Thailand has comprehensive options to ensure migrant workers have health coverage while those who are not eligible have affordable options for families and children through the Ministry of Public Health Migrant Health Insurance Scheme. Thailand further mandates 15 years of free education for all children, whether nationals, stateless or other undocumented migrants as part of the Education for All Policy (in 1995) and the Cabinet Resolution on Education for Unregistered Persons (in 2005). Japan has furthermore introduced policies based on the CRC and ICESCR to guarantee all children, regardless of nationality, free access to public education[10].

At a regional level, ASEAN in 20017 adopted the Declaration on Strengthening Education for Out-of-School Children and Youth, mandating Member States to "establish programmes and practices to ensure inclusive and equitable quality education and promote lifelong learning opportunities for all, through [...] free, equitable and quality primary and secondary education", including for migrant children.



Recommendations

- Governments must ensure that all children, regardless of their migration status, have access to protection systems. These must include services related to mental health and psychosocial support (MHPSS), child-sensitive case management procedures, including at border-crossing points; protection from all forms of violence, including gender-based violence; as well as protection from early marriage.
- Governments should adopt and implement measures to ensure that migrant children have full and equal access to national education systems. States should ensure that national education system take the particular needs of migrant children into account, including by bridging language barriers and providing specialist training to teachers.
- Governments should adopt and implement measures to ensure that migrant children have full and equal access to national healthcare systems. States should ensure that national health systems take the particular needs of migrant children into account, including providing training to healthcare staff and by providing quality and affordable care options.
- Governments should ensure administrative arrangements (known as “firewalls”) are in place between immigration enforcement and public services, thereby allowing refugee and migrant children and their families to report crimes and have access to justice, housing, health care, education, police, social and labour services without fear of detection, detention or deportation.
- Governments should work to end all forms of stigma and discrimination against migrant children and their families. This should include public information campaigns about the benefits of migration and close monitoring of hate speech, online and offline, towards migrants.





DETENTION OF MIGRANT CHILDREN

According to international human rights standards, migrating through irregular channels is not a criminal offence; therefore, migrants should not be treated as criminals. Similarly, the Global Compact for Migration states that states should only use immigration detention as a “last resort” and work towards alternatives (Objective 13). Regarding children, states should protect and respect the “best interests of the child” at all times regardless of immigration status, work towards ending child detention in international migration, and in the short-term provide alternatives to detention, including community-based care.

The effects of detention on child migrants are particularly damaging, regardless of the condition of detention. Studies have shown that even short periods in detention can have seriously harmful effects on children’s health and development. Children held in detention have shown signs of experiencing post-traumatic stress disorder (PTSD) and depression[11]. The UN Special rapporteur on torture has even stated that detention can amount to a form of cruel, inhuman or degrading treatment of migrant children[12].

The impact of institutionalisation also has an insidious effect on children and families, and interferes with the ability of parents to care for their children. Examples include, the lack of access to family cooking facilities, the limited access to personal possessions, the inability of parents to work and provide for the needs of their children, the lack of private family recreational spaces and the lack of privacy involved in living in cramped accommodation. In addition, detention can seriously impact children’s ability to access basic services and rights, including to healthcare, education and play and recreation.

Despite this, some 100 countries in the world continue to detain children based on their immigration statuses[13]. Some states justify the detention of migrant children by pointing to Article 37 (b) of the Convention of the Rights of the Child which refers to the detention of children “as a last resort and for the shortest appropriate period of time”. Human rights experts, including the Committee on the Rights of the Child, have stressed however that while this provision may apply to children in conflict with the law, it is not applicable in situations of immigration detention[13].

Despite some notable positive developments in recent years (see below), the detention of migrant children continues in many Asian countries. In 2017, research by Save the Children and the Asia Pacific Refugee Rights Network (APRRN) highlighted how harmful detention practices were affecting children in Indonesia, Malaysia and Thailand[14]. The three countries are both destinations and transit routes for migrants in the region.

While conditions varied between the three countries, children were broadly held in the detention centres that failed to meet international standards. Many were forced to sleep in cramped or substandard accommodation, often separated from their families or mixed with other adults. There was little to no access to healthcare or education, or to play and recreation areas, while children reported either witnessing or being the victim of violence or sexual abuse.

There are several reasons behind the continued detention of migrant children across Asia. Many countries still rely on legal frameworks that treat irregular migrants as “illegal immigrants” and fail to provide for the particular needs of children. UNHCR has furthermore highlighted the lack of adequate screening procedures and trained immigration staff, as well as a lack of political will to put better policies and legal frameworks in place.

There is, however, growing consensus in the Asia region on the need to move away from the practice of detaining children on the move, and notable positives to highlight. In 2019, ASEAN adopted the Declaration on the Rights of Children in the Context of Migration which commits Member States to “develop effective procedures and alternatives to child immigration detention to reduce its impact”[15]. The Declaration urges states in the region to ensure that children are kept together with their families in a non-custodial and safe environment.

In Thailand, authorities in 2019 adopted a Memorandum of Understanding aimed at releasing all children in detention and ending all such detention in the future. While detention of migrant children does continue in Thailand, the MOU provides an important framework and civil society organisations are cooperating with authorities on its implementation[16]. Save the Children research has furthermore highlighted small-scale initiatives in Malaysia and Indonesia where local NGOs are supporting asylum seekers and refugees to live in community settings, rather than detention facilities.



Recommendations

- States in the region should, in line with commitments in the GCM, work to end detention of migrant children entirely.
- Bring national frameworks in line with international standards to ensure that irregular migrants are not criminalised or treated as “illegal immigrants,” while requiring authorities to identify alternatives to detention for migrant children.
- Work with civil society organisation to train and raise awareness among state immigration officials of the harmful effects of detention on children and the need to provide alternatives.
- Invest in and expand child protection and appropriate care systems to ensure that they are inclusive of children affected by migration.

IMPACTS OF COVID-19 ON MIGRANT CHILDREN

While children have largely been spared the direct health impacts of the COVID-19 pandemic, they remain extremely vulnerable to its indirect impacts, including the financial and social consequence. Migrants and their children, already an exposed group before the pandemic, are among those most in need of protection and access to social safety nets. A number of factors contribute to the particular vulnerability of migrants to COVID-19, including limited access to healthcare already before the pandemic, a lack of personal protective equipment, cramped and overcrowded living conditions, and prevailing discrimination.

There are several examples of concentrated outbreaks among migrant workers across the region. In Singapore, the COVID-19 prevalence in migrant dormitories stood at 16.5% (compared to 0.04% of the population at large), while in both Malaysia and Thailand high rates of infection have been recorded in migration detention centers[17].



Reports of high infection rates among migrant workers have contributed to stigma and discrimination, further alienating migrant communities and adding to a sense of insecurity. In Thailand, for example, there was a notable rise in online hate speech against migrant workers from Myanmar following an outbreak of cases in November 2020[18].

The pandemic has taken a particular toll on migrant children. The lack of access to adequate healthcare combined with cramped living conditions can be harmful to children's development, limiting nutrition and potentially contributing to stunting. The IOM has reported that a shortage of basic supplies and resources for child protection services has hardened living conditions for children in migration shelters[19].

Children across Asia, including migrant children, have faced severe challenges in accessing education during the pandemic during school closures. Poorer communities, including migrant children, have often struggled to access distance learning tools, in particular those dependent on digital technologies, severely disrupting their education. In addition, migrant parents often have fewer resources to help children with home-schooling, while many migrant children face language barriers in accessing education[20]. For many children schools are also a source of social support, counselling and a daily meal that has no longer been available during the pandemic.

The economic crisis from the pandemic has affected migrants and their families badly. The ILO has estimated that in the third quarter of 2020, the equivalent of 185 million full-time jobs were lost in the Asia-Pacific regions. Migrants on temporary labour schemes are usually not covered by social protection systems in countries where they work, leaving them exposed to the economic consequences of the pandemic, as well as their families who depend on remittances back home. Border closures furthermore caused millions of migrants to lose their jobs in the ASEAN region. The World Bank has estimated that remittances in East Asia and the Pacific regions are estimated to decline by 10.5% from 2020 to 2019 (from US\$147 billion to US\$131 billion). In a survey by Save the Children of more than 25,000 people, including 8,000 children, in 37 countries, more than three-quarters of households reported an income loss, with poorer households particularly badly affected[21].



For migrant children left behind, the collapse of remittances has meant a major loss of family income which can lead to negative coping mechanisms and heightened protection risks. This can include an increase in trafficking, child labour or child marriage. UNFPA estimates that an additional 13 million child marriage could take place over the coming decades due to the impact of the pandemic[22]. Save the Children and Plan International have further documented an alarming increase in gender-based violence against girls in Asia during the pandemic, in part driven by heightened domestic tensions from loss of incomes[23].

Recommendations

- Develop long-term responses to COVID-19 that meet the needs, uphold the rights, and support the self-reliance of migrant and displaced children. Ensure they are child, gender, and disability sensitive and do this with children and affected communities.
- Ensure all migrant children and youth get access to basic and affordable services without discrimination.
- Countries must prioritise universal healthcare coverage that includes migrants, and caters to the particular needs of migrant children, including access to national COVID-19 responses and vaccination schemes, as a public health approach to curtailing the spread of the outbreak
- Governments in the region must take steps to counter stigmatisation of migrant workers and their families in the context of the pandemic. This should include public information campaign aimed at dispelling myths about the role of migrants in spreading the pandemic, and emphasising the positive impact of migration on the national economy.
- Recognise the qualifications and skills of migrant children and youth so that they can access appropriate education and learning opportunities, prevent child labour and access decent and age-appropriate work opportunities. These policies contribute to the prosperity of both migrant and host communities.



CONCLUSION

Despite promising practices in some countries, children affected by migration continue to face a range of challenges across the Asia region. The more than 11 million children on the move still struggle to live lives of safety and dignity, with many of their protection needs remain unaddressed. Migrant children fall victim to trafficking or other forms of abuse, while several countries across the region continue to criminalise and detain migrant children in violation of international law.

Access to services remains a serious challenge, as migrant are often not included in social safety nets or national education or healthcare systems. For children left behind by migrating parents, the financial impact of COVID-19 on the availability of migrant labour and the drop in remittances could have crippling effects on family incomes, heightening protection risks.

The Global Compact for Safe, Orderly and Regular Migration (GCM), endorsed by the vast majority of states in Asia, offers a unique opportunity to address many of these issues. Governments should use the upcoming Asia-Pacific Regional Review of Implementation of the GCM to take stock of human rights issues affecting migrants in the region, and redouble efforts to implement the GCM effectively in the coming years. This is also an opportunity for governments to address the particular needs of children affected by migration, and bear in mind that one of the GCM's guiding principles is child-sensitivity.



FOOTNOTES:

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