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# Children affected by migration in Southeast Asia The Role of Business



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# The Role of Business



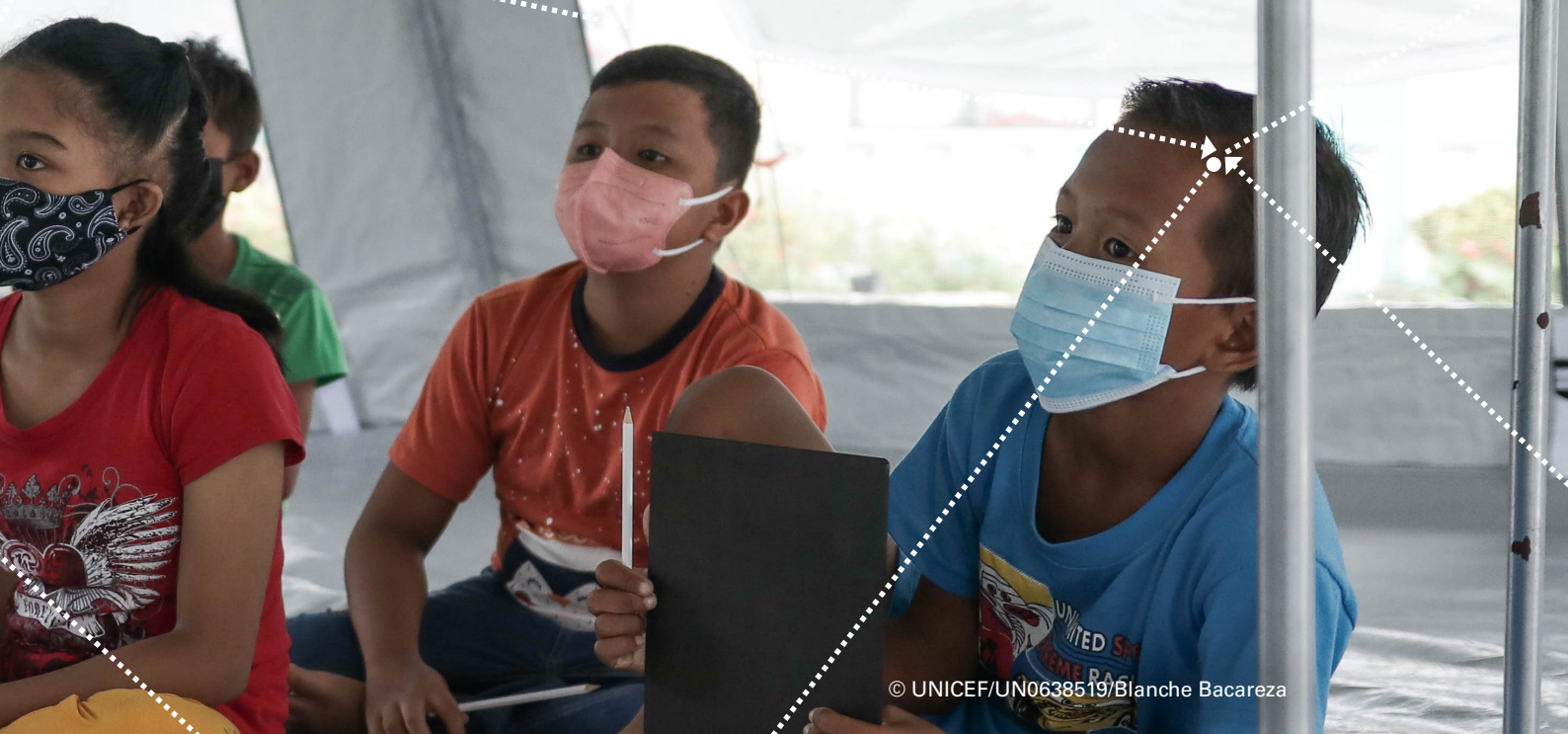
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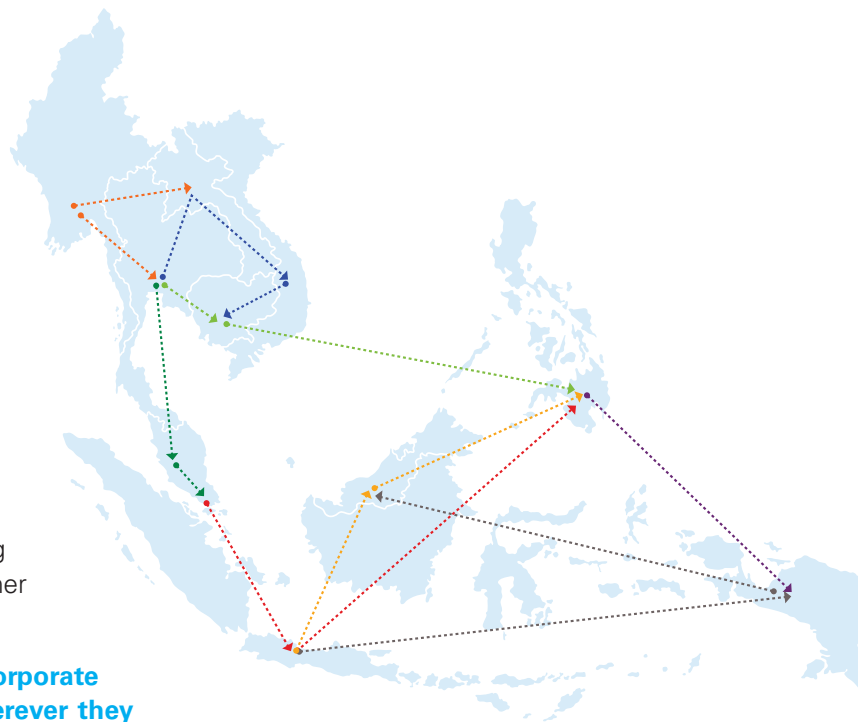
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**Millions of children in Southeast Asia are affected by migration.**

They may migrate alone, with their families or remain in their country of origin while one or both parents migrate. They may be displaced while fleeing persecution and seeking asylum. Children may also be displaced by environmental disasters, degradation and the impacts of climate change, accidents from large-scale development projects, land acquisitions or conflict. While migration can have a positive impact on individual children and families, particularly where States facilitate safe and orderly forms of movement, it can also expose children to higher risk movements, including smuggling and trafficking, along with a range of other protection risks.



**It is well established that businesses have a corporate responsibility to respect children’s rights wherever they operate.**

This ‘responsibility to respect’, which is affirmed in the United Nations Guiding Principles on Business and Human Rights 2011<sup>1</sup> (UNGPs) and elaborated by the Committee on the Rights of the Child (see Box 1),<sup>2</sup> applies no less to the rights of children affected by migration. ‘Human rights due diligence’ is an essential part of a business’ responsibility to respect human rights, including children’s rights.<sup>3</sup> Indeed, in recent years, there has been a growing emphasis in the international policy arena on the steps that businesses should – or even *must* – take to implement this responsibility. In 2016, the UN Working Group on Business and Human Rights issued recommendations on the development and implementation of National Action Plans on Business and Human Rights based primarily on the human rights due diligence responsibilities in the UNGPs.<sup>4</sup> In February 2022, the European Commission introduced a draft proposal for

<sup>1</sup> Endorsed by the Human Rights Council in resolution 17/4 on 16 June 2011.  
<sup>2</sup> Committee on the Rights of the Child, general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children’s rights (CRC General Comment No. 16 (2013)), para. 8.  
<sup>3</sup> ‘Guiding Principles on Business and Human Rights’, para. 17.  
<sup>4</sup> UN Working Group on Business and Human Rights, ‘Guidance on National Action Plans on Business and Human Rights’, November 2016.

a directive which would place 'corporate sustainability due diligence' on a mandatory footing for all in-scope companies, regardless of where the negative human rights impacts arise worldwide (see *Box 6*).<sup>5</sup> The growing emphasis on human rights due diligence will have implications for how businesses respect the rights of children affected by migration in Southeast Asia.

### **Box 1: United Nations Guiding Principles on Business and Human Rights**

The UNGPs are a set of principles calling for States and businesses to 'prevent, respect and remedy' human rights violations. They were endorsed by the United Nations Human Rights Council in 2011. The UNGPs follow the 'protect, respect and remedy' framework developed by John Ruggie, former Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business.

This framework consists of: the **State's duty to protect** against human rights violations within its territory and/or jurisdiction by businesses; the **responsibility of businesses to respect** human rights by avoiding their infringement and addressing adverse human rights impacts with which they are involved; and ensuring that individuals whose human rights have been violated by businesses have **access to an effective remedy**.

In general comment No. 16 of 2013, the Committee on the Rights of the Child affirmed that the 'protect, respect and remedy' framework in the UNGPs applies to children's rights, including the right to protection.

**Until recently, however, children and their interests have been largely invisible in migration studies, with even less known about the role of business in contributing to and addressing child protection risks.**

Rather, the literature on migration has traditionally focused on adults and the role of the State and civil society in protecting human rights. It is crucial that the role of the business sector is understood so that States can protect, and businesses can respect, the right to protection of children affected by migration in Southeast Asia.

**It is against this backdrop that the UNICEF East Asia and the Pacific Regional Office commissioned a study on the situation of children affected by migration in ASEAN Member States, paying special attention to the role of the business sector. This policy brief summarizes the findings and recommendations of the regional study.**<sup>6</sup> The study examines the role of the business sector in driving child migration, contributing to the child protection risks associated with migration, and the steps that the business sector has taken to address these risks. This policy brief also summarizes the findings of in-depth case studies focusing on different ways that children are affected by migration and the role of business in contributing to and addressing protection risks facing these children.

<sup>5</sup> European Commission, 'Corporate Sustainability Due Diligence', <[https://commission.europa.eu/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence\\_en](https://commission.europa.eu/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence_en)>, accessed 15 December 2022; European Commission, 'Just and Sustainable Economy: Commission lays down rules for companies to respect human rights and environment in global value chains', Press release, Brussels, 23 February 2022, <[www.ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_1145](http://www.ec.europa.eu/commission/presscorner/detail/en/ip_22_1145)>, accessed 15 December 2022.

<sup>6</sup> UNICEF EAPRO, *Situation of Children in ASEAN Member States*, UNICEF, 2023.



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## Box 2: Key terms

**‘Children affected by migration’** is a broad umbrella term that encompasses children (those aged under 18 years)<sup>7</sup> who move or have moved within their country of origin or across the border into another State, temporarily or permanently. This includes children who migrate voluntarily or involuntarily (as a result of forced displacement due to natural disaster or conflict); or for economic, social, educational or cultural reasons. It includes children who move individually or to accompany parents who have migrated. It also includes children who remain behind while one or both of their parents migrate (‘children remaining behind’).<sup>8</sup>

**The terms ‘businesses’ or the ‘business sector’ capture all business enterprises**, both national and transnational, regardless of size, sector, location, ownership and structure.<sup>9</sup> These include businesses which are not necessarily domiciled in ASEAN but which operate or have business relationships (e.g., supply chains) in the ASEAN region, as well as small, family run, informal businesses which operate within ASEAN.

**Human rights due diligence** refers to the process of identifying, preventing, mitigating and accounting for how a business addresses its adverse impacts on human rights, including children’s rights, arising from its operations and business relationships.<sup>10</sup>

<sup>7</sup> This is in accordance with international definitions of childhood in particular as set out in the Convention on the Rights of the Child, Article 1. It should be noted that in the domestic laws of some ASEAN Member States, such as Thailand, children who have attained majority through marriage are not included within the definition of ‘child’ in the Child Protection Act 2003. In addition, in some domestic laws, such as the Philippine Republic Act 7610, a child over the age of 18 who cannot fully take care of themselves because of a physical or mental disability or condition is included within the definition of a child.

<sup>8</sup> Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of migration, CRC/C/GC/22, 16 November 2017, para. 9. See also UNDESA, which defines an international migrant as anyone who changes their country of usual residence, ‘Recommendations on Statistics on International Migration, Revision 1’, 1998; and International Organization for Migration, ‘IOM Definition of “Migrant”’, <[www.iom.int/who-is-a-migrant](http://www.iom.int/who-is-a-migrant)>.

<sup>9</sup> Committee on the Rights of the Child, general comment No. 16 (2013), State obligations regarding the impact of the business sector on children’s rights, 17 April 2013, CRC/C/GC/16 (CRC GC No. 16 (2013)), para. 3.

<sup>10</sup> ‘Guiding Principles on Business and Human Rights’, para. 17; CRC general comment No. 16 (2013), paras. 62–65.





# 1 Role of business in driving child migration

**Businesses play a key role in driving child migration in Southeast Asia.** The figure below explains the drivers which operate at the structural, community, family and individual levels of a child's life.



## STRUCTURAL

- Industrial development and the labour demands of businesses attract migrants in search of improved economic opportunities.
- Preference by businesses in certain sectors to recruit migrant workers, particularly in irregular work, due to their perceived mobility to undertake seasonal work and their diligence, availability and relatively low cost.
- Businesses operating and supervising State migration policies contribute to shaping migration patterns and, in relation to temporary labour migration programmes, pushing migrants with families into irregular situations.
- Environmental disasters, degradation, accidents and disasters and land acquisitions caused or contributed to by businesses displace populations and drive migration.
- Businesses linked with conflict and violent security operations displace populations and drive migration.



## COMMUNITY OR FAMILY-BASED

- Low wages and lack of social benefits provided by businesses create economic hardships for parents and carers, and thereby children, driving migration to prevent poverty with or without children.



## INDIVIDUAL

- Business policies and practices can increase the risk of violence against children, which can drive them to migrate elsewhere to seek protection.



# 2 Protection risks

**Children affected by migration are exposed to a range of protection risks. Businesses may cause and contribute to these risks – both directly and indirectly – through their activities and relationships.**

**Child labour and economic exploitation are often cited as the main child protection risks caused or contributed to by businesses in the ASEAN region.** Underage migrant labour is known to occur in Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Thailand and Viet Nam. It is particularly prevalent in the informal sector, in low-wage, low-skilled industries such as textiles, agriculture (including fishing, palm oil and rubber plantations), construction, domestic work and hospitality. Underage migrant labour is particularly likely to occur towards the end of long supply chains where there is weaker monitoring and enforcement of child labour laws, and in business activities taking place informally within the home.<sup>11</sup> Children affected by migration may also be engaged in the worst forms of child labour, including hazardous work and debt bondage (see *Box 3*).

### **Box 3: Protection risks for child and family migration associated with large-scale construction projects**

Qualitative research carried out in 2022 in Lao PDR on children affected by migration associated with the Lao-China railway construction sites (unpublished) found that they were exposed to a range of risks, including exploitation in child labour and child trafficking. The research involved a series of in-depth interviews with 44 government, NGO and United Nations stakeholders working closely with children at the national, provincial, district and village levels in Vientiane, Luang Namtha and Luang Prabang provinces.

The research found that the economic opportunities offered by the construction of the railway resulted in families with children migrating internally within Lao PDR in search of employment. While adult migrant workers were mostly employed as day labourers on construction sites, many of their children found work in informal positions in supporting industries and businesses, particularly in hospitality and domestic work. Findings suggest that small numbers of children, including children of migrant workers, were also able to circumvent controls in place to prevent child labour and find work as day labourers themselves.

Children migrating alone were typically found to be from low-income families in search of employment to support their families back home. The evidence suggests that many of these children were from ethnic minority groups such as the Khmu, Hmong and Phounoy, which are disproportionately more likely to experience poverty.

<sup>11</sup> For example, individual interview, human resources manager, construction company in Thailand, 27 June 2022; Online key informant interview, international agency in ASEAN, 30 November 2021; Smith and Hamilton, *Child Trafficking and Exploitation in the Context of Migration in Viet Nam*.

Child migration connected to the railway construction was found to have resulted in a range of protection risks. Children, including internal migrant children, were particularly vulnerable to being engaged in work which is likely to be considered harmful to their health and well-being, such as carrying and breaking rocks. While villages closest to the railway were more likely to have protections in place to prevent child labour within communities (i.e., family ties, access to education and support services), children who migrated from other provinces did not appear to be similarly protected.

Research participants also reported instances of girls from rural areas being married to Chinese men working on the railway and trafficked across the border to China, where some may go on to suffer other forms of abuse. Children coming from these communities often lack official documentation in the province in which they are working, such as a record in the family register book, making them 'invisible' to officials.

**Key informant:** *"Some victims were misled that they would have a job, but then they were prostituted. Some were married with Chinese men, but they eventually were traded to others.... Most of the victims were illegal migrants. Some victims were forced by their parents to marry a Chinese man and smuggled out to China without any documentation."*

Participants reported that some internal migrant families struggled to access basic services on arrival in new communities near to the railway.

**Key Informant:** *"...some families migrated with their children, especially in the north. When they relocated to work in Chinese companies... their children aged 8–10 years went with them. Their children do not have the opportunity to go to school and do not [have] access to any services."*

**Business employment policies and practices also indirectly contribute to child labour and economic exploitation.** Businesses that do not provide adequate wages or support to working parents (for example, to enable them to afford adequate childcare so that their children can access education) drive (migrant) parents to take their children with them to work, potentially exposing children to hazardous conditions and/or eventually leading them to undertake underage or hazardous work themselves.<sup>12</sup> The ways in which labour contracts are structured can also drive child labour even though it is not always recognized as such. The 'piece rate' system on palm oil plantations in Indonesia and Malaysia, which remunerates workers based on the weight of the harvest yielded, leads to children working informally to support their family in reaching its target.<sup>13</sup> Other contextual factors intersect with business policies and practices to place children at heightened risk of economic exploitation. For instance, in Viet Nam, there was a growing demand for irregular migrant labour during the COVID-19 pandemic as businesses increasingly outsourced work to the informal sector due to a shortage of regular migrant workers.<sup>14</sup>

**Business activities and relationships contribute to child trafficking in the ASEAN region.** Research highlights cases of businesses knowingly and unknowingly engaging children who have been trafficked for the purposes of sexual or economic exploitation. Lack of education, rurality and poverty are key interlinking risk factors for child trafficking.<sup>15</sup> Gender, disability and ethnicity also affect a child's vulnerability to this form of exploitation.<sup>16</sup> Businesses operating in Special Economic Zones<sup>17</sup> in Cambodia, Lao PDR, Thailand and, more recently, Myanmar, are a particular cause for concern given the numerous reports of human (including child) trafficking, lack of transparency of their operations and impunity for these violations.<sup>18</sup> Businesses are also

<sup>12</sup> United Nations Children's Fund, 'Palm Oil and Children in Indonesia: Exploring the sector's impact on children's rights', Jakarta, 2016, p. 6.

<sup>13</sup> Ibid., p. 12; Apland and Lord, *Malaysia Case Study: A deep-dive examination of child labour and other protection risks faced by migrant children living on palm oil plantations in Sabah*.

<sup>14</sup> Smith and Hamilton, *Child Trafficking and Exploitation in the Context of Migration in Viet Nam*.

<sup>15</sup> See, for example, Smith and Hamilton, *Child Trafficking and Exploitation in the Context of Migration in Viet Nam*.

<sup>16</sup> Ibid.

<sup>17</sup> These are areas which offer more lenient regulatory environments in order to attract foreign investment.

<sup>18</sup> Kennedy, Lindsey, and Nathan Paul Southern, 'Inside Southeast Asia's Casino Scam Archipelago: Special Economic Zones and self-governing statelets across the Mekong region have become conduits for human trafficking on a massive scale', 2 August 2022, accessed from <[www.thediplomat.com/2022/08/inside-southeast-asias-casino-scam-archipelago](http://www.thediplomat.com/2022/08/inside-southeast-asias-casino-scam-archipelago)>, 13 December 2022.



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involved more directly in trafficking children as brokers or transport or recruitment agencies. Traffickers may use digital technologies to communicate with and/or groom children for trafficking or exploit trafficked children in businesses operating online.<sup>19</sup> Business workers may purchase commercial sex and not check the age of the girls or women involved.<sup>20</sup>

#### **Box 4: Protection risks facing children affected by migration associated with the use of digital technologies**

The role of the business sector in respecting children's rights in the digital environment has gained significant attention over recent years and is equally relevant to the protection of children affected by migration in the ASEAN region. As part of the research on the impact of the Lao-China railway in Lao PDR (see *Box 3*), officials described cases where children were approached through social media or other websites or applications and offered employment opportunities, which later led to situations of sexual exploitation. The risk of child trafficking in the ASEAN region through the use of information and communication technologies is an area that requires more research, as do the responses of the business sector in preventing and remedying these violations.

#### **Business practices can place children affected by migration at (increased) risk of violence and abuse.**

The absence of social protection services and adequate living conditions for workers and their children can create environments where children are placed at risk of harm.<sup>21</sup> In Ho Chi Minh City, Viet Nam, lack of social support for female migrant workers and their children who accompany them can create overcrowding and poor living conditions, placing children, particularly girls, at higher risk of abuse and exploitation.<sup>22</sup> This risk can be particularly serious where there is an absence of childcare.<sup>23</sup> In Indonesia, limited maternity protections, lack of childcare opportunities, poor maternal health and nutrition, and limited access to education for the children of

<sup>19</sup> Kennedy and Southern, 'Inside Southeast Asia's Casino Scam Archipelago'.

<sup>20</sup> Online key informant interview, NGO, 9 November 2021.

<sup>21</sup> UNICEF Vietnam, *The Apparel and Footwear Sector and Children in Viet Nam*, 2017, p. 6.

<sup>22</sup> Ibid.

<sup>23</sup> 'Palm Oil and Children in Indonesia: Exploring the sector's impact on children's rights', p. 6.

plantation workers, can significantly damage the health and development of children living on the plantation.<sup>24</sup> Children without documentation who cannot access basic services are placed at higher risk.<sup>25</sup> Children may also witness acts of violence on business premises.<sup>26</sup> More broadly, businesses that do not provide information on or support for accessing education, healthcare and other essential services may contribute to the risk that children become socially excluded from the local community, leading to the risk of isolation, which may also hinder opportunities for their integration into local life in the future.<sup>27</sup>

**Business policies and operations can also contribute to family separation.** Parents and guardians working in seasonal employment are likely to migrate without their children due to the need for mobility and flexibility in finding work. This is a particular risk where parents/guardians migrate under a temporary labour migration programme, as these programmes do not normally permit or facilitate family sponsorship or (re)unification.<sup>28</sup> As a result, their children face frequent, intermittent periods without parental care, potentially negatively affecting children's development and increasing their risk of suffering violence, abuse, neglect and exploitation if they are left without adequate alternative care.<sup>29</sup> Similar consequences can arise where businesses require workers to work long hours without breaks.<sup>30</sup> The availability of social protection benefits and access to quality services, including education, healthcare and childcare facilities for workers and their families, can also significantly influence decision-making by migrant parents on whether or not to take their children with them.<sup>31</sup> Where female migrant workers take on the dual responsibilities of paid work and childcare, children may be at particular risk of family separation.<sup>32</sup>

**Lastly, business practices can contribute to migrant children and families being undocumented, placing them at heightened risk of exploitation or abuse and leaving them unable to access essential services.** These practices can also affect the child's access to birth registration and enjoyment of their right to acquire a nationality. Businesses may knowingly (to cut costs and time) or unknowingly (due to lack of awareness of national laws and regulations) fail to prepare or renew a migrant's documentation, pushing the (child) migrant and their dependents into irregular migration and cutting them off from essential services that are available to regular migrants.<sup>33</sup> This risk is particularly prevalent in industries with long supply chains, such as the construction industry in Thailand, and in seasonal work where workers are employed through a series of sub-contracts and frequently move jobs.<sup>34</sup> Child dependents of workers in temporary labour migration programmes are especially at risk, given that these programmes do not tend to sponsor family members.<sup>35</sup> By contributing to the irregular migration status of a child, businesses may also be regarded as exposing children to the risks of penal sanctions that flow from illegal migration in certain ASEAN Member States, such as their arrest, detention, deportation and refoulement.<sup>36</sup> Indeed, children in irregular migration situations on palm oil plantations in Sabah may be at particular risk of arrest and detention by immigration authorities.<sup>37</sup>

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<sup>24</sup> Ibid., p. 1.

<sup>25</sup> Ibid., p. 11.

<sup>26</sup> Baan Dek Foundation and United Nations Children's Fund, *Building Futures in Thailand: Support to children living in construction site camps*, Bangkok, 2018, pp. 37–39.

<sup>27</sup> Ibid., p. 33.

<sup>28</sup> Ibid., p. 36.

<sup>29</sup> Ibid.

<sup>30</sup> 'Palm Oil and Children in Indonesia: Exploring the sector's impact on children's rights', p. 6.

<sup>31</sup> 'Palm Oil and Children in Indonesia: Exploring the sector's impact on children's rights', p. 6; United Nations Children's Fund, 'Internal Migration into Ho Chi Minh City and the Situation for Children', Policy brief, [undated], p. 4; The Apparel and Footwear Sector and Children in Viet Nam, pp. 2 and 5.

<sup>32</sup> 'Internal Migration into Ho Chi Minh City and the Situation for Children', pp. 8–9.

<sup>33</sup> Online key informant Interview, focal point from NGO in Thailand [name of NGO withheld to protect anonymity], 25 May 2022; Office of the United Nations High Commissioner for Human Rights, *We Wanted Workers, but Human Beings Came: Human rights and temporary labour migration programmes*, 2022, p. 30.

<sup>34</sup> Online key informant interview, focal point from NGO in Thailand [name of NGO withheld to protect anonymity], 25 May 2022.

<sup>35</sup> *We Wanted Workers, but Human Beings Came: Human rights and temporary labour migration programmes*.

<sup>36</sup> Indeed, OHCHR has noted that migrant workers under temporary labour migration programmes who have entered into an irregular situation are "often penalized prior to return, facing detention ahead of their deportation and may also face punishment on return where irregular emigration is penalized by their country of origin"; *We Wanted Workers, but Human Beings Came: Human rights and temporary labour migration programmes*, p. 10.

<sup>37</sup> Apland and Lord, *Malaysia Case Study: A deep-dive examination of child labour and other protection risks faced by migrant children living on palm oil plantations in Sabah*.

### **Box 5: Deep-dive examination of child labour and other protection risks faced by migrant children living on palm oil plantations in Sabah, Malaysia**

Qualitative research was carried out in 2022 in Sabah on child labour and other protection risks faced by migrant children (including children of undocumented migrant parents) living on palm oil plantations and the systems and services to support children. The research involved a series of in-depth interviews with 25 government stakeholders (national and Sabah State level); representatives of palm oil companies and their business partners and subsidiaries; international organizations and NGOs concerned with child labour and the rights of child migrants; and informants with first-hand experience of working with migrant children in the palm oil plantations, including those involved in the direct provision of services.

The results from the case study suggest a high incidence of children of Filipino and Indonesian migrant workers living with their families in and around plantation sites in Sabah. Children's involvement in work on the plantations was recognized to be widespread and normalized as a practice, usually occurring in the context of providing informal assistance to their parents rather than their being hired openly or directly by plantations. Research participants identified a number of underlying factors which, together, contribute to the involvement of children in child labour. While limited access to quality education and childcare facilities available on site were recognized to be significant drivers, the economic vulnerability of families, low wages provided by plantations and the piece rate system of pay combined to create incentives for engaging children in work to achieve higher yields. Children of migrant workers face numerous barriers to accessing alternative employment opportunities, including a lack of documentation, discrimination, isolation and limited access to education. In this context, as a number of informants explained, taking up work on the plantation may seem like the best option.

In addition to child labour, a number of serious protection concerns for children were identified on plantations, including arrest and detention by immigration authorities, violence, trafficking and exploitation. Irregular status was often identified as the root cause of children's heightened vulnerability to risk. Inadequate parental supervision and natural and human-made hazards and risks present in the physical environment of the plantations were among other protection concerns highlighted by respondents.

**Teacher in Lahad Datu:** *"The work is definitely dangerous especially for children because they can easily injure themselves. The surrounding environment at the work site is dangerous... Once they have started work, it definitely affects their schooling because they become too tired to do homework or concentrate. And of course, work becomes a distraction... Once they are injured while helping their parents work, it will affect their schooling. They may miss some schooling days. The only benefit I see from these kids working is adding to the monthly family income. That is all."*<sup>38</sup>

<sup>38</sup> Group interview, teachers in Lahad Datu, 12 March 2022.





# 3 Responding to protection risks

**While some businesses and States in ASEAN have demonstrated a commitment to improving business practices to strengthen the rights and protection of children, key gaps and barriers remain.** ASEAN Member States adopted the ASEAN Regional Strategy to Promote Corporate Social Responsibility and Human Rights in 2016. This identified the need for businesses to “go beyond pre-existing notions of CSR as philanthropic-giving and charity to assessing the human rights, social and environmental impacts connected to their business activities”, bringing the regional framework more in line with the UNGPs (see *Box 1*). ASEAN Member States are called upon to encourage these efforts, including by helping “marginalised, vulnerable and affected peoples and communities”, including children.<sup>39</sup> However, the Strategy does not specifically mention ‘migrants’ or the rights of ‘children affected by migration’, which is a key gap.

**Regional business and human rights frameworks elsewhere in the world are likely to have a significant impact on how multinational businesses conduct their activities and respond to the protection risks of children affected by migration in the ASEAN region.** Most notable among these developments is the European Commission’s draft proposal for a directive on mandatory ‘corporate sustainability due diligence’ (see *Box 6*).

## **Box 6: Proposal of the European Commission for a directive introducing mandatory ‘corporate sustainability due diligence’**

The European Commission’s draft proposal to introduce a directive on mandatory corporate sustainability due diligence would, if introduced in its original form, require specified types of companies<sup>40</sup> to identify, end, prevent, mitigate and account for the negative human and environmental impacts of their operations and those of their subsidiaries and in their value chains anywhere in the world.<sup>41</sup> Corresponding obligations would also be imposed on the companies’ directors.<sup>42</sup> Negative human rights impacts explicitly include forced labour and child labour, as well as a series of other violations of children’s rights.<sup>43</sup> UNICEF has argued elsewhere for the need to strengthen the integration of children’s rights in these proposals.<sup>44</sup>

<sup>39</sup> ASEAN Regional Strategy to Promote Corporate Social Responsibility and Human Rights, November 2016, part 5.

<sup>40</sup> Large EU limited liability companies and non-EU companies above a certain size which are active and generate a certain turnover in the European Union.

<sup>41</sup> European Commission, ‘Corporate Sustainability Due Diligence’, <[https://commission.europa.eu/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence\\_en](https://commission.europa.eu/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence_en)>, accessed 15 December 2022; European Commission ‘Just and Sustainable Economy: Commission lays down rules for companies to respect human rights and environment in global value chains’, Press release, Brussels, 23 February 2022. <[www.ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_1145](http://www.ec.europa.eu/commission/presscorner/detail/en/ip_22_1145)>, accessed 15 December 2022.

<sup>42</sup> ‘Corporate Sustainability Due Diligence’; ‘Just and Sustainable Economy: Commission lays down rules for companies to respect human rights and environment in global value chains’.

<sup>43</sup> European Commission, Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, Explanatory Memorandum, 23 February 2022, <<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022PC0071&from=EN>>, accessed 16 December 2022.

<sup>44</sup> United Nations Children’s Fund, ‘An EU Corporate Sustainability Due Diligence Directive that Works for Children – UNICEF comments on the European Commission proposal [COM(2022) 71 final]’, <[www.unicef.org/eu/media/2476/file/An%20EU%20Corporate%20Sustainability%20Due%20Diligence%20Directive%20that%20Works%20for%20Children:%20UNICEF%20comments%20on%20the%20European%20Commission%20proposal.pdf](http://www.unicef.org/eu/media/2476/file/An%20EU%20Corporate%20Sustainability%20Due%20Diligence%20Directive%20that%20Works%20for%20Children:%20UNICEF%20comments%20on%20the%20European%20Commission%20proposal.pdf)>, accessed 15 December 2022.

## National laws and policies

There are notable examples of ASEAN Member States incorporating international principles on business and human/children's rights in their legal and policy frameworks, which may serve to protect children affected by migration. Viet Nam is a pathfinder country in the '8.7 Alliance', a global partnership to achieve target 8.7 of the Sustainable Development Goals on ending child labour in all its forms by 2025.<sup>45</sup> Thailand has adopted its First National Action Plan on Business and Human Rights 2019–2022, incorporating specific activities to protect the rights of children of migrant workers (see *Box 7*).<sup>46</sup> Malaysia is expected to launch its First National Action Plans on Business and Human Rights in 2023,<sup>47</sup> while Viet Nam and Indonesia are also in the process of developing similar national action plans.<sup>48</sup>

### Box 7: Thailand's First National Action Plan on Business and Human Rights 2019–2022

The development of Thailand's First National Action Plan on Business and Human Rights was led by the Rights and Liberties Protection Department in the Ministry of Justice and is reported to have involved all sectors, including government, business and civil society.<sup>49</sup> The Action Plan is intended to implement the recommendation of the UN Working Group on Business and Human Rights for States to establish national action plans based on the UNGPs.<sup>50</sup>

The Action Plan covers four core areas, all of which are relevant to children affected by migration: labour; community, land, natural resources and the environment; human rights defenders; and cross-border investment and multinational enterprises. Though not integrated throughout, the Action Plan includes specific activities relating to protecting children of migrant workers, as follows:

- Encouraging “establishments to organize childcare centres at work by registering as child service centres in the workplace with the Ministry of Social Development and Human Security”. The Action Plan provides that such establishments “will receive tax deductions and children of employees and workers are taken care of with proper development”;
- Protecting children online by consulting with the business sector to develop guidelines for service provision which take children into account, such as organizing staff to supervise a chat line in the mobile phone network; developing a mobile application or channel to receive complaints; referring a child to the relevant agencies if they need help; providing counselling to children bullied in schools; and supporting research studies by working with relevant state agencies and civil society organizations.<sup>51</sup>

Activities relating to specific protection concerns may also serve to protect children affected by migration from these risks. For instance, to implement the State's duty to protect human rights in the context of human trafficking and forced labour, the Action Plan calls upon the police, Ministry of Agriculture, Ministry of Labour and Ministry of Industry to use measures or labour laws which are applied to the fisheries sector to the supervision of labour conditions in other sectors, such as agriculture and construction, that hire many migrant workers.<sup>52</sup>

<sup>45</sup> Alliance 8.7, Vietnam, <[www.alliance87.org/pathfinder\\_countries/vietnam/#tabp-2](http://www.alliance87.org/pathfinder_countries/vietnam/#tabp-2)>, accessed 16 January 2023.

<sup>46</sup> Royal Thai Government, *First National Action Plan on Business and Human Rights 2019–2022*, pp. 48–49, <<https://globalnaps.org/wp-content/uploads/2017/11/nap-thailand-en.pdf>>, accessed 16 January 2023.

<sup>47</sup> Aziz, Jehan Wan, 'Five Lessons Emerging from Malaysia's First National Conference on Business and Human Rights 2021', United Nations Development Programme, 30 September 2021, <[www.undp.org/malaysia/blog/five-lessons-emerging-malaysias-first-national-conference-business-and-human-rights-2021](http://www.undp.org/malaysia/blog/five-lessons-emerging-malaysias-first-national-conference-business-and-human-rights-2021)>, accessed 16 January 2023.

<sup>48</sup> Focusright, 'World Map', <[www.focusright.ch/en/rising-expectations#drivers](http://www.focusright.ch/en/rising-expectations#drivers)>, accessed 16 January 2023; United Nations Development Programme, 'Viet Nam Takes Next Steps in Developing NAP on Responsible Business', 22 April 2022, <[www.undp.org/news/viet-nam-takes-next-steps-developing-nap-responsible-business](http://www.undp.org/news/viet-nam-takes-next-steps-developing-nap-responsible-business)>, accessed 16 January 2023.

<sup>49</sup> *First National Action Plan on Business and Human Rights 2019–2022*, p. 4.

<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*, pp. 48–49.

<sup>52</sup> *Ibid.*, p. 50.

The Action Plan integrates activities that may address some of the broader factors contributing to the protection risks faced by children affected by migration, including providing fair wages and salaries to their parents; suitable working conditions; access to health services by workers; inspecting and monitoring entertainment places, businesses, establishments and recruitment agencies; and inspecting business licences, labour contracts, working conditions and work permits (in the case of migrant workers).<sup>53</sup> The State is also called upon to address “the problem of access to education by children of migrant workers” by providing basic education both in the public and private systems and the informal (non-formal education) sector.

The Action Plan contains specific activities with regard to the governance of Special Economic Zones, in which there are serious protection risks associated with children affected by migration and a gap in accountability. Such activities include various line ministries and the Office of the National Economic and Social Development Council considering the development of guidelines or measures for Special Economic Zones so that “they adhere to the highest standards of good governance and the guidelines of the corporations” and reflect the UNGPs in the establishment and management of these Zones.<sup>54</sup>

**Non-implementation of laws and regulations safeguarding children is a common challenge, particularly among smaller businesses and the informal economy.**<sup>55</sup> This is due to limited knowledge and awareness of laws and regulations among businesses (see below), businesses citing a lack of resources to implement the measures, a lack of capacity of state agents in inspecting and identifying violations, impunity stemming from gaps in the legal framework and, in extreme cases, alleged corruption.<sup>56</sup>

## Self-regulation

**The integration of child rights-based approaches in regulatory frameworks developed by industries can contribute to addressing the protection risks faced by children affected by migration.** Standards exist for certain key sectors in ASEAN, including the tourism (most notably the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism),<sup>57</sup> palm oil<sup>58</sup> and construction sectors, among others. However, where such standards incorporate human rights considerations, they are normally limited to issues of ‘sustainability’ and the impact on the community, or specific child protection concerns such as sexual exploitation or child labour, as opposed to child protection concerns or children’s rights more generally. Business standards also often focus mainly on monitoring and compliance and corporate commitments rather than outcomes for children.<sup>59</sup> There is some evidence suggesting that some businesses are increasingly recognizing the shortcomings of self-regulation and audit processes when addressing human rights issues in their supply chains.<sup>60</sup>

<sup>53</sup> Ibid., pp. 24–52.

<sup>54</sup> Ibid., p. 84.

<sup>55</sup> See, for example, Smith and Hamilton, *Child Trafficking and Exploitation in the Context of Migration in Viet Nam*.

<sup>56</sup> Kennedy and Southern ‘Inside Southeast Asia’s Casino Scam Archipelago’.

<sup>57</sup> World Tourism Organization, ‘Global Code of Ethics for Tourism’, August 2020, <[www.unwto.org/global-code-of-ethics-for-tourism](http://www.unwto.org/global-code-of-ethics-for-tourism)>, accessed 4 January 2023; ‘Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism’, <<https://thecode.org/about>>, accessed 4 January 2023.

<sup>58</sup> Roundtable on Sustainable Palm Oil, Guidance Documents for Palm Oil Producers, Smallholders and Group Managers, Downstream Supply Chain Actors, and Auditors and Certification Bodies (forthcoming, at the time of writing), accessible via <<https://rspo.org/rspo-launch-new-guidances-to-further-strengthen-child-rights-protection>>, accessed 4 January 2023.

<sup>59</sup> United Nations Children’s Fund, ‘Child Labour and Responsible Business Conduct: A Guidance note for action’, 2022, p. 31.

<sup>60</sup> British Institute of International and Comparative Law and Norton Rose Fulbright, ‘Making Sense of Managing Human Rights Issues in Supply Chains’, Summary note, 1 January 2018.



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## Child rights due diligence, impact assessments and public reporting

**Human rights due diligence, impact assessments and public disclosure of the steps taken to address negative impacts are an integral part of the corporate responsibility to respect children's rights** and, at least with regard to due diligence, should be required as a matter of law.<sup>61</sup> There is some evidence that child rights due diligence, impact assessments and public reporting are undertaken by a number of businesses in ASEAN Member States, although these are mainly voluntary efforts in certain sectors (e.g., the Chiang Mai Framework for Action and Tools for the property and construction sector in Thailand)<sup>62</sup> or by large multinational businesses which face grave reputational and, consequently, financial damage should they be associated with child rights violations.<sup>63</sup> Indeed, the Committee on the Rights of the Child has issued recommendations to Lao PDR (2018),<sup>64</sup> Singapore (2019, with regard to environmental degradation and children's rights),<sup>65</sup> Cambodia (2022)<sup>66</sup> and Viet Nam (2022)<sup>67</sup> to require businesses to undertake human rights due diligence and/or impact assessments and public reporting on their impacts on children's rights.

<sup>61</sup> CRC general comment No. 16 (2013), paras. 62–65.

<sup>62</sup> Building Social Impact Initiative website, <[www.buildingsocialimpact.org/eng](http://www.buildingsocialimpact.org/eng)>, accessed 15 December 2022.

<sup>63</sup> Online key informant interview, regional NGO, 26 November 2021.

<sup>64</sup> Committee on the Rights of the Child, Concluding Observations, Lao PDR, 1 November 2018, para. 13(c).

<sup>65</sup> Committee on the Rights of the Child, Concluding Observations, Singapore, 28 June 2019, para. 16.

<sup>66</sup> Committee on the Rights of the Child, Concluding Observations, Cambodia, 27 June 2022, para. 14(b).

<sup>67</sup> Committee on the Rights of the Child, Concluding Observations, Viet Nam, 21 October 2022, para. 14(c).

## Box 8: Chiang Mai Framework for Action and Tools, Thailand

In Thailand, eight companies<sup>68</sup> have formally joined a voluntary initiative – the ‘Building Social Impact (BSI) Initiative’ – to improve social standards in the property and construction sector.<sup>69</sup> The BSI Initiative is implemented by the NGO, Baan Dek Foundation, with support from UNICEF Thailand, with the aim of ensuring the safety of an estimated 60,000 children living in construction site camps in Thailand and helping them to access education and healthcare services.<sup>70</sup> Besides these eight companies, the Baan Dek Foundation has partnered with 39 property developers and construction companies and supports 53 construction site camps under the BSI initiative.<sup>71</sup>

To achieve its aim, the BSI Initiative offers a series of tools for property developers and construction companies to use to improve their business strategies. The tools include: the Chiang Mai Framework for Action consisting of 12 recommendations for businesses on improving infrastructure, welfare and services, health and education;<sup>72</sup> social impact guidelines on how to implement the Chiang Mai Framework for Action;<sup>73</sup> a social impact self-assessment tool for camp managers and camp bosses to assess the extent to which their camps are in line with the Chiang Mai Framework for Action;<sup>74</sup> and a social impact reference pack providing step-by-step processes for operational staff to follow when implementing the action plan generated from the results of the self-assessment toolkit. Baan Dek also provides camp management training on using the BSI tools.<sup>75</sup>

Besides positively impacting children’s lives, the Chiang Mai Framework for Action anticipates that businesses will also be able to report other positive results, such as improved staff retention, reduced liability for accidents in the camps, improved reputation through improved social protections for workers and their families, and improved sustainability and environmental impacts, among other things.<sup>76</sup>

Although the BSI tools have yet to be formally evaluated, Baan Dek notes promising practices in terms of the dynamics displayed by the managers and their wives in construction site camps. The managers are described as having a natural “*empathy*” and interest in ensuring the well-being of camp inhabitants, while their wives tend to play a caretaker role in the camps, which the tools build upon.<sup>77</sup> However, challenges remain in developing a culture of business and child rights and mainstreaming this approach across the whole company and construction sector.<sup>78</sup>

<sup>68</sup> Visavapat, Syntec, Magnolia Quality Development Corporation, Chiangmai Rimdoi, Property Guru, Bulk One, Thai Polycons, and Artelia and Ritta.

<sup>69</sup> Building Social Impact Initiative website, <[www.buildingsocialimpact.org/eng](http://www.buildingsocialimpact.org/eng)>, accessed 15 December 2022.

<sup>70</sup> Ibid.

<sup>71</sup> Ibid.

<sup>72</sup> Baan Dek Foundation and United Nations Children’s Fund, ‘Framework for Action: 12 key actions that make a difference’, <[https://static1.squarespace.com/static/5f5f8a9f77fc3c109fb44afa/t/6266c29c1e34f11bd9136e91/1650901685840/FA\\_Framework+for+Action\\_2022\\_English.jpg](https://static1.squarespace.com/static/5f5f8a9f77fc3c109fb44afa/t/6266c29c1e34f11bd9136e91/1650901685840/FA_Framework+for+Action_2022_English.jpg)>, accessed 15 December 2022.

<sup>73</sup> Ibid.

<sup>74</sup> Baan Dek Foundation and UNICEF, BSI Social Impact Self-Assessment Tool, <[www.buildingsocialimpact.org/contact-us](http://www.buildingsocialimpact.org/contact-us)>, accessed 15 December 2022.

<sup>75</sup> Building Social Impact Initiative website, <[www.buildingsocialimpact.org/eng](http://www.buildingsocialimpact.org/eng)>, accessed 15 December 2022.

<sup>76</sup> Baan Dek Foundation and United Nations Children’s Fund, ‘Social Impact Guidelines for Construction Site Camps’, p. 6, <[https://static1.squarespace.com/static/5f5f8a9f77fc3c109fb44afa/t/62afed2ba2a5202cec1f654a/1655696708969/FA\\_BSI\\_Guidelines\\_Eng\\_2022.pdf](https://static1.squarespace.com/static/5f5f8a9f77fc3c109fb44afa/t/62afed2ba2a5202cec1f654a/1655696708969/FA_BSI_Guidelines_Eng_2022.pdf)>, accessed 15 December 2022.

<sup>77</sup> Online key informant interview, focal point from Baan Dek Foundation, Thailand, 2022.

<sup>78</sup> Ibid.

## Voluntary programmes and initiatives

**There are several examples of businesses in ASEAN, usually in partnership with civil society and/or international agencies, taking voluntary steps to support migrant workers and their families to address child protection risks.** Examples include businesses in the construction industry in Thailand<sup>79</sup> and the palm oil sectors in Indonesia<sup>80</sup> and Malaysia.<sup>81</sup> However, challenges remain in systematizing responsible business conduct in ASEAN Member Countries. Business leaders often approach child protection issues through ad hoc philanthropic initiatives that address specific child protection risks, such as child labour or child trafficking, rather than integrating child rights as an integral and systematic part of the business' strategy and approach.<sup>82</sup> This challenge stems, in part, from a lack of awareness by business leaders and investors of their contribution to the contextual factors driving the protection risks faced by children affected by migration.<sup>83</sup> This challenge hinders the business sector's effective engagement with the broader structural factors which drive child protection risks, such as providing parents with a living wage, flexible working arrangements, providing support to ensure that children have access to adequate childcare, and so forth.<sup>84</sup> This challenge may be particularly acute in long value chains, such as in the construction industry in Thailand, where overseas property investors and developers may not be aware of the protection risks associated with children of migrant workers in construction site camps.<sup>85</sup> Furthermore, business leaders may not be aware of the potential benefits that child rights-based approaches may bring to their business, which acts as a further barrier.<sup>86</sup>

## Legal remedies

**Businesses in ASEAN have a responsibility to remedy violations of the rights of children affected by migration to protection, which they have identified and caused or contributed to.**<sup>87</sup> ASEAN Member States, in turn, have an obligation to ensure that children can access their right to an effective remedy for such violations.<sup>88</sup> There are isolated examples of migrant communities bringing class actions lawsuits against businesses for human rights abuses in ASEAN, including where the rights of children affected by migration have been violated.<sup>89</sup>

**However, there are considerable barriers facing children affected by migration and their families in seeking legal remedies.** Children face substantial challenges in accessing effective remedies due to their lack of legal standing;<sup>90</sup> a lack of awareness of their rights and grievance mechanisms; capacity, resource and skills limitations; and lack of legal assistance. These challenges are particularly likely for children affected by migration who are often further marginalized from local communities and lack access to services. Children affected by migration, their parents and legal representatives tend to face additional legal and logistical hurdles to accessing an effective remedy where the violation is caused by a multinational business acting extraterritorially. Such hurdles include demonstrating a reasonable link between the violation and business conduct and, more practically, authorities being able to obtain access to business premises to identify and investigate allegations. Notable gaps also arise with regard to Special Economic Zones. In Cambodia, for example, there is a lack of

<sup>79</sup> For example, *Building Futures in Thailand: Support to children living in construction site camps*, p. 52; Sansiri PLC, 'Child-Friendly Space Guideline Booklet', 5 March 2014, <[https://issuu.com/sansiriplc/docs/new\\_manual\\_eng\\_12\\_feb](https://issuu.com/sansiriplc/docs/new_manual_eng_12_feb)>, accessed 4 January 2023.

<sup>80</sup> 'Palm Oil and Children in Indonesia: Exploring the sector's impact on children's rights', p. 8.

<sup>81</sup> Aplan and Lord, *Malaysia Case Study: A deep-dive examination of child labour and other protection risks faced by migrant children living on palm oil plantations in Sabah*.

<sup>82</sup> *Building Futures in Thailand: Support to Children living in construction site camps*, p. 60.

<sup>83</sup> United Nations Children's Fund, 'Child Labour and Responsible Business Conduct: A guidance note for action', 2022, p. 12.

<sup>84</sup> Ibid.

<sup>85</sup> Online key informant interview, focal point from an international agency [details withheld to protect anonymity], 28 April 2022.

<sup>86</sup> *Building Futures in Thailand: Support to children living in construction site camps*, pp. 60–61 and 67.

<sup>87</sup> 'Children's Rights and Business Principles', p. 16.

<sup>88</sup> 'United Nations Guiding Principles on Business and Human Rights', Principle 25; CRC general comment No. 16 (2013), paras. 5(c) and 44.

<sup>89</sup> It is noted that the facts of this case are subject to court proceedings; 'Girl, 7, Raped at Thai Factory Supplying Clothes for Tesco while Mother Worked', *The Guardian*, 19 December 2022, <[www.theguardian.com/business/2022/dec/19/girl-7-raped-at-thai-factory-supplying-clothes-for-tesco-while-mother-worked?CMP=Share\\_iOSApp\\_Other](http://www.theguardian.com/business/2022/dec/19/girl-7-raped-at-thai-factory-supplying-clothes-for-tesco-while-mother-worked?CMP=Share_iOSApp_Other)>, accessed 20 December 2022; Business and Human Rights Resource Centre, 'Case Brief: Class action lawsuit by Cambodian villagers against Mitr Phil Sugar Corporation', 2 April 2018, <[www.business-humanrights.org/en/latest-news/case-brief-class-action-lawsuit-by-cambodian-villagers-against-mitr-phil-sugar-corporation](http://www.business-humanrights.org/en/latest-news/case-brief-class-action-lawsuit-by-cambodian-villagers-against-mitr-phil-sugar-corporation)>, accessed 23 November 2022; Inclusive Development International, 'Cambodia: Challenging Mitr Phil land grab', <[www.inclusivedevelopment.net/cases/mitr-phil](http://www.inclusivedevelopment.net/cases/mitr-phil)>, accessed 23 November 2022.

<sup>90</sup> For example, the law may require an individual to be above a certain age in order to lodge a complaint or initiate legal proceedings.



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transparency and publicity of laws governing business operations in these zones and an absence of complaints and grievance mechanisms for alleged violations.<sup>91</sup> There is also evidence of businesses in ASEAN bringing lawsuits against potential human rights defenders, which may silence children affected by migration, their parents and legal representatives, or discourage or intimidate them against seeking redress.<sup>92</sup> More practically, businesses may lack adequate child safeguarding policies and fail to report child protection violations, particularly in the informal sector and in contexts where this is not (or not perceived to be) required by law<sup>93</sup> and where businesses fear sanctions by the State.<sup>94</sup>

### **Box 9: Challenges in ensuring access to an effective remedy for children affected by migration in the context of the large-scale construction projects**

As part of the research relating to the development of the Lao-China railway in Lao PDR, participants noted that village authorities and the police often faced challenges accessing construction camps without clear authorization, which often took several days to secure. This led to reported frustration among officials who were concerned about the potential risks of children being sexually exploited behind closed doors in camps and communities surrounding the railway, without any structures in place for survivors to come forward and seek support and access services

<sup>91</sup> Cambodian Centre for Human Rights, 'Fact Sheet: Cambodia's Special Economic Zones and human rights', September 2018, p. 3.

<sup>92</sup> Article 19, 'Thailand: Act to prevent spurious lawsuits against human rights defenders', 12 June 2020, <[www.article19.org/resources/thailand-act-to-prevent-spurious-lawsuits-against-human-rights-defenders](http://www.article19.org/resources/thailand-act-to-prevent-spurious-lawsuits-against-human-rights-defenders/)>, accessed 16 January 2023; Business & Human Rights Resource Centre, SLAPPed but not Silenced: Defending human rights in the face of legal risks, June 2021, p. 17, <[https://media.business-humanrights.org/media/documents/2021\\_SLAPPs\\_Briefing\\_EN\\_v51.pdf](https://media.business-humanrights.org/media/documents/2021_SLAPPs_Briefing_EN_v51.pdf)>, accessed 16 January 2023.

<sup>93</sup> Interview, focal point from a construction company in Thailand 1, [name withheld to protect anonymity], 23 June 2022; Interview, focal point from a construction company in Thailand 2 [name withheld to protect anonymity], 27 June 2022.

<sup>94</sup> It is noted that the facts of this case are subject to court proceedings: 'Girl, 7, Raped at Thai Factory Supplying Clothes for Tesco while Mother Worked', The Guardian, <[www.theguardian.com/business/2022/dec/19/girl-7-raped-at-thai-factory-supplying-clothes-for-tesco-while-mother-worked?CMP=Share\\_iOSApp\\_Other](http://www.theguardian.com/business/2022/dec/19/girl-7-raped-at-thai-factory-supplying-clothes-for-tesco-while-mother-worked?CMP=Share_iOSApp_Other)>, accessed 20 December 2022.

### **Box 10: Business sector responses to child labour and other protection risks faced by migrant children living on palm oil plantations in Sabah, Malaysia**

In addition to a comprehensive and protective legal framework, a number of industry initiatives have attempted to address child protection risks in the palm oil sector. The Roundtable on Sustainable Palm Oil (RSPO) is a global, non-profit consortium of stakeholders in the palm oil industry who have agreed on a set of criteria for the production of sustainable palm oil at all stages of the supply chain, one of which is to ensure “*Children are not employed or exploited*” (criteria 6.4).<sup>95</sup> Another initiative is Malaysian Sustainable Palm Oil (MSPO), which is a certification standard for palm oil production based on sustainability, responsible cultivation and minimization of negative human and environmental impacts.<sup>96</sup> In order to become certified, organizations must go through an audit process by an accredited certification body that has been vetted by the Department of Standards Malaysia (DSM).<sup>97</sup>

However, despite these welcome initiatives and the comprehensive legal framework, monitoring and enforcement appears to be limited in practice. Research participants offered varied opinions about the ability for RSPO and MSPO to address child labour in plantations and the impact both have had on sustainability within the sector more generally. While some considered that both schemes have led to improvements in workers’ rights over the past decade as well as to better living conditions for children, others were more skeptical about both schemes and the ability of the certification process to accurately assess plantations. In general, respondents perceived that the bigger plantations and companies take the guidelines seriously and attempt to address challenges, for example through the provision of day-care and schools on site and by publicizing the standards throughout the plantation. On the other hand, respondents considered that mid-size to smaller companies have lower rates of compliance with RPSO/MSPO. It was suggested during interviews that corruption may be hindering the monitoring of child labour and enforcement of standards, with anecdotal evidence that some police have accepted bribes from plantations in response to turning a blind eye to reports of child labour violations, and tip-offs reaching plantations before police raids.

The complexity of palm oil supply chains also exacerbates challenges for companies performing due diligence to ensure that child labour and other violations are not occurring in different tiers of the chain. Refineries are not able to monitor mills and ascertain their compliance with RSPO standards easily. While many independent plantations have strict entry requirements for non-workers, this contributes to a lack of accountability.

<sup>95</sup> RSPO Standards, <<https://rspo.org/standards>>.

<sup>96</sup> Control Union, MSPO, <<https://certifications.controlunion.com/en/certification-programs/certification-programs/mspo-malaysia-sustainable-palm-oil>>.

<sup>97</sup> MPOCC/MSPO, FAQs, <[www.mpocc.org.my/faqs](http://www.mpocc.org.my/faqs)>.







# 4 Recommendations

## States:

States have clear international obligations to protect children against rights violations by enterprises within their jurisdiction, while creating an enabling and supportive environment for businesses to respect children's rights and ensuring that children have access to effective remedies for rights violations by businesses.<sup>98</sup> The increasing emphasis on responsible business conduct and the implementation of human rights due diligence in the international policy sphere reinforce now more than ever the importance and urgency of fulfilling these obligations. To fulfil these obligations in respect of children affected by migration, key recommendations include:

- Amending national laws, policies and regulations to:
  - Specifically integrate children's rights and the rights of children affected by migration into national strategies and action plans on business and human rights;
  - Set clear expectations for businesses domiciled within their jurisdiction to respect the rights of children, specifically including the right of children affected by migration to protection, wherever they operate and regardless of the child's migration status or statelessness.
  - Place the human rights due diligence responsibilities of businesses on a mandatory footing, particularly in high-risk industries. Such obligations should require businesses to give special consideration to the rights of children, specifically including children affected by migration, and should apply to the whole of a business' supply chain. Such responsibilities should vary according to the size of the business, the risk of severe human rights impacts and the nature and context of its operations.<sup>99</sup>
  - Make the granting of business licences, permits or access to domestic markets conditional upon the business providing a comprehensive human rights impact assessment of its operations which integrates children's rights and gives specific attention to the rights of particularly marginalized children, including children affected by migration, and a commitment to implement appropriate safeguards and risk mitigation strategies for any negative impacts identified;



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<sup>98</sup> 'Guiding Principles on Business and Human Rights'; CRC general comment No. 16 (2013), para. 5.

<sup>99</sup> 'Guiding Principles on Business and Human Rights', Principle 17(b).

- Ensure that children affected by migration and their parents and representatives have equal access to formal and informal grievance mechanisms for violations caused or contributed to by businesses, including legal standing and access to legal aid;
  - Ensure that the law provides a range of civil and, where appropriate, criminal sanctions for businesses and/or their leaders, for failure to comply with their legal obligations, including when acting extraterritorially;
  - Prevent strategic lawsuits against public participation and to protect human rights defenders;
  - Increase avenues to enable children and families to regularize their status.
- Integrate a ‘business lens’ in systems-strengthening efforts across all sectors, including child protection and access to justice, education, health and social protection, to ensure coherence in the prevention and effective response to child protection risks linked to the operations of businesses. This includes:
    - Sustained knowledge and skills-based training for civil servants, professionals and practitioners on the rights of children affected by migration, the United Nations Guiding Principles on Business and Human Rights, and the Children’s Rights and Business Principles, and identifying and responding to child protection risks in which businesses are involved, including labour monitoring and inspection.
    - Where relevant, sustained efforts to combat corruption and impunity for rights violations by businesses.

## Business sector:

To implement their corporate responsibility to respect and commitment to support the rights of children affected by migration to protection, key recommendations to businesses include:

- Specifically integrating children’s rights and the rights of children affected by migration in their internal policies and procedures, including:
  - A policy commitment to meet their responsibility to respect children’s rights;
  - Human rights due diligence processes which integrate children’s rights and identify, prevent, mitigate and account for their impacts on human (including children’s) rights;
  - Child rights-based impact assessments throughout the business’ supply chain;
  - Child-friendly remediation processes for alleged violations;
  - Safeguarding policies and child protection referral protocols linked to state child protection mechanisms.
- Investing in and delivering sustained knowledge and skills-based training for staff on the responsibility to respect children’s rights, including the rights of children affected by migration to protection, and implementation of the business’ child rights policies and procedures.
- Participating in systems-strengthening efforts to address broader contextual factors driving child protection risks facing children affected by migration.
- Using the business’ leverage to inspire reforms, including advocating for improved services for children affected by migration, legal and policy reforms, galvanizing support from other businesses to address the root causes of child protection risks, and influencing the development of child rights-based industry standards and accountability mechanisms.

## Civil society:

- Working with businesses, state agencies and other stakeholders to systematize child rights-based approaches to business operations and relationships with a specific focus on the rights of children affected by migration.
- Generating and disseminating evidence on the impact of business activities and relationships on children affected by migration, with the participation of the children themselves and their families.
- Advocating for and providing expertise to implement systems-strengthening reforms and develop industry standards to address child protection risks facing children affected by migration linked to business operations.
- Delivering programmes and training targeting children affected by migration and their parents or carers on their rights, access to services and, where relevant, grievance mechanisms.



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## International agencies

- Integrating a 'business lens' in programme priorities, targets and activities with a focus on addressing the needs of particularly marginalized groups of children, including children affected by migration.
- Contributing evidence and expertise rooted in the Convention on the Rights of the Child to inform multi-stakeholder dialogue and support reform initiatives to address child protection risks linked to business operations and migration.
- Supporting state agencies to operationalize the UNGPs and general comment No. 16 of the Committee on the Rights of the Child, with a specific focus on the rights of children affected by migration, including technical and financial support to address structural drivers and causes of child protection risks through system-wide reforms.

## Collective action

- For stakeholders across all sectors, coordinating efforts to identify and respond to child protection risks facing children affected by migration as outlined above.







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