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Save the Children

Regional Conference on Children on the Move in Southeast Asia

Bangkok, 24–25 May 2017

## Report



Prepared by Marnie McDonald, Consultant Rapporteur  
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**Note:** This report summarizes presentations made but focuses primarily on participant discussions. For copies of presentations, please contact Ratirose Supaporn at [ratirose.supaporn@savethechildren.org](mailto:ratirose.supaporn@savethechildren.org).

## Acronyms

ASEAN	Association of Southeast Asian Nations
BIA	Best Interest Assessment
CMW	Committee on the Protection of the Rights of All Migrant Workers
COM	Children on the Move
CRC	Convention on the Rights of the Child
CRC Committee	Committee on the Rights of the Child
CRRF	Comprehensive Refugee Response Framework
CSO	Civil Society Organization
GCM	Global Compact for Safe, Orderly and Regular Migration
GCR	Global Compact on Refugees
ICRC	International Committee of the Red Cross
IOM	International Organization for Migration
JGC	Joint General Comment No. 3 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 21 of the Committee on the Rights of the Child on the Human Rights of Children in the Context of International Migration
MWC	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
PSS	Psychosocial Support
SDGs	Sustainable Development Goals
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund

**Day One, Wednesday 24 May****Morning session: Pre-conference session for CSOs and young people – regional consultation on the JGC**

This session was led by Mr Pablo Ceriani Cernadas, Vice-Chair of the Committee on the Protection of the Rights of All Migrant Workers (CMW). Mr Benyam Dawit Mezmur, former Chair of the Committee on the Rights of the Child (CRC Committee) and Ms. Mikiko Otani, newly elected member of the CRC Committee, joined the session via Skype. Following welcome and introductions, Mr Ceriani gave an overview of the background and goals of the Joint General Comment No. 3 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 21 of the Committee on the Rights of the Child on the Human Rights of Children in the Context of International Migration (JGC) of the CMW and CRC Committee. The zero draft has already been informed by over 60 reports from regional organizations and this conference will add to that.

**Goals**

- Coherent, comprehensive interpretation of interrelated Conventions
- The JGC will be an authoritative guide for policy, legislative and other responses to current challenges on children and migration
- Strengthening the protection of children's rights within immigration policies
- Systematize CRC–CMW jurisprudence
- Strengthen UN human rights mechanisms.

**Background of the JGC**

International migration affects millions of children from every region. In addition to the root causes of migration that are often directly related to severe human rights deprivations, there are also an increasing number of challenges that children on the move (COM) cope with on a daily basis. There is a 'double deficit' in migration policies – both a deficit in terms of migration policies not addressing children's rights and a deficit in national child protection policies not taking into account the specific needs and circumstances of children in the context of international migration.

The JGC has been drafted to address this issue. The goal of the JGC is to describe in detail what governments need to do in order to comply with the commitments they have made by being signatories to the CRC and/or the MWC. The JGC should be used by governments as a guideline for policy formulation/amendment and is based on comments previously made by the two committees, as referenced in the JGC.

The Sustainable Development Goals (SDGs) are included and referred to in the JGC in part because many governments have committed to the SDGs. It is thus a way to ensure migrant child rights are factored into other policies which may affect them indirectly, e.g. poverty reduction, as well as addressing children's rights through the rights and migration status of their parents.

**Process and guidelines**

Online submissions were made first, then regional consultations were/will be held in the Mediterranean, Asia Pacific, Americas and Africa. Global consultations will be undertaken later in the year in Berlin, with the JGC expected to be approved in mid-September.

The draft covers several different categories of children – unaccompanied, separated, those travelling with family, and children born to migrant parents in the country of destination or children remaining in the country of origin of migrant parents.

Both committees tried to develop general guidelines based on the primacy of children's rights over migration policy, where the best interest of the child is always both the baseline and deciding factor. There are three other key principles:

- Non-discrimination
  - Should be central to migration policies and procedures
  - Protection is given to all children under 18
  - Measures are taken against xenophobia
- The right to be heard and participate
- The right to life, survival and development.

The JGC also seeks to strengthen the use of the principle of non-refoulement and emphasize that government bodies should always consider the best interest of the child when making migration-related decisions. Other important rights which are covered by the JGC include:

- The right to family life. For families already in the destination country, the right of children not to be separated from their parents due to deportation (of parents) or other reasons. Family unity is not just about being together but incorporates the parental duty to ensure proper development of the child.
- Right to a name, identity and nationality. This covers statelessness and birth registration.
- Protection from exploitation. The JGC aims to endorse a broad and comprehensive interpretation of child protection, including protection from abuse, trafficking and labour exploitation.
- Social rights. One section focuses on the principle that no child should ever be detained because of their or their parents' migration status, a principle recently affirmed by both committees. The family unit cannot be considered as a means to justify detention (i.e. a child should not be detained simply because his or her parents are detained; instead, the whole family should be released into an alternative to detention). Also included are rights to:
  - Education
  - Health
  - An adequate standard of living
  - Social security and social assistance
  - Labour rights.
- Due process and access to justice, including the right to be heard; legal aid; and consular protection.
- Age determination procedures are also addressed, as these can be both invasive and unreliable. If a person claims to be a child they should be given the benefit of the doubt.

International cooperation and follow-up is vital to the implementation of the JGC, especially wide dissemination of the JGC once it is finalized. State parties must be monitored to ensure they are complying with both Conventions. Bilateral, regional and multilateral agreements need to be put in place, including the forthcoming Global Compact on Refugees and the Global Compact for Safe, Regular and Orderly Migration. Both arose from the New York Declaration for Refugees and Migrants and are expected to be finalized by the end of 2018.

#### Comments from Benyam Dawit Mezmur: important sections of the JGC for discussion and input

All comments received are appreciated and input is actively being sought on many aspects of the JGC. For example, feedback to strengthen the **language** of the JGC has been received. However, the language used must be in line with the language used in the Conventions, plus there is a word count applied to the document (10,400 words). The title comes from the CRC's Day of General Discussion in 2012 –input about whether it is still relevant or whether it should be changed (notably the reference to the human rights of children versus simply, children's rights) is welcome.

Input on the **structure** is also welcome – there is no prioritization of issues at present but should there be? Does the document strike a good balance between various regions? It is a global document but some issues may be relevant for certain regions but not others. To what extent does the document strike a balance between what is an obligation under the Conventions and what are best practices?

Is the **scope** correct? For example, what about children left behind when parents migrate? Is there a need to provide more information on causes of migration? Should there be more specifics on refugee and asylum seeker children?

Are there **issues** that are outdated or superseded by practice? Does the principle that a child is a child – i.e. primacy of child rights over migration status – need to be stronger? Do we need to add more to address xenophobia and the negative discourse around migration?

**Age discrimination** – who is a child? If there is no conclusive evidence that a person is a child, many states err on the side of classifying them as an adult, or the child may identify as an adult to avoid invasive age determination procedures. Are there any good practices to address these issues?

**Child marriage** is also an issue – e.g. separating a child bride from her husband. How can this be addressed?

Is the language around **detention** adequate? Do we need to categorize child detention as arbitrary detention? Access to justice is also an issue – some have suggested stronger language is needed. Access to services, e.g. health and education, can also be a complex issue – children may not be in detention but often do not access these services because they fear coming into contact with law enforcement and perhaps being detained as a result.

**Pushbacks** from countries against children trying to cross their borders – how does this affect the non-refoulement policy and what can be done to improve regional cooperation?

### Q&A/feedback

**Comment:** As a lawyer who recently defended a refugee child (from Somalia) in Thailand, I used previous comments from the CRC in court and the court decided the child should not be detained, so they are helpful. Paragraph 59 of the JGC relates to due process and cites an Inter-American Commission on Human Rights opinion on the importance of a refugee child having a translator/interpreter. However, I would like the group to include regional and global sources as well, as opinions handed down by the IACHR do not carry much weight in this region.

**Question:** What is the best way to convey specific comments on the JGC to the Committees? Additionally, can discussions around the JGC influence the GCR? How can we make sure the JGC, when it is disseminated, is conveyed to all child migrants in child-friendly versions, as well as ensuring they can, in practice, access the rights they have?

**Answer (Benyam):** The comment on due process is well taken. If you want to submit comments on the draft JGC, the more specific you can be the better. There is a section on the website where comments can be emailed but you can also include them in this conference. I encourage all participants to e-mail detailed comments. We are working closely with the Global Compacts. We have developed some processes for dissemination. We do need a child-friendly version and a detailed and long-term dissemination plan.

**Comment (Pablo):** The deadline for receiving written comments is the end of June. Now that we have a draft we would like very specific comments on the draft itself, even new versions of individual paragraphs. The sooner we receive your comments the better. On dissemination, we got to where we are now through multi-stakeholder cooperation and I think that is how dissemination / translation / creating child-friendly versions will also work best.

**Comment (Benyam):** The CRC Committee is big on child participation and we welcome any organizations that can include child participation or give us feedback from children. These organizations can also assist with dissemination to children.

#### Activity: comments and input on the JGC

Participants were split into three working groups to discuss specific sections of the JGC in detail and provide feedback about what is in the draft but also what may be missing.

#### Child labour, trafficking and exploitation

This group went through the JGC paragraph by paragraph and made recommendations in the same way.

**Paragraph 61** (which addresses children born to parents with irregular migration status): Based on the experience of Filipino workers, there can also be barriers to birth registration even when the parent(s) migration status is legal. Some countries with many migrant workers (especially in the Middle East) forbid relationships between locals and migrants, so children born of such relationships are not recognized. Children resulting from rape or from adulterous relationships may also face barriers to birth registration through the parents' fear of discovery and the potential consequences. The final sentence could be amended to include barriers/laws that exist in the country where the child is born or conceived, e.g. 'due to barriers to acquiring citizenship in the country of origin of the parents or the country where the child was conceived or born'.

**Paragraph 62** (which addresses birth registration in the context of the SDGs)

- Citizenship is not the same as birth registration, e.g. a person born in Hong Kong may have a British passport but does not enjoy the right to live in the UK. The terms 'nationality', 'citizenship' and 'legal identity' are not interchangeable and need to be used very carefully.
- A general comment on terminology: the difference between trafficking and illegal migration is not always clear within individual country legislation. It is important that all countries align their definition of trafficking with the Palermo Protocol definition.

**Paragraph 81** (on measures that States should adopt): It was suggested that two more bullet points be added: to the effect that all countries ratify relevant international and regional treaties/ definitions relevant to human trafficking; and that victims of child trafficking and prostitution should be protected from criminalization.

**Title:** Remove the word 'international' or add 'and internal', as internal migration is also an issue.

**Paragraph 78** (on vulnerability to trafficking or exploitation): Remove the word 'country' or add the word 'origin', as children can be subject to all these risks in their country of origin as well, especially children who are left behind by migrant parents.

**Paragraph 79** (which recognizes female children as more vulnerable to trafficking): Remove 'female' and replace with 'all', as in some countries boys are actually more vulnerable. We suggest removing the first sentence of para. 79 and combining the remainder with para. 78.

**General comment:** What is missing from the document is the right of children to access the cultural heritage from their country of origin. Also missing is that many children affected by migration have become parents themselves, often while still children, and they need additional safeguards.



### Access to social rights, social integration and family life

**General feedback:** The definition of family life needs to be flexible and include extended family (siblings, grandparents, aunts, etc.). When a child turns 18 they are legally an adult but should not be immediately cut off from family life. Cultural norms should be given consideration too, especially regarding women, who in many cultures are expected to remain with the family until married. There was also some discussion about the importance of both parents being included/involved in the child's life. Some families might be perpetuating problems so a best interest assessment (BIA) should have priority over family reunification / staying with the family.

**Child brides:** How to treat child brides in terms of family reunion is a complex equation – in some cases it may be in their best interest to remain with their spouse rather than reunite with their parents.

**BIA:** Clearer examples are needed of guardianship and how the BIA is conducted, including how the child is heard and their input included.

**Internal displacement:** This issue and how to incorporate that into the JGC needs to be discussed, i.e. protection of internally displaced children. **Comment (Pablo):** The CMW is related to international migration and cross-border. However, we cover the entire migration process (starting, transit, destination, return). If children migrated internally in the process and do not end up cross-border, then it's no problem to include this. And the CRC includes children in the entire process. The idea is to have a broader view of migration. However, it might be more difficult to bring something in from the CMW and add CRC language because the CRC is more universal.

**Question:** Can we explicitly include language around children left behind by migrating parents?

**Answer (Pablo):** We had language to cover this group in the concept note but we decided to leave this section. However, through this regional consultation, if you say this is critical, you should include paragraphs on this and we can consider it. Clear proposals and suggestions on language are needed.

**Right to health:** It is important for children to have access to mental health/psychosocial support (PSS) services, and the rights of children with disabilities need to be addressed more specifically.

**Right to education:** This should include access to accredited and sustained education (e.g. some certificate/proof of education so that children can continue their education at the same level if they move to another country). Education should be available to children in their own national language, not just the language of the destination country.

**Right to work:** The JGC should recognize discrepancies between child labour and the right to work.

### Detention, due process safeguards, expulsion/repatriation

**Non-refoulement:** There should be some emphasis on the root causes of migration (e.g. Rohingya). There was also discussion of the concept of 'voluntary repatriation', and whether it was indeed voluntary considering that in some cases conditions are made so difficult that people have no choice but to return to their country of origin (e.g. worsening conditions in camps along the Thai-Myanmar border, or choosing between indefinite detention or return to the country of origin).

**Age determination:** Sometimes children as young as 13 are being treated as adults. The importance of children being given the benefit of the doubt from the outset was also emphasized; in several countries in the region, children whose ages are in question are treated as adults unless age determination procedures indicate otherwise. There was also discussion about the words 'relevant experience and expertise' in relation to those making age determinations and the need for



terminology that is more specific. For example, law enforcement officers with no formal training in child protection or age assessment procedures may be officially designated as having ‘relevant experience and expertise’ because it is their mandate to conduct such assessments.

**Detention:** A definition of detention needs to be created – for example, there are some NGO shelters which are closed and are effectively alternative forms of detention. It was suggested that detention be defined by reference to the deprivation of liberty. The broad spectrum of rights compromised by detention (education, health, etc.) was also discussed. Detention should not be used as a form of deterrence or border control and that should be covered as well.

**Guardianship:** Wherever guardianship is referenced it should be emphasized that guardians should be independent – the Australian example was cited where the Minister for Immigration is the official guardian for all asylum seeker/refugee children, as well as the decision maker in matters concerning their immigration status.

### General comments

We should be looking at how to maximize the participation of parents and other family members in providing services to children. For example, many refugees have skills (doctors, other professionals) and they are an under-utilized resource. This may not be within the scope of this document but is a point worth discussing. Gainful/dignified work for parents can have a major impact on children.

**Response (Pablo):** These are very useful comments. Regarding para. 61 – we will think about how we can include some of this language. The use of language like ‘durable solutions’ attempts to cover some of the issues involved in the transition from childhood to adulthood.

Mental health definitely needs to be included. Regarding cross-border collaboration – we have already received some written submissions but would like more so please submit your ideas in detail. Detention does need to be properly defined. There are some international standards that we will look at. We are also addressing guardianship and legal aid. We do need to be clear on independent guardianship and also what constitutes expertise.

Refugee and asylum seeker protection: I think it is missing from the draft and needs to be included. Although the CRC and CMW do not directly reference the Geneva Convention, there is overlap.

Internal migration needs to be explored, however the CMW refers mainly to international migration. There is room to include internal migration but it needs to be discussed in more detail.

### Session 2: Discussion Panel 1 – Global Developments

- Where are we after the NY Declaration?
- What opportunities are emerging from the Global Compacts and the JGC? What about Agenda 2030?
- Panel reflections
- Q&A

The conference was officially opened. Dr Seree Nonthasoot, was unable to be at the conference to give the opening remarks. On his behalf, his representative Dr Sriprapha Petcharamesree told the conference that Dr Seree, as the Thai representative on the Association of Southeast Asian Nations (ASEAN) Intergovernmental Commission on Human Rights, has worked on many issues related to human rights. He is committed to working on these issues and will continue to pursue them throughout his second term until the end of 2018.

## Discussion Panel 1 – Global Developments

### Panellists:

- Stefan Stoyanov, Terre des Hommes
- Yoko Iwasa, UNHCR Regional Office for Southeast Asia
- Mariko Tomiyama, IOM Regional Office for Asia and the Pacific
- Pablo Ceriani, UN Committee on the Protection of the Rights of All Migrant Workers

*“ We acknowledge a **shared international responsibility** to manage large movements of refugees and migrants in a humane, sensitive, compassionate and people-centred manner.”*

- New York Declaration [para. 11]

**Opening remarks by Dr. Maria Nnette Motus, IOM Regional Office for Asia and the Pacific, session moderator:** Many people here are members of the Committee advising on the Global Compact. It is estimated that one in every eight migrants is a child. The Asia Pacific region accounts for 60% of the world population and 40% of all migrants are born in the region.

We want to look at what has happened since the New York Summit and Declaration for Refugees and Migrants. The Declaration expresses the will of member states to protect migrants and refugees. The commitments of the countries to migrants and refugees; commitments to migrants; and commitments to refugees are all covered in the Declaration. Linking these commitments to the SDGs is very important.

### First presentation – Stefan Stoyanov, technical expert on trafficking and migration, Terre des Hommes

Destination Unknown is an international campaign to protect COM led by Terre des Hommes. It is broad and related to COM and other children affected by migration. These children should have the right to be protected at all stages. A document with nine recommended principles to guide actions related to COM and other children affected by migration has been created. The purpose is to use this document to liaise with governments prior to the finalization of the outcome document to ensure that what has already been agreed in international law remains visible enough to those making decisions.

- COM shall be considered children first and foremost and the best interest of the child is paramount
- All children have the right to life, survival and development
- Children have the right to liberty of movement within their state, and to leave their state and any other state
- Immigration detention of children always contravenes the principle of the best interests of the child
- Children shall not be separated from parents or primary caregivers
- No child is illegal – children should be protected against all forms of discrimination
- Child protection systems should protect all children, including COM and other children affected by migration
- Migration management measures shall not adversely affect children’s human rights
- Children have a right to express their views freely in all matters affecting them and to have their views taken into consideration.

This document was agreed on by civil society and relevant UN organizations and was used to ask governments that these principles be included in the NY Declaration. There are six areas covered by the NY Declaration:

- Non-discrimination

- Child protection
- Best interests of the child
- Durable solutions
- Child immigration detention
- Access to services

The Global Compact on Safe, Orderly and Regular Migration will come into effect in 2018. CSOs decided the NY Declaration is a good opportunity to work together and with governments to ensure the rights of children are included in the two Global Compacts. The Initiative for Child Rights in the Global Compacts was formed, including 22 separate agencies. There are three main strands of work:

- Development of a working document called Child Rights in the Global Compact. The first draft has already been produced and will be finalized in June after the Berlin conference.
- The organization of the global conference on 12-13 June in Berlin.
- An advocacy strategy, which will be developed and agreed on by all members. Goals and specific commitments with ways to measure them are included.

Consultations have been held with children and young people in Thailand, Laos, Cambodia and Myanmar which we hope will feed into the JGC and into the finalization of the Working Document.

### **Second presentation – Yoko Isawa, UNHCR Regional Office for Southeast Asia: The comprehensive refugee response framework and the Global Compact on Refugees**

The NY Declaration has two components: a comprehensive refugee response framework (CRRF) and the Global Compact on refugees. The Compact will be based on the CRRF. UNHCR is tasked to develop and initiate this process. Actions to ensure:

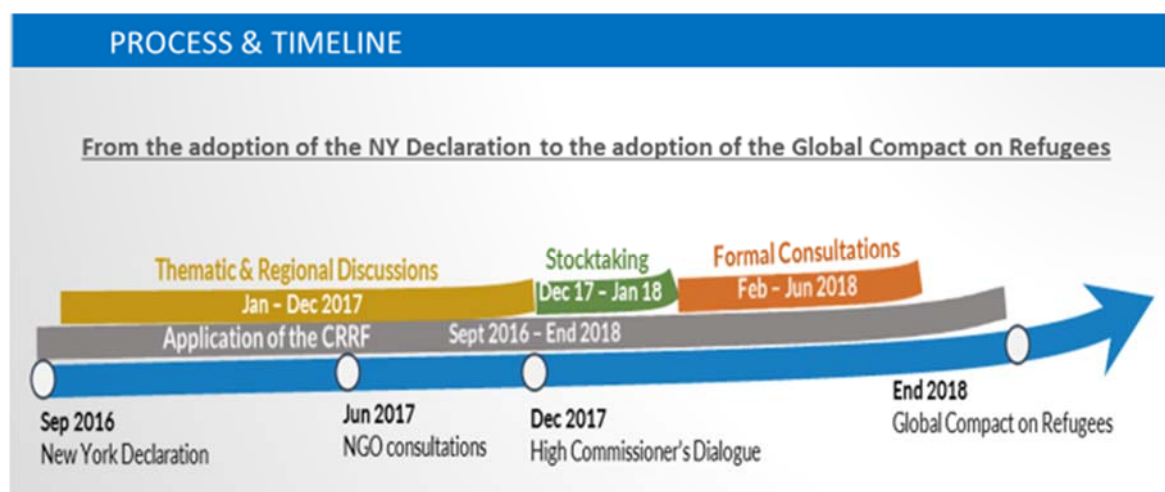
- Reception and admission
- Support for immediate and ongoing needs
- Support for host countries and communities
- Durable solutions.

Some new actions are called for, including a systematic whole-of-society approach. It also foresees sustainable and predictable responses, including innovative responses. Inclusion and integration is a focus, including access to national services rather than having a parallel system for them. The emphasis is on partnerships and on highlighting the benefits of refugees rather than the burdens. Objectives:

- Ease pressure on host countries
- Enhance refugee self-reliance
- Expand access to third country solutions
- Support conditions in countries of origin for safe and dignified return.

Pilots are ongoing in six countries (none in Asia). Member states are committed to working on the Global Compact for Refugees. A preamble will be included which states the reasons for it and the body of the Compact will be informed by the pilots of the CRRF.

Process and timeline (see diagram below): A zero draft of the Global Compact will be developed in February, followed by consultations, with a final draft expected in November. A template is being developed to capture best practices and lessons learned. A short document is available on how NGOs can be involved. There is also a one-page overview of the Compact and CRRF available.



Migrants and refugees are treated separately, partly because they face different issues, but there are areas of crossover. There must be coherence and clarity between the two Compacts so we are working with that Working Group as well. The Refugee Compact is based on the global legal framework.

### Third presentation – Mariko Tomiyama, IOM Regional Office for Asia and the Pacific

This panel is to place COM in the context of these Global Compacts. The modality has been agreed on, which includes regional consultations, thematic sessions and intergovernmental dialogue. The UN Secretary-General has appointed a special representative for international migration. The time is very short given the scope of the work so the modality document emphasizes using existing dialogue mechanisms and tapping existing expertise. Member states are encouraged to hold national multi-stakeholder consultations.

IOM has been working with partners to hold CSO regional consultations. There are a lot of complex issues involving children that affect both Compacts and that is being looked at that within the regional consultations. Both Compacts are rooted in the SDGs.

**Comment (moderator):** We must engage with all levels of society, including academia, CSOs, district and provincial governments, etc. All countries are encouraged to hold such consultations and then bring the recommendations from those to the regional consultation.

### Fourth presentation – Pablo Ceriani, UN Committee on the Protection of the Rights of All Migrant Workers

The Compacts are linked to the number of challenges COM face. The CMW is the international legal framework for that Compact, in the same way that the Geneva Convention underpins the Refugee Compact.

Why these Compacts? Because the situation has changed dramatically, and although the CRC has been ratified by all states bar one, the CMW has only been ratified by 51 states, despite being adopted universally. There are a number of contradictions between the CMW and national policies. Although we have been discussing whether or not children should be deprived of liberty when in conflict with the law for the last 20 years, the number of children deprived of liberty due to migration status has risen over that time, and they are often much younger and held for a much longer time than children in conflict with the law. These children are also deprived of access to services such as education and health services.

The situation has thus regressed. This JGC highlights the interrelated nature of human rights. What happens to parents impacts children and vice versa. The children's rights approach to migration debates forces us to think more responsibly about how we address policy, particularly to think about a more long-term approach, which has generally been missing from the debate.

When discussing how migrants are being treated in transit and detention, it is important to take children into account. This process is an opportunity to think about that. Guidelines being adopted by regional bodies should be taken into account as well. A rights-based approach is crucial to all these issues – migration, refugees and labour.

### **Intervention from the floor – Ezekiel Simperingham, International Federation of Red Cross and Red Crescent Societies Regional Office for Asia Pacific**

We are the world's largest humanitarian network with 190 national societies in 190 countries and 17 million volunteers. In 2016 we made a commitment to make migration an area of focus. We have PSS support projects and reunification projects that involve COM.

We are in the process of developing a global position paper. It is as important for us to influence the document and the language in the document as it is to influence the reality on the ground. Our national societies will use this opportunity to raise these issues with their governments. The top priorities for us are:

- Safety and protection
- Access to services
- Protecting the rights and needs of vulnerable migrant children.

### **Q&A/feedback**

**Question:** Some organizations have formed alliances to work on specific SDGs, e.g. Re 8.7 on eradicating the worst forms of child labour. Are there similar alliances for other SDGs?

**Answer:** There are a lot of initiatives at all levels (local, national, regional). There are two other alliances, on trafficking (5.2) and peace and justice (16). SDGs have been adopted and there is a lot of discussion on implementation. We need to look at the issue in an holistic way, incorporating other SDGs in the same area. The European refugee crisis was one of the reasons for the Compacts, as governments were being reactive rather than proactive.

**Question:** What will the programme action on the CRRF look like?

**Answer:** There is a set of actions and practical modalities to be implemented to put the CRRF into practice.

**Question:** Why were the pilot countries for CRRF selected only from Africa and Latin America, and what exactly are the pilots and how do they relate to COM?

**Answer:** This region is relatively stable compared to Africa and the Middle East. The pilot countries were chosen because they came forward and actively wanted to be pilot countries. In this region, many governments are not signatories to the Refugee Convention so we see the SDGs as a good way to circumvent that obstacle and get them on board because the SDGs cover all people, including migrants and refugees.

**Comment (Stefan):** In September this year the Global Action Plan against Trafficking in Persons will be up for review. I don't have details but agencies may want to look into how they can be involved.

**Question:** The root causes of migration, e.g. climate change and natural disasters, are not mentioned much. Access to communications and information is also something that needs to be addressed, so migrant or refugee children can maintain communication with the rest of their family.

Also, should we be spending so much time on yet another document when there are such limited resources at the grass roots level?

**Answer:** While communications are important, we need to look at why they are needed – why are parents not allowed/able to bring their children with them, why are families being separated? These two Compacts will help facilitate implementation of the SDGs. An informal session was held in NY this week on the causes of migration, which included climate change. I think this document is necessary because while a Convention sets out principles, we need to move from principles to implementation and action. One of the key objectives of the Global Compacts is exactly that. It's also a good opportunity for CSOs to highlight their best practices and try to get them adopted on a wider scale.

There has been a vast change in the discussion about migration, e.g. ten years ago migration was always linked to development but now we can talk about migration on its own.

### Session 3: Discussion Panel 2 – COM and other children affected by migration in the countries of Southeast Asia

- Where do UN institutions/ASEAN/CSOs want their countries and the ASEAN region to be with regards to the rights of COM and other children affected by migration by 2020? How do they want to change the picture of the lives of this group of children?
- How would the Global Compacts help them get there? What would be their motivations for supporting or being involved in the Global Compacts?
- What are their major difficulties in getting there and what help would they need?
- Q & A

**Presenter:** Stephen Blight, UNICEF East Asia and the Pacific

**Moderator:** Dr Sriprapha Petcharamee, Institute of Human Rights and Peace Studies, Mahidol University, Thailand

#### Presentation – Stephen Blight, UNICEF East Asia and the Pacific: A Child is a Child

'A Child is a Child' is a report and advocacy effort launched by UNICEF last week in preparation for the G7 summit. The main finding of the report is dramatic: there has been a fivefold increase in the number of children separated and on the move since 2010. They tend to fall through the cracks because they move along illicit pathways, face harsh border controls and are easily exploited. The phrase 'a child is a child' is aimed at removing other definitions, such as 'unaccompanied' or 'separated' or 'migrant'.

We have six policy asks, which are:

- Protect uprooted children from exploitation and violence – in this region one-third of trafficking victims identified are children. Illegal pathways to migration are also dangerous.
- End the detention of children by creating practical alternatives.
- Keep families together and give children legal status. The number of unaccompanied and separated children is growing – over 200,000 were detected in Europe and the Americas last year.
- Help uprooted children to stay in school and stay healthy.
- Press for action on the causes that uproot children from their homes – protracted conflict, violence, poverty, etc.
- Combat xenophobia and discrimination.

Some challenges for implementation in Southeast Asia:



- Incomplete adoption of international standards.
- Statelessness – 800,000 in Myanmar, 300,000 in Thailand, a similar number in Malaysia. There is also uneven progress on birth registration, especially in Laos, Myanmar, Cambodia and Indonesia.
- Weak frameworks for regional action. The response within ASEAN to the Andaman Sea boat crisis was underwhelming and the actions that were taken were done so reluctantly. ASEAN is hampered by its principles of non-interference in member countries' laws and domestic policies.
- Fragmented migration policies. Some countries need workers and others have a surplus but ASEAN regulations do not facilitate the free movement of labour between countries. Only six categories of jobs allow such movement, covering only 1.5% of the labour force and only high-skilled labour.
- Lack of alternatives to detention. Despite clear international standards and clear alternatives, detention is still widespread. There is often tension between the need to keep children outside of detention and the need to keep children with their families.
- Exclusion from basic services. While favourable policies exist in Thailand, for example, spotty implementation and practices plus barriers not addressed by policy mean many children still do not access health and education services.
- Lack of data.

	BRU	CAM	IDN	LAO	MYS	MMR	PHI	SIN	THA	VNM
Convention on the Rights of the Child (1989)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Convention relating to the Status of Refugees (1951) and Protocol (1967)	✗	✓	✗	✗	✗	✗	✓	✗	✗	✗
Protocol to Prevent, Suppress and Punish Trafficking in Persons (2000)	✗	✓	✓	✓	✓	✓	✓	✓	✓	✓
Protocol against the smuggling of migrants (2000)	✗	✓	✓	✓	✗	✓	✓	✗	✗	✗
Convention on the rights of all migrant workers (1990)	✗	✗	✓	✗	✗	✗	✓	✗	✗	✗
Convention on the reduction of Statelessness (1961)	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗

**Dr Petchamesree:** There is also an increasing trend of children crossing borders within ASEAN, and many of them have no documents. Although COM are not specifically mentioned in the ASEAN workplan for women and children, some specific categories are covered, e.g. trafficked children, children without birth registration. Climate change as a root cause of migration is something we don't discuss enough, as is child marriage. These issues are included in the ASEAN workplan.

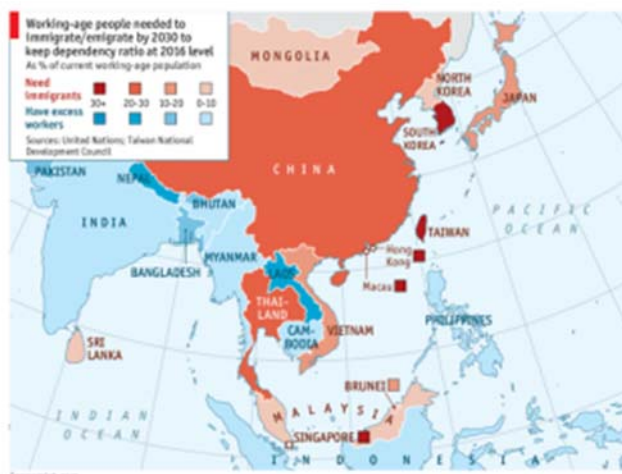
In 2000 there was a UN Global Compact on Business and thousands of corporations signed that Compact, yet there are still many violations of child and human rights being perpetrated by businesses, so the question raised in the previous session about whether we should be devoting scarce resources to another document is pertinent.

**Questions for participants**

How can we advance the agenda of COM, especially given that there is no such agenda in this region?

How will the Global Compacts on migrants and refugees improve the lives of COM?

What are our priorities for inclusion in the Global Compacts? Are the six policy asks presented by Stephen are a good start?





### Responses from participants

- When states in the region address COM, they use the immigration law first and foremost. This means COM will be dealt with by immigration officers, who are generally not trained in a child rights or human rights approach. We should try to change the law so that COM are dealt with by other government bodies.
- We are missing the link between various children's rights, e.g. education and the methods of education. How do we ensure that the education provided is appropriate? Links are needed between child rights and other thematic areas like education or children with disabilities.
- An issue worth highlighting is children's vulnerability when they come to move. Agency and resilience of children is important. The predominant reason for older children (15-18) to migrate is for work. Most of them would not consider themselves victims or exploited but they would probably be classified as such and resources may be devoted to them that could be better used elsewhere, e.g. in labour or migration policy (in this example).
- I agree with the points raised just now about older children migrating for work voluntarily. Terre des Hommes reports are being launched on Friday, including on the migration of low-skilled Cambodian women to Malaysia for work, and there are interesting findings about the migration of low-skilled labour.
- Cross-border migration of children and youths is increasing. There is also a push to increase tourism and economic activity by governments, which may make children more vulnerable.
- Child participation is another topic that needs more discussion. ASEAN integration is opening borders to trade and information but not to human beings.
- Regarding keeping families together – while this is important for younger children, it becomes more problematic with older children. Sometimes they leave home of their own volition and do not want to be reunited. Also, some beggars keep children with them when they should be in school, and girls sometimes leave their families because of discrimination. Not all children want to remain in school – some want to work.
- On the subject of keeping families together, the point is well taken but in situations of forced migration children are often separated from their parents and become vulnerable as a result. So this issue needs to be addressed on a case-by-case basis.
- Regarding the adoption of international standards – how effective is it to have these standards adopted? States can circumvent Conventions even if they ratify them, e.g. Australia right now by detaining asylum seekers. Even if Compacts are adopted, what about leadership? China with its one belt, one road policy is pushing economic considerations over and above human rights.

**Comment (Dr Petcharamesree):** That is a good point about ratification. Cambodia ratifies everything but implementation is another story, for example.

- Signing Conventions is not the end of the process – the Conventions must be translated into domestic law by signatory countries.
- Signing Conventions does at least allow pressure to be applied to governments – i.e. you signed the Convention so you need to implement it.
- The Global Compacts are happening very quickly, and the upside is that the process is very fluid and we can have input into that. The Compacts can contribute to COM because adoption will give states ownership and thus give us a tool for advocacy, partnership and leverage.

**Comment (Dr Petcharamesree):** We have an opportunity to influence the language used by ASEAN governments, because negotiations will happen at an intergovernmental level. If you want to influence the language, give it to them. Bureaucrats love complete answers.

- Major difficulties:
  - Non-ratification. How can we persuade governments to sign/ratify?
  - What support can we offer them, e.g. in providing alternatives to detention? If even

- their own communities have difficulty accessing free healthcare and education, one can understand their resistance to outsiders telling them to provide such services to COM.
- While I agree that ‘a child is a child’, older children (15 and older) often don’t want to be treated as children and they need to be treated with respect. How can we involve children in these consultations?
  - Stefan: We organized a training event on this topic for CSO staff who were going to run consultations. The training materials are available upon request by emailing p.thangam@tdh.nl. The report from the consultations from all four countries will be available. Regarding how little we know about the Global Compacts – I see this as an opportunity to define what will be in them. The Compact is supposed to include specific commitments, modalities for implementation and ways to measure progress so let’s work on getting those in there.
  - The ASEAN blueprints are complementary to the SDGs so we have an opportunity to influence them. There are also opportunities at local level, e.g. individual cities and mayors, that we should take advantage of rather than always looking at national level.

**Comment (Dr Petcharamesree):** The ASEAN blueprint is very loaded and very boring so the SDGs are actually more of a point of reference than the blueprints. When researching the Global Compacts, some documents are difficult to understand and they are scattered across various websites.

Although there may be some questions about the Global Compacts, they are under way so we should do our best to influence them in such a way that they will advance our agenda in this region. We need also to discuss priorities and language as this is one of the most effective ways to influence ASEAN – give them the language on a silver platter. We will never get everything we want so be realistic about that and really determine priorities. Making use of SDGs is also a good strategy, as ASEAN member states are really committed to them. We also need to engage the people who will be affected by these documents as much as possible.

## Day Two, Thursday 25 May

### Session 4: Thematic session on access to services

The session focused on access to services that would ensure children are able to access their rights to protection, health, psychosocial services, education for children, and protection from violence and exploitation, including trafficking in children. There was a presentation of key issues and good practices in the SE Asia region, followed by Q&A and discussion.

#### First presentation – Amihan Abueva, Child Rights Coalition Asia

The presentation began with a short video of children’s voices. Access to services should ultimately move towards healing and growth, rather than just get children through the next day.

#### Feedback from children’s consultations in four countries

Children’s consultations were held in four countries last week – Thai, Myanmar, Laos and Cambodia. The inputs are from over 100 children in Thailand (in refugee camps), 28 children in Myanmar (some who had gone to Thailand, some in Yangon), 54 children in Laos and 39 children in Cambodia. The results of those consultations were presented by Ye Yint from United ACT, Myanmar. Some selected challenges raised in the consultations included:

- **Access to education**
  - Children lose an opportunity for education and understanding of their nationality
  - Discrimination from friends and teachers at school and people in communities

- Children could not access to basic education services due to lack of birth certificate, family book or national identification card
- Children faced difficulties going back to school
- Children cannot go to school regularly or drop out from school
- **Access to care services**
  - Caregivers in the shelters sometimes lack professionalism and behave inappropriately
  - Children lose freedom and sometimes feel threatened by others in the shelters
  - Family separation
  - Children lose self-confidence, relationships with friends, and family love and care; and rarely communicate with their families
- **Access to health services**
  - Less attention is paid to migrants
  - Migrants often do not dare to access to health services
  - Lack of related documents for medical treatment e.g. ID card for health care
  - Many migrants use clinics rather than hospitals because of the problem with ID, even though clinics are more expensive
  - Communication barriers (e.g. language barrier for illegal migrants)
  - Lack of paediatricians and other health professionals who understand migration.

On the Myanmar/Thai border, funding has been reduced so services are scarcer because most NGOs have moved into Myanmar now that it has opened up. The need to address transitions is highlighted by this presentation, as is the need for quality services and the vulnerability to violence and sexual abuse. Education had a heavy emphasis too, with children wanting better education services.

Safe migration options, skills training, and greater child participation in children's and youth clubs are all needed. The lack of funding due to changing priorities of NGOs is a problem. Child safeguarding needs to be implemented at the grass roots level. We also need to train professionals who come in contact with children – doctors, nurses, teachers, etc. – in child safeguarding.

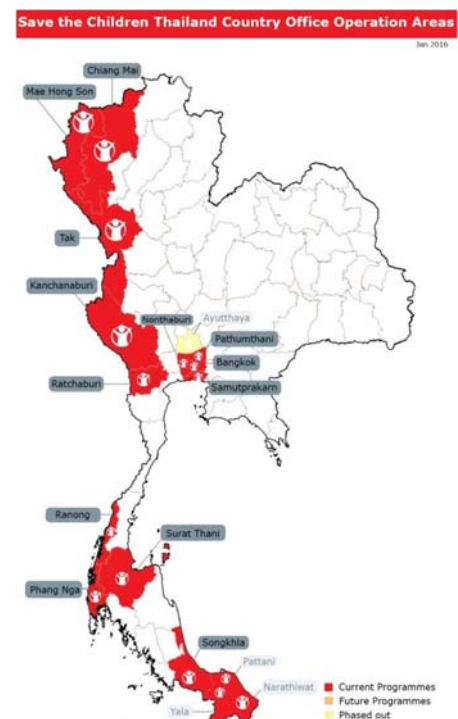
### Second presentation – Matumon Katerenchuk, Save the Children Thailand: Sharing experiences working with partners in Thailand

Save the Children implements mostly in border areas, particularly the border with Myanmar, and in the deep south where there is conflict.

Good practices: The Education for All policy and related labour laws that support the status development and documentation of children of migrant workers. Since 1999 children of migrant workers have been given the right to access free education up to the age of 15 years. The Ministry of Education has tried to enrol migrant children in education, but the ID process is under the Ministry of Interior and ID is needed to access school.

Now around 48,000 children have an ID number which allows them access to school but no other services. The government is moving to providing a 13-digit ID number which will allow migrant children to access other services. However, the process is complicated. It needs to be simplified and made more efficient.

There are no longer any legal grounds to reject migrant children from school. Birth registration and the ID number also allows children over age 7 to access free health services. Thai nationality



is being granted to children born in Thailand or who have lived in Thailand for a long time. This is policy but implementation is not yet where it should be.

Another good practice is the cross-ministerial Working Group on out of school children. Around 480,000 children are not in education, including roughly 250,000 migrant children/children of migrant workers but we do not have accurate data. The Working Group discusses how to reduce barriers for children to access school. The ASEAN out of school declaration has been helpful.

Migrant children often move around and their education is thus often interrupted so a more flexible, recognized (accredited) system is needed for these children. The Ministry is trying to support the many non-formal education centres around Mae Sot border area. There is a push to get the Myanmar government to recognize education provided to Burmese people in Thailand.

### **Child protection**

Save the Children works with many vulnerable groups. During the Andaman Sea boat crisis in 2015, many people, including children, ended up in detention. Save the Children provided:

- Technical assistance for shelter staff on child protection and education
- Interpretation services – it is important that interpreters are accurate and use child-friendly terminology
- Identification of unaccompanied and separated children
- Legal assistance process for child victims of trafficking
- PSS
- Education

Providing technical assistance is where we have really added value, along with improved coordination of local service providers and communication. We used case management to identify children in need of PSS, legal assistance or family reunification. Once needs were identified we tailored the services provided to each individual child. We provided basic literacy and numeracy education services. Most children had had no education at all before arriving.

Provision of justice: some children were witnesses to trafficking and needed to appear in court so we worked with legal professionals to make sure children were ready for that experience. Many children were very afraid to give evidence but over time they were empowered to do so. We also worked with all nine child welfare protection centres across Thailand to create and implement a child safeguarding policy and build the capacities of staff.

### **Q&A/feedback**

**Question:** Where are the migrants from Cambodia and Laos going?

**Answer:** Lao migrants primarily cross into Thailand. The ones we interviewed were ones who had been to Thailand: trafficked children, children who migrated for labour, and pushback cases (i.e. deported from Thailand for lack of documentation, mostly unaccompanied).

**Comment (from Cambodia):** Consultations were held with children from 14 provinces, living in shelters. They included children born to migrant parents in destination countries, children who experienced migration and children separated from parents due to parents migrating for work. Most migrants come from two provinces and most migrate to Thailand. Many cross the border daily to work and come back in the evening.

**Question:** Is the 13-digit number needed to access education and vocational training in Thailand? As for health care, many Thais prefer to go to a clinic as well because the waiting time at hospitals is often longer.

**Answer:** Children don't need documentation to enrol in school (by policy) but without

documentation the school cannot claim the government subsidy for a student, so in practice they may reject children without the 13-digit number. Also, most migrants want it because it allows them to access other services such as health services. For health services, some public hospitals ask migrants for documents (e.g. a work permit) in order to access free health services. Because there is a risk they may be referred to law enforcement due to lack of documents, they often prefer to pay for a private clinic. In border areas there are often mobile clinics to overcome these issues.

### Session 5: Thematic session on child immigration detention, provision of appropriate reception and care

This session focused on the issue of child immigration detention in SE Asia, available alternatives to immigration detention for children and their families and the provision of appropriate reception and care in a safe and nurturing environment. There was a presentation of key issues and good practices in the SE Asia region, followed by Q&A and discussion.

**Presenters:** Lisa Button, Save the Children Australia, and Vivienne Chew, International Detention Coalition

#### Presentation – Lisa Button, Save the Children Australia: Unlocking Childhood: Current immigration detention practices and alternatives for child asylum seekers and refugees in Asia and the Pacific

The research presented in the report (launched the previous evening) was a collaboration between various agencies and was driven by the global refugee crisis and the growing use of detention for children. The research focused on asylum seekers and refugees (i.e. prolonged detention) and on Thailand, Indonesia, Malaysia, Australia and Nauru as the key host/transit countries. It also focused on official 'immigration detention centres' only, not other forms of detention (e.g. closed shelters). The goal is ending detention altogether rather than improving conditions.

There does appear to be a drop in the number of children detained over the last year. However, the statistics (from UNHCR) are very conservative. In Thailand, statistics are only for the end of the calendar year so they do not include children released earlier in the year but do include those out on bail. Certain countries have reservations about specific articles of the CRC; for example, they will only implement if they do not conflict with local law, which is a concern.

#### NUMBER OF CHILD ASYLUM SEEKERS AND REFUGEE CHILDREN IN IMMIGRATION DETENTION FACILITIES<sup>3</sup>

	31 DEC 2014	FULLYEAR 2014	31 DEC 2015	FULLYEAR 2015	31 DEC 2016	FULLYEAR 2016
Australia	420	DNA but 1,000 in Jan <sup>4</sup>	91	DNA but 127 in June <sup>5</sup>	<5	DNA but 88 in Jan <sup>6</sup>
Indonesia	1,349	1,795	1,056	1,904	975	1,602
Malaysia	425	1,334	418	1,433	87	647
Nauru <sup>7</sup>	135	DNA but 135 in Dec	Nil (68 in 'open centre')	DNA but 119 in Jan <sup>8</sup>	Nil (45 in 'open centre')	Nil (54 in 'open centre' in Jan) <sup>9</sup>
Thailand	DNA	DNA	49 <sup>10</sup>	DNA but 49 in Dec	43 <sup>11</sup>	DNA but 43 in Dec
<b>Total</b>	<b>More than 2,329</b>	<b>More than 4,264</b>	<b>1,614</b>	<b>At least 3,632</b>	<b>1,109<sup>12</sup></b>	<b>At least 2,380</b>

DNA = Data not available for relevant period

Other major concerns include overcrowding, separation of children from parents, corporal punishment, lack of access to health care and education, poor nutrition, limited communication with the outside world, inappropriate sleeping arrangements. Specific child protection concerns include lack of awareness and policies on child safeguarding, children (especially male children) being treated as adults and lack of access to legal advice and interpreters.

The impacts of detention are both direct – loss of freedom, physical and mental health, development, violence, abuse and family separation – and indirect (deprivation of education, health, family life, cultural identity). Fear of detention is also very real and many families keep their children indoors and do not access education and health services for fear of being detained.

### **Thailand**

Thailand is not a signatory to the Refugee Convention and has no laws concerning refugees, so refugees fall into a legal black hole. UNHCR is the main agency registering and processing refugees. Although Thailand has a policy of not detaining children, in practice government shelters require separation of families and parents will often request that children come with them into detention. UNHCR registration can provide some protection but does not secure release. Once in the system, there are very few viable pathways out for children.

Positive developments: there is a new screening mechanism for undocumented migrants with protection needs. The Thai Cabinet passed a resolution this year to create a screening process to provide a legal status to refugees but it is not law yet and has not been implemented. UNHCR is working with the government to create the screening mechanism.

Concerns: The Thai government is reluctant to give full refugee status because it is not a signatory to the Convention. Some children are repatriated while parents are still being screened. The main concern is that there are no alternatives to detention for family groups. The lack of a framework for guardianship and foster care is another major concern, as is the fact that undocumented migrants are generally excluded from child protection laws.

### **Malaysia**

Malaysia is home to 2–4 million undocumented migrants, mostly informal labour. There are also approximately 150,000 registered asylum seekers and refugees (90% from Myanmar – Rohingya and others), of which 35,144 are registered children.

Malaysia is not a signatory of the Refugee Convention and there is no legal framework on refugees. Over 85,000 undocumented migrants were detained in 2016, mostly in appalling conditions. The average time children spend in detention is four months. Once in detention, children are usually separated from parents along age and gender lines. Corporal punishment is a major concern.

Positive developments: In Malaysia there is a new UNHCR card. Law enforcement can swipe the back of the card and be linked to information about the registrant, including a photo, so forgery of cards is much more difficult and those holding a card are less likely to be detained. There are some pilots on alternatives to detention, as well as a pilot work scheme for Rohingya. However, in developing alternatives to detention we should not focus solely on Rohingya.

### **Indonesia**

There are 14,500 asylum seekers and refugees (3,669 children) in Indonesia, including many unaccompanied children (approx. 471). While Indonesia is not a signatory to the Refugee Convention, there is a new presidential declaration which is a potential game changer but is light on



details. Self-reporting to detention centres has increased. It happens when families run out of money or want to access alternatives such as community-based housing or government shelters.

Positive developments: There has been a growth in alternatives to detention (from 2,546 spaces in 2015 to 3,772 in 2015) including alternatives for families. Roll-out of the new UNHCR card is planned for 2017. There are potential new laws covering child protection and guardianship.



Ongoing concerns are similar to those of the other countries: lack of a legal framework, long wait times for resettlement, dangerous detention conditions, exclusion of migrants from child protection laws.



### Presentation – Vivienne Chew, International Detention Coalition: Alternatives to detention

The International Detention Coalition publication ‘Captured Childhood’ is the result of our research on the issue of child immigration detention. We held interviews with 70 children from 11 countries and also looked at practices of governments that do not detain children. Drawing from such good practices, we came up with recommendations for alternatives to detention for children and their families. Such recommendations are summarized in our Child-Friendly Community Assessment and Placement Model.

In this region there is a focus on shelters and institutions but there is a new model in Malaysia of case management and foster care for unaccompanied children that is being piloted by SUKA Society, a child rights NGO. Children are referred in various ways – self-referral, referred by other migrants, by UNHCR or by other NGOs. Only unaccompanied children not registered with UNHCR are enrolled in the program because of the added protection risks that they face in terms of vulnerability to arrest and detention.

The model is centred on community placement (as opposed to placement in institutions). One form of community placement is fostering with refugee families, who are in turn provided with the



support needed to care for an unaccompanied child. The model has a strong case management component, with case managers providing information about the registration and Refugee Status Determination process and also assisting children to access health services, education, etc. through referral to other NGOs and health care providers. Case management can also really speed up the process of assessment and resettlement. The other type of community placement that is utilized is independent living for older teenagers, with the support of case managers.

### Presentation of feedback from children's consultations – Village Focus International: Child consultations in Laos

Child consultations were recently held in Laos, Cambodia, Myanmar and Thailand. For detention, the results presented are only from Laos. We interviewed 27 children, including trafficking victims and pushback children.

In the worst cases pushback children have to pay a fee. Those with funds will be released quickly but those without often stay longer than a month. Children are recruited from villages by brokers so they are victims of trafficking but are treated as undocumented migrants. When they are deported they often cross the border far from their home town/village and are exploited and re-trafficked.

Children from neighbouring countries are usually kept at police stations for up to 14 days and their treatment depends largely on the police officer in charge of them. Violence is the rule rather than the exception. Shelters run by governments in destination countries usually provide various services. Children usually stay 5–12 months but it can be as long as eight years. They are often treated differently from national children.

All financial support for shelters in Laos for returned children comes from outside Laos. Children are provided with food and clothing and available services include healthcare, education, life skills / vocational training and counselling. Children sometimes receive a grant to start a business when they leave the shelter.

### Q&A/feedback

**Comment:** We were told that there is a new policy that children in Malaysia will go directly to welfare homes and not be put in detention. With the new UNHCR card the incidence of corruption may diminish – previously people stopped would pay a bribe to be let go.

**Comment:** The screening mechanism is a priority for UNHCR in Thailand. The purpose will be to determine who has protection needs and we hope it will provide protection from detention. Thai authorities have visited UNHCR to observe registration procedures. There is a specific reference in the Global Compacts to ending detention of children which may be helpful.

**Comment:** A distinction should be made between detention of refugee/asylum seeker children and migrant children from neighbouring countries (in Thailand). Usually the latter are detained only for a short time and then repatriated. For the former, they are often detained for a long time.

**Comment:** Be careful about seeing shelters for victims of trafficking in Thailand as superior to immigration detention centres because often they are 'closed' and therefore also deprive children of liberty. Allowing those in shelters to work is also limited to males.

## Session 6: Thematic session on integration and non-discrimination

This session focused on: integration of COM into host communities; an end to discrimination, racism and xenophobia by empowering and supporting both COM and host communities; and ensuring an equitable distribution of resources within local communities to benefit all. There was a presentation of key issues and good practices in the SE Asia region, followed by Q&A and discussion.

**Presenters:** Kong Villa, Cambodia Against Child Trafficking Network; Usa Lerdsrisuntad, Foundation for Women, Thailand and Kongseng Sirivath, Village Focus International, Laos

### Presentation of feedback from children's consultations – Kong Villa, Cambodia Against Child Trafficking Network: Discrimination in Laos, Thailand, Myanmar and Cambodia

#### Laos

- Female returned migrants are less respected by the community and it is difficult for them to marry and reintegrate.
- All children (boys and girls) have the possibility to attend school.
- Children who were left behind tend to continue their education, as parents send money back. Migrant children, however, are often not able to continue their education. Once they drop out it is very unlikely that they ever go back to school. In general, children who are left behind tend to reach a higher level of education than migrant children.
- Poor children often receive less attention in school, health services and protection.
- Disabled children don't attend school. Schools are not equipped to support disabled children.

#### Thailand

- Children of migrant workers and migrants workers feel they are portrayed negatively in the media, which leads to discrimination
- Children are subject to being asked for bribes by the traffic police and soldiers at checkpoints due to their illegal status. If they cannot pay they may be jailed or deported.

#### Myanmar

- Migrant children are not treated well by other children at school
- Difficulties associated with labour migration include discrimination from supervisors, being bullied by senior staff, low salary and unhealthy accommodation
- Medical staff and shop owners do not treat migrants well
- When they are conflict with the law, police do not follow the law but instead ask for bribes
- They are not paid as the law states and they have to work long and unusual hours.

### Presentation - Usa Lerdsrisuntad, Foundation for Women, Thailand

The Foundation for Women runs the Mae Sot Centre for Women and Children, working with women and children in Muslim communities, including children from immigration detention centres and trafficked children. Children from Myanmar go to the Centre but children from Laos are referred to Village Focus International (pushed back across the border). In the shelter are children from immigration detention centres in Bangkok and Mae Sot as well as referred children.

Services provided include shelter and food, health care, counselling, needs assessment, language classes, recovery activities, education and training, family relocation and assessment, and preparing for safe return or integration into Mae Sot if teenagers do not want to return to their families. Some prefer to stay for work opportunities. Many children only stay short-term before being repatriated. There are some frequent flyers – those who get repatriated but then return.

Activities are also provided that empower children to understand and exercise their rights and promote leadership. We have extended our activities to the Muslim community in Mae Sot, partly

because girls who leave the shelter and are repatriated often return and are soon married and pregnant, which curtails their education.

Children integrated in Mae Sot include those whose parents live there; those who stay for school; those abandoned; those left behind by parents leaving for work. The Centre provides skills and information for living in Mae Sot (for those who do not want to continue education) including:

- How to work safely
- Trafficking and safe migration
- How to protect themselves from abuse
- Income saving
- Language classes
- Reproductive health.

For those who wish to study, we support them in that process. We have a drop-in centre for children and have organized peer support groups and self-defence training. Girls are particularly vulnerable because of religious beliefs and cultural norms – early marriage, early pregnancy, no use of birth control because of religion, no voice with parents, etc. We have facilitated meetings between parents and teachers in order to raise awareness about the importance of education.

There is also a day care centre and we cooperate with the local hospital to provide vaccinations. We also raise awareness about domestic violence through working with Muslim community leaders. In Mae Sot the police know most people are undocumented.

#### **Presentation - Kongseng Sirivath, Village Focus International, Laos**

Laos is a source country and most migrants go to Thailand. The biggest group is 12–17 year olds and the age has lowered over the years. There are only four shelters in the whole country to serve trafficking victims and no organization working on migrant workers. Village Focus is the only organization working with COM and promoting safe migration. We operate two shelters, one in the south near the Thai border. Last year we received funding to build a transit centre to provide short-term shelter for pushback deportees – 100–150 per day, many of them unaccompanied and separated children. Often they are from the north are but are deported down south and don't know how to get home.

There is a full-time social worker to do quick screening/needs assessment, who will refer people to the drop-in centre but only for very short-term accommodation. Our priority is safe family reunification. For those who cannot contact their family or remember where they are from we refer them to the long-term shelter, where they are provided with health and non-formal education services because almost all girls at the shelter are illiterate. Vocational training is also offered, along with life skills training. All children must pass primary school equivalency.

There is a social worker who conducts family assessments to see if reunification is in the best interests of the child. If it is not, we try to find them a job placement or give them a grant to start a small business, e.g. tailoring or agricultural training.

Many girls are victims of trafficking but not identified as such and are simply deported but they often have serious health problems, especially mental health problems, and there are very few professionals in Laos in this area. This is a major hurdle to reintegration into society. Sometimes these girls stay up to three years before they are ready to be reunited with their family and community. We also try to improve the livelihoods of families of returning children so children will not be immediately sent back over the border to earn money.

For younger children we encourage them to return to school and try to support the family to earn more income to enable the child to stay in school. There is still a major gap between the policy level and the grass roots level. Policies often take a decade or more to be implemented.

### Q&A/feedback

**Question:** Migrant women and children face a lot of discrimination at health care facilities in Mae Sot – often because of the language barrier – but have you seen any progress?

**Answer:** Those who can afford it go to a clinic rather than the hospital. Some families have to borrow money to access health services (e.g. for childbirth) and end up paying high rates of interest.

**Question:** Do migrants face discrimination at hospitals?

**Answer:** Often they have to wait for a long time. Another facet affecting access to health care is the fear of coming into contact with authorities and being identified as an illegal migrants, leading people to defer seeking help.

**Question:** What are your plans for continuing your work? Many agencies are pulling their funding from anti-trafficking work and I have seen many grass roots organizations lose their funding just when they have amassed deep experience and expertise.

**Answer (Cambodia):** We recently closed an office due to lack of funding. We are building a network with other NGOs to mobilize resources and have developed memorandums of understanding with other organizations to provide some services. We are also lobbying the government for funds. Governments still tend to think in terms of migration only rather than the broad spectrum of COM, including trafficking and refugees. **Laos:** We are trying to empower communities to prevent trafficking and protect children. Trafficking is also related to poverty and violence so sometimes tackling these issues is an indirect way to prevent trafficking, for example through boosting livelihoods and incomes. We have also begun girls clubs to try to empower girls. Strong communities are the best defence against trafficking.

**Thailand:** While there is still some funding for trafficking, we feel the biggest gap is in services for COM. Eradication of violence against women and girls is important too, and focusing on holding the government to their SDG commitments.

**Comment:** Regarding the funding issue – sometimes donors change their priorities because data shows them that the situation is improving (especially government data). However, sometimes government data is not accurate so we need to generate our own data.

### Session 7: Formulation of recommendations – three thematic breakout groups

Formulation of recommendations on concrete steps that could be taken nationally, bilaterally, regionally and multilaterally to advance the rights of COM in relation to that thematic area. Recommendations should be targeted towards States, international agencies (UN and others), civil society, the private sector, donors and other stakeholders for COM to access essential services.

**Note:** The table comparing the NY Declaration with the goals in the Working Document Child Rights in Global Compacts (see appendix 3) was used for this discussion.

#### Access to services

This group held a more general discussion, rather than dealing specifically with the targets listed in the table.

**Education**

- Language support
- Transitional education for those with no previous education
- Systems developed at the national level that integrate cross-ministerial services
- Technical and vocational education and training
- Recognition of educational attainments from origin country or transit country if the child returns to country of origin

**Shelter**

- Safe dormitories for working children
- Foster care
- Group homes for older children
- Housing/shelter needs to be of decent quality, safe and secure
- Privacy should be ensured
- Community-based care is also important, along with opportunities for participation in the community

**Other needs**

- Comprehensive services, including trained translators and case managers
  - Reforms in the legal system so court processes will be more child-friendly and training of court personnel
  - Psychological assistance to deal with trauma
  - Developing and strengthening a wide network of grass roots organizations to work with INGOs and government, both local and national
  - Identifying what children need, e.g. quality of and accessibility to health and education services that are affordable.
- 
- We need to be able to quickly identify children who are at risk. Mobilizing the community to identify them, especially village authorities, is one approach. While this might work well in village or small town settings, it may not work as well in an urban setting, particularly as COM can be highly mobile.
  - Data should ideally be collected in both the host and sending countries, although this can be difficult when people are undocumented. Many countries also lack adequate systems for capturing data, and sometimes data is collected but never analysed. One way to persuade governments to collect data is to point out how much it can save them in the long term.
  - NGOs/INGOs need to work together better. However, working together is not easy and some investment needs to be made in how to do that. In Thailand the CRC Coalition is a good example of collaboration. Together we have more potential to influence government.
  - Mapping services to create a referral network is another suggestion. We should be using geographic information systems to create actual maps, and think about using technology more. For example, apps could be created that help people find service providers once they cross the border. Along this line we should advocate to businesses to invest more in social development, and also advocate with governments to incentivize businesses in this area, e.g. with tax breaks.
  - Professional training for those who come in contact with children needs to integrate child protection sensitivity and skills training and the status of social work as a profession needs to be raised.
  - Integration of children with other local children is important to combat xenophobia.
  - Most of the recommendations put the burden on the destination country but there should be equal burden on countries of origin.
  - Origin country embassies in host countries should be involved in assisting migrants/trafficked persons (but not refugees) in destination countries. Origin countries also need to provide shelters and services for migrants/trafficked persons who are deported/returned.

- Businesses that use child labour are often small or medium-sized and they need to be encouraged by government and multinational corporations (to whom they may be suppliers) to improve working conditions/end child labour. Good labour options need to be provided for older children, preferably with training and education components.
- Access to leisure and quality cultural materials is also necessary.
- Establish peer groups for psychological support.
- Children with disabilities need special services and need to be ensured of access to services. Services also need to be gender sensitive.

### **Immigration detention**

The NY Declaration talks about using child detention only as a measure of last resort. This phrase is almost identical to the CRC and relates mostly to children in conflict with the law rather than immigration status. There should be zero tolerance of detention of children. We also take issue with the use of 'progressively end' because there is no end date. 'End immigration detention of children and implement alternatives that are aligned with child rights' is preferred.

Target 2: The government should declare how many children are in detention and what their plan is to get children out of detention.

Target 3: Mostly the authorities who handle migrant children are immigration authorities, who often do not understand child rights or the different categories of COM and what their specific needs are. We agree that a Ministry for Children or similar is the best authority to deal with COM.

Targets 4 & 5: We agree that it is realistic to allow governments to set their own timelines.

### **Integration and non-discrimination**

For this to move ahead, there needs to be a partner relationship between government, civil society, community and the private sector to work equally together to build the community and achieve these goals. Opportunities need to be created for children from different backgrounds/groups to play or learn together. This requires collaboration between community and government.

There are also regional alliances such as ASEAN that can pass legislation/recommendations. Community-based organizations and CSOs should be encouraged to share and communicate their good practices with government, and a database of these maintained. We also need to recognize the impact of grass roots organizations and their ability to change attitudes. Government provides the leadership and legislative framework and communities provide the detailed programmes/events. There should be a child protection agency in every country as well as an awareness-raising programme about child rights in each country.

### **Next steps**

- We are preparing a report, which will include everything discussed here. We will ask them to make it available to the conference attendees in Berlin.
- There may need to be some thinking after the Berlin conference about what direction to take once we have the final wording of the JGC and Global Compacts.

**Comment:** There is more to be done on the JGC both in terms of providing input and also how to disseminate it once it is finalized. This could be a good opportunity to work together. How do we get relevant government ministries on board and how do we translate it into child-friendly versions and different languages? How do we promote it as widely as possible, e.g. using social media?

- Some organizations are planning to make submissions to the JGC. The report from this conference will also be sent as a submission. We should encourage governments to submit as well, as this will give them a sense of ownership. Written submissions can be made to Bradford Smith at [bsmith@ohchr.org](mailto:bsmith@ohchr.org).
- A reminder to NGOs to write in to request an increase in the word limit for the JGC – the more that do the likelier it is to happen.
- There are a lot of processes for which we need to provide input and they have clear deadlines. We need to strategize to ensure our voice and messages are being heard in all these processes.
- There will also be national consultations so you will be able to use the report as an advocacy tool with your governments.
- Please send feedback on the conference itself.

**Comment:** We come from different organizations and we work with different target populations so perhaps we need to define who we are actually targeting.

**Comment:** We've had some very rich discussions about various populations but there are some populations that we haven't discussed, e.g. Brunei, people migrating from the Philippines to East Malaysia, internally within Indonesia.



## Appendix 1: Agenda

Day 1 - 24 May 2017	
08:30-09:00	<b>Registration, welcome coffee and tea</b>
09:00-12:30	<p><b>Pre-conference session for civil society organizations and young people:</b></p> <p><b>Regional consultation on the CMW-CRC Joint General Comment on the Human Rights of Children in the Context of International Migration</b></p> <p><i>Session to be led by Mr. Pablo Ceriani Cernadas, Vice-Chair of the Committee on the Protection of the Rights of All Migrant Workers (CMW)</i></p>
12:30- 13:30	<b>Lunch (followed by registration for arriving participants)</b>
13:30-14:00	<p><b>Opening of Regional Conference on COM in South-East Asia</b></p> <p><i>Opening remarks by Dr. Seree Nonthasoot, Representative of Thailand to the ASEAN Intergovernmental Commission on Human Rights, and Rose Supaporn, Save the Children, Asia Regional Office</i></p>
14:00-15:15	<p><b><u>Discussion panel 1 (PLENARY): Global Developments</u></b></p> <p>COM:</p> <ul style="list-style-type: none"> <li>• Where are we after the NY Declaration?</li> <li>• What opportunities are emerging from the Global Compacts and the Joint General Comment? What about Agenda 2030?</li> <li>• Panel reflections</li> <li>• Q&amp;A</li> </ul> <p><i>Panellists:</i></p> <ul style="list-style-type: none"> <li>• <i>Stefan Stoyanov, Terre des Hommes</i></li> <li>• <i>Yoko Iwasa, UNHCR Regional Office for Southeast Asia</i></li> <li>• <i>Mariko Tomiyama, IOM Regional Office for Asia and the Pacific</i></li> <li>• <i>Pablo Ceriani, UN Committee on the Protection of the Rights of All Migrant Workers</i></li> <li>• <i>Remo Gassmann, Embassy of Switzerland in Thailand</i></li> </ul> <p><i>Moderated by Dr. Maria Nenette Motus, IOM Regional Office for Asia and the Pacific</i></p>
15:15-15:45	<b>Coffee Break</b>
15:45-17:15	<p><b><u>Discussion panel 2 (PLENARY): COM and other children affected by migration in the countries of Southeast Asia</u></b></p> <ul style="list-style-type: none"> <li>• Where do UN institutions/ASEAN/CSOs want their countries and the ASEAN region to be with regards to the rights of COM and other children affected by migration by 2020? How do they want to change the picture of the lives of this group of children?</li> <li>• How would the Global Compacts help them get there? What would be their motivations for supporting or being involved in the Global Compacts?</li> <li>• What are their major difficulties in getting there and what help would they need?</li> <li>• Q &amp; A</li> </ul> <p><i>Panellists:</i></p> <ul style="list-style-type: none"> <li>• <i>Stephen Blight, UNICEF East Asia and the Pacific</i></li> <li>• <i>TBA</i></li> </ul> <p><i>Moderated by Dr. Sriprapha Petcharamesree, Institute of Human Rights and Peace Studies, Mahidol University, Thailand</i></p>
18:15	<b>Drinks Reception and Launch of Report by Save the Children and Asia Pacific Refugee Rights Network: “Unlocking Childhood: Current immigration detention practices and alternatives for child asylum seekers and refugees in Asia and the Pacific”</b>

<b>Day 2 - 25 MAY 2017</b>	
9:00-9:15	<b>Summary of Day 1; Introduction to Objectives of Day 2</b>
9:15-10:45	<p><b>Thematic Session 1: Access to Services</b></p> <p>The session will focus on access to services that would ensure children are able to access their rights to protection, health, psychosocial services, education for children, and protection from violence and exploitation, including trafficking in children. There will be a presentation of key issues and good practices in the SE Asia region, followed by Q&amp;A and discussion</p> <p><i>Presented by Amihan Abueva, Child Rights Coalition Asia and Matumon Katerenchuk, Save the Children Thailand</i></p>
10:45- 11:00	<b>Tea Break</b>
11:00- 12:30	<p><b>Thematic Session 2: Child Immigration Detention, Provision of Appropriate Reception and Care</b></p> <p>This session will focus on the issue of child immigration detention in SE Asia, available alternatives to immigration detention for children and their families and the provision of appropriate reception and care in a safe and nurturing environment. There will be a presentation of key issues and good practices in the SE Asia region, followed by Q&amp;A and discussion</p> <p><i>Presented by Lisa Button, Save the Children Australia, and Vivienne Chew, International Detention Coalition</i></p>
12:30- 13:30	<b>Lunch</b>
13:30- 15:00	<p><b>Theme 3 – Integration and Non-Discrimination</b></p> <p>This session will focus on: integration of COM into host communities; an end to discrimination, racism and xenophobia by empowering and supporting both COM and host communities; and ensuring an equitable distribution of resources within local communities to benefit all. There will be a presentation of key issues and good practices in the SE Asia region, followed by Q&amp;A and discussion</p> <p><i>Presented by Usa Lerdsrisuntad, Foundation for Women, Thailand and Kongseng Sirivath, Village Focus International, Laos</i></p>
15:00- 15:15	<b>Tea Break</b>
15:15- 16:45	<p><b>Formulation of Recommendations: Three Thematic Breakout Groups</b></p> <p>Formulation of recommendations on concrete steps that could be taken nationally, bilaterally, regionally and multilaterally to advance the rights of COM in relation to that thematic area. Recommendations should be targeted towards States, international agencies (UN and others), civil society, the private sector, donors and other stakeholders for COM to access essential services</p>
16:45- 17:30	<b>Presentation of Recommendations (Plenary)</b>
17:30	<b>Closing</b>

**Appendix 2: Participant List**

Name	Organization	Designation	Country	E-mail
H.M.C. van der Lee	Terre Des Hommes Netherlands	Regional Representative	Cambodia	e.vanderlee@tdh.nl
Els Heijnen-Maathuis	Save the Children Sweden	Regional Education Adviser - Asia	Thailand	els.heijnen-maathuis@rb.se
Son Penh	NGO Coalition on the Rights of the Child Cambodia	Secretary-General	Cambodia	Penh.Son@ngocrc.org/penhson@gmail.com
Kong Villa	Cambodia Against Child Trafficking Networks	Secretary-General	Cambodia	sg@cambodiaacts.org
Sopheap Suon	Terre Des Hommes Netherlands	Country Manager	Cambodia	s.sopheap@tdh.nl
Grace Chrispina Maria Gracia	Jesuit Refugee Service Indonesia	Information Advocacy Officer	Indonesia	grace@jrs.or.id
Muhammad Zubedy Koteng	Save the Children Indonesia	Child Protection Advisor	Indonesia	zubedy.koteng@savethechildren.org
Marnie McDonald	Conference Rapporteur	Rapporteur of the Conference	Lao PDR	marnie.c.mcdonald@gmail.com
Kongseng PIENGPANYA	Village Focus International Laos	Programme Coordinator	Lao PDR	kongseng@villagefocus.org
Datuk Mah Weng Kwai	National Human Rights Commission of Malaysia (SUHAKAM)	Commissioner	Malaysia	mahwengkwai@gmail.com
Dato Yasmeen Shariff	Former Member of the UN Child Rights Committee (CRC Global Initiative) Malaysia	Member	Malaysia	yasmeenshariff2003@yahoo.com
Ezekiel Simperingham	IFRC Regional Office for Asia Pacific	Asia Pacific Regional Migration Coordinator	Malaysia	ezeziel.simperingham@ifrc.org
Vivienne Chew	International Detention Coalition	Asia Pacific Regional Coordinator	Malaysia	vchew@idcoalition.org
Maria Amihan V. Abueva	Child Rights Coalition Asia	Regional Executive Director	Philippines	amihan.abueva@crcasia.org
Michel Anglade	Save the Children Regional	Campaigns and Advocacy Director - Asia	Singapore	michel.anglade@savethechildren.org
Ketsanee Chantrakul	ECPAT Foundation Thailand	Project Coordinator	Thailand	ecpatk@loxinfo.co.th
Dr. Mark Capaldi	ECPAT International	Head of Research and Policy	Thailand	markc@ecpat.net
Rangsima Deesawade	ECPAT International	Regional Coordinator for Southeast Asia	Thailand	rangsimad@ecpat.net

Dr. Maria Nnette Motus	IOM Regional Office for Asia and the Pacific	Regional Director	Thailand	nmotus@iom.int
Dana Graber Ladek	IOM Thailand	Chief of Mission	Thailand	dgraber@iom.int
Janet Ondieki	IOM Thailand	Consultant (Migrant Assistance Unit)	Thailand	jondieki@iom.int
Mariko Tomiyama	IOM Regional Office for Asia and the Pacific	Sr Regional Policy and Liaison Officer	Thailand	mtomiyama@iom.int
Maria Rose	The Life Skills Development Foundation Thailand	Programme Management Team	Thailand	marose21@gmail.com
Grace Agcaoili	UNICEF East Asia and Pacific Regional Office	Child Protection Specialist - Child Rights	Thailand	gagcaoili@unicef.org
Chawaratt Chawarangkul	Asylum Access Thailand	Senior Policy Advisor	Thailand	chawaratt.chawarangkul@asylumaccess.org
John Patrick Murray	Caritas Thailand	Member of Caritas International Working Group on Migration and Trafficking	Thailand	fjyogi@yahoo.com.au
Usa Lerdsrisuntad	Foundation for Women Thailand	Programme Director	Thailand	usaffw@gmail.com
Helen Brunt	IFRC Regional Office for Asia Pacific	Senior Migration Officer	Thailand	helen.brunt@ifrc.org
Bambang Alfred Sipayung	Jesuit Refugee Service Asia Pacific	Regional Director	Thailand	director@jrsap.org
Itsaraporn Daoram	Terre Des Hommes Germany	Country Coordinator and Children and Youth Participation Strategy Goal Coordinator for Southeast Asia	Thailand	tdhthai@tdhgsea.org
Kohnwilai Teppunkoonngam	The Coalition for the Rights of Refugees and Stateless Persons Thailand	Committee	Thailand	kohnwilai@gmail.com
Stephen Blight	UNICEF East Asia and Pacific Regional Office	Regional Child Protection Advisor	Thailand	sblight@unicef.org
Yoko Iwasa	UNHCR Regional Office for Southeast Asia	Senior Durable Solutions Officer	Thailand	iwasa@unhcr.org
Vanvisa Warachit	UNHCR Regional Office for Southeast Asia		Thailand	WARACHIT@unhcr.org

Dr. Sriprapha Petcharamesree	Mahidol University			sripraphapet@gmail.com
Anna Olsen	ILO Regional Office for Asia and the Pacific	Technical Specialist Tripartite Action to Enhance the Contribution of Labour Migration to Growth and Development in ASEAN (TRIANGLE II)	Thailand	olsena@ilo.org
Sebastian Ball	United Nations Action for Cooperation against Trafficking in Persons (UN-ACT)	Regional Research Specialist	Thailand	<a href="mailto:sebastian.boll@undp.org">sebastian.boll@undp.org</a>
Thangam Ponpandian	Terre Des Hommes Netherlands	Thematic programme manager on migration and trafficking		<a href="mailto:p.thangam@tdh.nl">p.thangam@tdh.nl</a>
Watcharabhorn Sa-Nguansin	Terre Des Hommes Netherlands	Programme Officer (Thailand and Myanmar)	Thailand	<a href="mailto:w.sa-nguansin@tdh.nl">w.sa-nguansin@tdh.nl</a>
Amarin Plengrasme	Gabfai Community Theatre Group	Director	Thailand	<a href="mailto:gabfai1996@gmail.com">gabfai1996@gmail.com</a>
Chanvetey Vann	Terre Des Hommes Netherlands	Regional Communication Officer Asia	Cambodia	<a href="mailto:c.vann@tdh.nl">c.vann@tdh.nl</a>
Ye Yint Naung	United Against Child Trafficking/Equality Myanmar	Program Coordinator	Myanmar	<a href="mailto:yyn.unitedact@gmail.com">yyn.unitedact@gmail.com</a>
Ratirose Supaporn	Save the Children		Thailand	<a href="mailto:ratirose.Supaporn@savethechildren.org">ratirose.Supaporn@savethechildren.org</a>
Sussi Prapakranant	Asia Pacific Refugee Rights Network		Thailand	<a href="mailto:sussi@aprrn.info">sussi@aprrn.info</a>
Lisa Button	Save the Children Australia		Australia	<a href="mailto:lisa.Button@savethechildren.org.au">lisa.Button@savethechildren.org.au</a>
Irene So	Porticus	Programme Manager	Hong Kong	<a href="mailto:i.so@porticus.com">i.so@porticus.com</a>
Ms. Cecilia Mok	Porticus	Junior Grant Manager	Hong Kong	<a href="mailto:c.mok@porticus.com">c.mok@porticus.com</a>
Siripan Wandee	International Committee of the Red Cross Thailand	Migration Programme Officer	Thailand	<a href="mailto:siwandee@icrc.org">siwandee@icrc.org</a>
Zafri Zafri	Yayasan Geutanyoë Indonesia	Media Staff	Indonesia	<a href="mailto:zhiezafri23@gmail.com">zhiezafri23@gmail.com</a>
HE Mrs. Bou Sophoan	Cambodia National Council for Children	Deputy Secretary-General	Cambodia	<a href="mailto:sophoancnc@gmail.com">sophoancnc@gmail.com</a>

Pol.Colonel Keo Phalla	Migration Technical Team Department, NCCT's General Directorate	Vice Director	Cambodia	<a href="mailto:phalla_keo007@yahoo.com">phalla_keo007@yahoo.com</a>
Meeber Laeseoh	Gabfai Community Theatre Group		Thailand	<a href="mailto:gabfai.meeber@gmail.com">gabfai.meeber@gmail.com</a>
Jittima Jantanamalaka	Gabfai Community Theatre Group		Thailand	<a href="mailto:yourstarlight@gmail.com">yourstarlight@gmail.com</a>
Gary Risser	UNICEF Thailand	Chief, Child Protection	Thailand	<a href="mailto:grisser@unicef.org">grisser@unicef.org</a>
Patcharin Nawichai	Asia Pacific Refugee Rights Network	Operations Coordinator	Thailand	<a href="mailto:patcharin@aprrn.info">patcharin@aprrn.info</a>
Sudarat Sereewat	Face Foundation Thailand	Director	Thailand	<a href="mailto:facesudabkk@gmail.com">facesudabkk@gmail.com</a>
Thachamach Krairit	Save the Children Thailand	Project Coordinator, Program Implementation	Thailand	<a href="mailto:khem.krairit@savethechildren.org">khem.krairit@savethechildren.org</a>
Matumon Katerenchuk	Save the Children Thailand	Advocacy and Campaign Coordinator	Thailand	<a href="mailto:mam.katerenchuk@savethechildren.org">mam.katerenchuk@savethechildren.org</a>
Sotheavy Hap	Terre des Hommes Netherlands		Cambodia	<a href="mailto:s.hap@tdh.nl">s.hap@tdh.nl</a>
Stefan Stoyanov	Terre des Hommes Netherlands	Technical Expert Trafficking & Migration		<a href="mailto:s.stoyanov@tdh.nl">s.stoyanov@tdh.nl</a>
Pablo Ceriani	UN Committee on the Rights of Migrant Workers and their Families	Vice-Chair	Argentina	<a href="mailto:pablo.ceriani@gmail.com">pablo.ceriani@gmail.com</a>
Perada Suponpun	Face Foundation	Project Manager	Thailand	<a href="mailto:faceperada@gmail.com">faceperada@gmail.com</a>
Mr. Remo Gassmann	Embassy of Switzerland in Thailand	Academic Associate to Diplomatic Section		<a href="mailto:remo.gassmann@eda.admin.ch">remo.gassmann@eda.admin.ch</a>
David Keegan	Host International	Chief Executive Officer	Australia	<a href="mailto:david.keegan@hostinternational.org.au">david.keegan@hostinternational.org.au</a>
Paul Tacon	United Nations ESCAP	Social Affairs Officer		<a href="mailto:tacon@un.org">tacon@un.org</a>
Kim Koch	Save the Children (Thailand)	Country Director		
Kaori Kawarabayashi	UN-ACT	Project Manager		<a href="mailto:kaori.kawarabayashi@undp.org">kaori.kawarabayashi@undp.org</a>
<b>Additional attendees (not on the original invitation list)</b>				
Narisara Kaewvilai	NHRC			
Phuwodon Suksakulboondha	NHRC			
Katia Chirizzi	OHCHR			
Byul Ryan	OHCHR			
Heike Hetson	UNDG AP			

Wimanrat Promrak	DCY			
Hong Roitha	Terre des Hommes Netherlands			
Katchada Prommadi	Plan Thailand			



**Appendix 3: Table comparing the New York Declaration with the goals in the Working Document  
Child Rights in Global Compacts**

NEW YORK DECLARATION	RELEVANT GOAL IN THE WORKING DOCUMENT CHILD RIGHTS IN GLOBAL COMPACTS
<b>Non-Discrimination</b>	
<ul style="list-style-type: none"> <li>• We commit to combating xenophobia, racism and discrimination in our societies against refugees and migrants. We will take measures to improve their integration and inclusion, as appropriate, and with particular reference to access to education, health care, justice and language training (para. 39)</li> <li>• We will tackle the multiple and intersecting forms of discrimination against refugee and migrant women and girls (para. 31)</li> </ul>	<ul style="list-style-type: none"> <li>• Adopt and implement measures to reduce xenophobia, racism and discrimination against refugees and migrants.</li> <li>• All States receiving significant numbers of migrants take action to improve access for child refugees and migrants to education, health care, justice and language training.</li> </ul> <p>Best Interests of the Child</p>
<b>Best Interests of the Child</b>	
<ul style="list-style-type: none"> <li>• We will protect the human rights and fundamental freedoms of all refugee and migrant children, regardless of their status, and giving primary consideration at all times to the best interests of the child (para. 32).</li> <li>• Para. 58 also refers to the best interests of the child in making decisions regarding removal or repatriation of migrant children.</li> </ul>	<p>Ensure that decisions concerning all COM and other children affected by migration, including those migrating within their country of origin, are governed by the best interests of the child principle. Ensure that accurate and comprehensive disaggregated data are regularly collected to ensure precise measurement of progress.</p>
<b>Child Protection</b>	
<ul style="list-style-type: none"> <li>• We will protect the human rights and fundamental freedoms of all refugee and migrant children, regardless of their status, and giving primary consideration at all times to the best interests of the child. This will apply particularly to unaccompanied children and those separated from their families; we will refer their care to the relevant national child protection authorities and other relevant authorities. We will comply with our obligations under the Convention on the Rights of the Child</li> <li>• The NY Declaration notes the specific needs of child migrants for an adequate standard of living and the right, specifically of girl children to be protected from violence</li> <li>• The NY Declaration also contains a ‘Comprehensive Refugee Response Framework’ which outlines the standards for addressing the needs of all refugees and migrants from the initial reception period, along with their</li> </ul>	<p>Provide children with adequate social and legal services that constitute child protection in the context of migration, during the migratory journey, at reception and ongoing throughout the process of seeking a durable solution. Child protection in this context refers to, among others: Identification, registration and tracing of family members as appropriate; protection from violence, abuse and exploitation and appropriate recourse when it occurs; access to appropriate legal, consular and social assistance mechanisms; where necessary, appointment of a guardian as soon as practicable; access to information; and provision of basic services that include education, healthcare and psychosocial care. Accurate and comprehensive disaggregated data is collected to ensure precise measurement of progress.</p>

<p>changing ongoing needs and culminating in a durable solution.. This Framework includes numerous measures for protection of all refugees and migrants, but it also requires that specific emphasis be placed on the needs of the most vulnerable populations, including child migrants.</p>	
<b>Durable Solutions</b>	
<ul style="list-style-type: none"> <li>• We will actively promote durable solutions, particularly in protracted refugee situations....(para. 75)</li> <li>• Annex 1 on “Comprehensive Refugee Response Framework” contains 8 more detailed points about durable solutions for child and adult refugees</li> <li>• The Declaration itself also contains guarantees that exclude certain options that are not regarded as legitimate durable solutions: <ul style="list-style-type: none"> <li>• We reaffirm that, in line with the principle of non-refoulement, individuals must not be returned at borders (para. 24)</li> <li>• Any type of return, whether voluntary or otherwise, must be consistent with our obligations under international human rights law and in compliance with the principle of non-refoulement. It should also respect the rules of international law and must in addition be conducted in keeping with the best interests of children and with due process (para. 58)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Adopt and implement procedures for determining what should happen to unaccompanied or separated children, which explicitly make the best interests of the child a primary consideration in the determination and require the views of a child for whom a durable solution is being sought to be taken into account in accordance with the child’s age and maturity;</li> <li>• Agree and implement durable solutions for all unaccompanied or separated children, both refugees and others;</li> <li>• Abandon the practice of issuing residence permits to unaccompanied children that are valid only until they reach the age of 18 and develop durable solutions which are of indefinite validity;</li> <li>• Agree an internationally-recognized procedure for monitoring returns (of children, whether accompanied or unaccompanied) and for monitoring the subsequent re/integration (of such children) in their countries of origin</li> </ul>
<b>Child Immigration Detention</b>	
<p>[W]e will use it only as a measure of last resort, in the least restrictive setting, for the shortest possible period of time, under conditions that respect their human rights and in a manner that takes into account, as a primary consideration, the best interest of the child, and we will work towards the ending of this practice (para. 33)</p>	<p>Progressively end the immigration detention of children</p>
<b>Access to Services: Shelter, Education and Health</b>	
<ul style="list-style-type: none"> <li>• We will work to provide for basic health, education and psychosocial development and for the registration of all births on our territories. We are determined to ensure that all children are receiving education within a few months of arrival, and we will prioritize budgetary provision to facilitate this, including support for host countries as required (para. 32)</li> </ul>	<ul style="list-style-type: none"> <li>• Grant refugee and migrant children access to adequate shelter and to education and health services on a par with citizen children up to age 18, regardless of migration status.</li> <li>• Put special measures in place to ensure the inclusion of vulnerable children, including girl children, unaccompanied children and children with disabilities in housing and education systems.</li> </ul>

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| <ul style="list-style-type: none"><li>• We stress the importance of addressing the immediate needs of persons who have been exposed to physical or psychological abuse while in transit upon their arrival, without discrimination and without regard to legal or migratory status or means of transportation (para. 26)</li><li>• We will provide access to sexual and reproductive healthcare services (para. 31)</li><li>• We are committed to providing humanitarian assistance to refugees so as to ensure essential support in key life-saving sectors, such as health care, shelter, food, water, and sanitation (para. 80)</li><li>• We will support early childhood education for refugee children. We will also promote tertiary education, skills training and vocational education (para. 82)</li></ul> | <ul style="list-style-type: none"><li>• Collect accurate and comprehensive disaggregated data regularly to ensure precise measurement of progress.</li><li>• Grant access to health services to all children affected by migration (refugees and others) both in their countries of origin and abroad.</li><li>• Strengthen and build resilient health systems (in line with Sustainable Development Target 3.8) with fundamental goals of achieving universal health coverage and universal access to quality essential health services for all, regardless of their legal status.</li><li>• Make mental health and psychosocial support part of the “basic health” provision guaranteed to refugees and to other migrant children</li></ul> |
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